

COLORADO REVISED STATUTES



TITLE 12

2012



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Colorado Revised Statutes 2012

Title 12 Professions and Occupations



Edited, Collated, Revised,
Annotated, and Indexed
Under the Supervision and Direction of the

COMMITTEE ON LEGAL SERVICES

by

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*Reenacted by the General Assembly as the
Positive Statutory Law of Colorado of a General and Permanent Nature
and as the Official Statutes of the State of Colorado*

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COLORADO REVISED STATUTES**

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OF
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The Committee on Legal Services hereby certifies that the 2012 Colorado Revised Statutes includes all the laws of a general and permanent nature of the state of Colorado as revised and reenacted in Colorado Revised Statutes 1973, together with all of the laws of a general and permanent nature enacted by the General Assembly subsequent to 1973, as corrected, collated, and revised as authorized by and in conformity with Article 5 of Title 2, Colorado Revised Statutes.

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Source Note Information

A source note shows the legislative history of a C.R.S. section and is located immediately after the text of the section. The source note for each section indicates the year the section was added, each year it was amended, and the page of the Session Laws and the section of the bill where the amendment can be found. The source note includes the number of the section in prior codifications when applicable. For amendments made after 1973, information on each specific provision of the section that has been changed by a bill, the specific change to the provision (i.e. added, added with relocations, amended, amended with relocations, repealed, repealed and reenacted, or recreated and reenacted), and the effective date of the bill are shown.

The legislative history is arranged by year of passage; if the section was amended by two or more acts in the same year, the order of the information for that year is determined by the effective dates of the acts. The effective date in the source note indicates the date the act or portion of the act takes effect even if the text of the amendment indicates a different date. If the year is not included with the month and day, the provision is effective the year of passage. Additional information to assist the user in researching C.R.S. sections can be found beginning on page vii.

The following provides a further explanation of the information found in a source note:

“L.” is the symbol for “Session Laws” and will be followed by a number indicating the year when the C.R.S. section was changed by an act generally either creating new law, amending existing law, or repealing existing law; except that, in the constitution, “L.” also means constitutional measures referred by the General Assembly and voted on by the people of Colorado at a general or an odd-year election.

“Ex. Sess.” is the symbol for “Extraordinary Session”. If this symbol follows the year, the amended provision can be found in the Session Laws for an extraordinary session for that year and not in the Session Laws for the regular session of the General Assembly for that year (S, S2 in the Red Book).

“p.” is the symbol for “page” and will be followed by a number indicating the page of the Session Laws where the amendment to the C.R.S. section can be found.

“§” is the symbol for “section” and will be followed by a number indicating the section of the act where the amendment to the C.R.S. section can be found.

“IP” is the symbol for the “introductory portion” to a section, subsection, paragraph, or subparagraph.

“Added” means the provision was newly enacted by the act (N in the Red Book).

“Added with relocations” means the provision in existing law was relocated from one title, article, part, or section to another title, article, part, or section with amendments by the act.

“Amended” means the provision in existing law was amended by the act (A in the Red Book).

“Amended with relocations” means the provision in existing law was amended to reorganize an entire title, article, part, or section by the act.

“Repealed” means the provision was deleted from the existing law by the act through the use of a repeal provision (R in the Red Book).

“R&RE” is the symbol for “Repealed and Reenacted” and means the provision in existing law was repealed and reenacted by the act (RE in the Red Book).

“RC&RE” is the symbol for “Recreated and Reenacted” and means a previously repealed provision has been recreated by the act (RC in the Red Book).

“Added by revision” means a provision providing for the repeal of a statutory provision on a specified date has been added by the Revisor of Statutes as a C.R.S. provision. Adding the provision is necessary because a separate section of the act provided for the repeal of the provision with a future effective date.

“Initiated” means a provision that was amended by means of an initiated petition approved by a vote of the people of Colorado at a general or an odd-year election.

“Referred” means a provision that was amended by a measure referred by the General Assembly and voted on by the people of Colorado at a general or an odd-year election; except that, in the constitution, a referred measure is indicated by “L.” and also means constitutional measures referred by the General Assembly and voted on by the people of Colorado at a general or an odd-year election.

Starting in 2009, references to the bill number and chapter number have been included in the source note. If you are conducting a search on-line, the bill number reference within the source note links directly to the bill itself.

Colorado Statutory Research

Legislative history is not already written. It must be compiled by the researcher from many different sources and materials. The following information is a helpful starting point in identifying information you wish to research. Consult the red book table distributed with the session laws, the softbound editions of Colorado Revised Statutes beginning in 1997, the comparative tables located in the back of the C.R.S. index, C.R.S. 1963 and subsequent cumulative supplements thereto through 1971, and C.R.S. 1973 and annual cumulative supplements thereto through 1996.

Prior to 1921, enacted laws were not compiled into a comparative table, thereby making it more difficult to track the legislative history. Determining the subject matter in the statutory index is the only choice for tracking the history of a statute since a statute did not retain its original number. The General Statutes of 1883 arranged laws into numbered chapters, alphabetically entitled, collated, and arranged by sections. This became the foundation and

model for compiling the statutes until the codification of C.R.S. 1973. (See Revised Statutes of Colorado 1908, An Act Providing For the Compilation, Publication, and Distribution of all the general statutes of the state.)

References in some source notes throughout the Colorado Revised Statutes to “Code 08”, “Code 21”, and “Code 35” are to the Revised Statutes of Colorado 1908, the Compiled Laws of Colorado 1921, and the Colorado Statutes Annotated 1935, respectively. Each of these volumes set forth the general statutes of the state of Colorado, including the Code of Civil Procedure and, in 1935, the Colorado Supreme Court Rules. On January 6, 1941, the Colorado Supreme Court adopted the new Rules of Civil Procedure, which became effective on April 6, 1941, resulting in the publication of a replacement volume. Thereafter, the publication of the Colorado Court Rules, although a continuing part of the Colorado Revised Statutes, contained a combination of the Federal Rules and the Colorado Code of Civil Procedure and, in addition, included some provisions that were entirely distinct from both the Federal Rules and the Colorado Code of Civil Procedure, as adopted or amended by the Supreme Court of Colorado.

To research a statute as it existed in previous years, the following is a chronological list of C.R.S. publications and the correct citation for each publication.

Revised Statutes of Colorado	(1868)	R.S.
General Laws of Colorado	(1877)	G.L.
General Statutes of Colorado	(1883)	G.S.
Revised Statutes of Colorado	(1908)	R.S. 08
Compiled Laws of Colorado	(1921)	C.L.
Colorado Statutes Annotated	(1935)	CSA
Colorado Revised Statutes 1953	(1953)	CRS 53
Colorado Revised Statutes 1963	(1963)	C.R.S. 1963
Colorado Revised Statutes	(1973)	C.R.S.

Comparative Tables:

- R.S. 08 to C.L. 1921 - located in the front of the C.L. 1921
- C.L. 1921 to CSA 1935 - located in the back of the Index to CSA 1935
- CSA 1935 to CRS 1953 - located in the front of the Index to CRS 1953
- CRS 1953 to C.R.S. 1963 - located in the front of the Index to C.R.S. 1963
- C.R.S. 1963 to C.R.S. - located in the back of the Index to C.R.S.

Supplements to C.R.S. 1963 include:

- 1965 hardbound supplement containing laws enacted in 1964 and 1965
- 1967 hardbound supplement containing laws enacted in 1966 and 1967
- 1969 hardbound supplement containing laws enacted in 1968 and 1969
- 1971 hardbound supplement containing laws enacted in 1970 and 1971

The softbound publication of the “Official Report of the Committee on Legal Services” was not intended as an official publication of our office. Copies were distributed to the members of the General Assembly for the purpose of certifying the laws enacted in the 1972 and 1973 Sessions for inclusion in the compilation of the 1973 C.R.S., which was not available until 1974. To find the 1972 or 1973 amended language, refer to the session laws of either 1972 or 1973.

Supplements and Replacement Volumes to C.R.S. 1973 and, on and after 1983, to Colorado Revised Statutes

Titles	Supplements to C.R.S. 1973 and, on and after 1983, to Colorado Revised Statutes	Replacement Volumes and Supplements to Replacement Volumes
Title 12	1975-77 Supplements	1978 Replacement Volume 1979-84 Supplements 1985 Replacement Volume 1986-90 Supplements 1991 Replacement Volume Vol. 5A - Articles 1-35 1992-96 Supplements Vol. 5B - Articles 36-64 1992-96 Supplements

Starting in 1997, annual softbound volumes are published each year.

For additional information on researching legislative history, see www.leg.state.co.us, Services Agencies, and select Legislative Legal Services. Choose Legal Topics and click on Researching Legislative History.

**Bills Enacted Without A Safety Clause
Explanation of Effective Date**

If a bill is enacted without a safety clause and an effective date is not indicated in the bill, the effective date is the day following the expiration of the ninety-day period after final adjournment of the General Assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state Constitution unless a referendum petition is filed against the act within such time period. If a referendum petition is filed, the act, if approved by the people, will take effect on the date of the official declaration of the vote thereon by proclamation of the Governor or the date indicated in the act if it is later than the Governor’s proclamation. The source note for a provision contained in such an act will indicate the actual date following the ninety-day period or the date set out in the act. If a referendum petition is filed, the date in the source note will be adjusted accordingly in the next publication following the election where the referendum petition is considered.

Annotations

Beginning in 2012, the annotations for Colorado state appellate court decisions include both public domain and regional reporter case cites. In preparing annotations to court decisions, we endeavor to include the most recent decisions. Occasionally, this may result in the inclusion of a decision before it becomes finalized and published in an official reporter. In such instances, the case cite will contain blank spaces for the volume and page number of the reporter. The volume and page number will be substituted for the blank spaces in subsequent publications of the statutes.

TITLE 12

PROFESSIONS AND OCCUPATIONS

TITLE 12

PROFESSIONS AND OCCUPATIONS

Cross references: For disposition of moneys collected under this title, see §§ 24-35-101 and 24-36-103; for practicing a profession or operating a business without a license, see §§ 12-51-106 and 16-13-306; for rule-making procedures and license suspension and revocation procedures by state agencies, see article 4 of title 24; for the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of registrations, see § 24-34-102 (7) and (8); for an alternative disciplinary action for persons licensed, registered, or certified pursuant to this title, see § 24-34-106.

GENERAL

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- Art. 1.5. General Provisions, 12-1.5-101.
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GENERAL

ARTICLE 1

Abstractors

12-1-101 to 12-1-116. (Repealed)

Source: L. 83: Entire article repealed, p. 513, § 4, effective May 16.

Editor’s note: This article was numbered as article 1 of chapter 1, C.R.S. 1963. For amendments to this article prior to its repeal in 1983, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 1.5

General Provisions

12-1.5-101. Mandatory donation of services prohibited.

12-1.5-101. Mandatory donation of services prohibited. (1) No regulatory agency or other department, division, agency, branch, instrumentality, or political subdivision of state government shall require any person practicing a regulated profession or occupation to donate such person’s professional services without compensation to any other person as a condition of admission to or continued licensure in such profession or occupation; nor shall payment of money in lieu of such uncompensated service be required.

(2) This section shall not be construed to prohibit the crediting of required hours of continuing education in exchange for hours of donated services by a person in a regulated profession or occupation.

Source: L. 99: Entire article added, p. 405, § 1, effective April 22.

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		12-2-131.	Professional corporations for the practice of public accounting as certified public accountants or as registered accountants. (Repealed)
12-2-118.	Partnerships or professional corporations composed of registered accountants - registration thereof. (Repealed)	12-2-132.	Repeal of article.

12-2-101. Legislative declaration. (1) It is declared to be in the interest of the citizens of the state of Colorado and a proper exercise of the police power of the state of Colorado to provide for the licensing and registration of certified public accountants, to ensure that persons who hold themselves out as possessing professional qualifications as certified public accountants are, in fact, qualified to render accounting services of a professional nature, and to provide for regulation of certified public accountants employed, serving clients, or doing business in Colorado and the maintenance of high standards of professional conduct by those so licensed and registered as certified public accountants. Because of the customary reliance by the public upon audited financial statements and upon financial information presented with the opinion or certificate of persons purporting to possess expert knowledge in accounting or auditing, it is further declared to be in the interest of such citizens to limit and restrict, under the circumstances set forth in this article, the issuance of opinions or certificates relating to accounting or financial statements which utilize or contain wording indicating that the author has expert knowledge in accounting or auditing or which purport to express an independent auditor's opinion as to financial position, financial results of operations, changes in financial position, reliability of financial information, or compliance with conditions established by law or contract to persons so licensed or registered.

(2) It is declared that the state board of accountancy may invoke discipline proactively with regard to certified public accountants employed, serving clients, or doing business in Colorado when required for the protection of the public health, safety, and welfare of the citizens of this state.

Source: L. 59: p. 128, § 1. CRS 53: § 2-2-1. C.R.S. 1963: § 2-1-1. L. 77: Entire section amended, p. 596, § 1, effective July 1. L. 90: Entire section amended, p. 743, § 1, effective July 1. L. 2000: Entire section amended, p. 1581, § 1, effective July 1.

ANNOTATION

Law reviews. For note, "Licensing of Occupations and Professions in Colorado", see 35 Dicta 235 (1958).

12-2-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Accredited college or university" means either:

(a) A college or university which is accredited by one of the following regional accrediting agencies:

- (I) The middle states association of colleges and schools;
- (II) The north central association of colleges and schools;
- (III) The New England association of schools and colleges;
- (IV) The northwest association of schools and colleges;
- (V) The southern association of colleges and schools;
- (VI) The western association of schools and colleges; or

(b) A college or university which meets academic standards substantially equivalent to the standards of the agencies specified in paragraph (a) of this subsection (1). The board shall establish by rule what constitutes substantially equivalent academic standards.

(1.5) "Board" means the state board of accountancy.

(2) "Foreign corporation" means a corporation organized under the laws of another state, which meets the requirements of section 12-2-117 (7).

(2.5) "Foreign limited liability company" means a limited liability company organized under the laws of another state, which meets the requirements of section 12-2-117 (7).

(2.7) "Limited liability company" means a limited liability company organized for the sole purpose of providing professional services to the public customarily performed by certified public accountants and includes foreign limited liability companies.

(2.9) "Peer review" means a study, appraisal, or review by an independent certified public accountant of one or more aspects of the professional work of another certified public accountant or of a registered partnership, corporation, or limited liability company that issues attest or compilation reports.

(3) "Person" includes individuals, partnerships, professional corporations, and limited liability companies.

(4) "Professional corporation" means a corporation organized for the sole purpose of providing professional services to the public customarily performed by certified public accountants and includes foreign corporations.

(5) "State" means any state, territory, or insular possession of the United States and the District of Columbia.

Source: L. 70: p. 97, § 13. C.R.S. 1963: § 2-1-31. L. 90: (2) and (4) amended, p. 744, § 2, effective July 1. L. 91: (1) amended and (1.5) added, p. 1669, § 1, effective March 27. L. 93: (2.5) and (2.7) added and (3) amended, p. 24, § 1, effective July 1. L. 2010: (2.9) added, (HB 10-1236), ch. 146, p. 506, § 28, effective July 1.

12-2-103. State board of accountancy - subject to termination. (1) The state board of accountancy shall consist of seven members appointed by the governor. Each member of the board shall be a citizen of the United States and a resident of this state. Five members of the board shall be holders of valid certified public accountant certificates issued under the laws of this state, a majority of whom are engaged in active practice as certified public accountants. Two members of the board shall be members of the public who do not hold a certified public accountant certificate. Members shall be appointed for terms of four years each. Any vacancy occurring during a term shall be filled by appointment by the governor for the unexpired term. Upon the expiration of a member's term of office, such member

shall continue to serve until a successor is appointed. In no event shall a member of the board serve more than two consecutive terms. The governor shall remove from the board any member whose certificate has become void or has been revoked or suspended and may remove any member of the board for neglect of duty, misconduct, or incompetence.

(2) A majority of the board shall constitute a quorum for the transaction of business.

(3) In any proceeding in court, civil or criminal, arising out of or founded upon any provision of this article, a copy of the records of the board certified as correct by the board shall be admissible in evidence as being the records of the board.

(4) Repealed.

(5) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the state board of accountancy created by this section.

(6) (a) Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

(b) The disclosure of reports or working papers subpoenaed by the board or any person or group authorized by the board to conduct an investigation into audit or review attest activities of a certified public accountant or certified public accounting firm pursuant to section 13-90-107 (1) (f) (III) or (1) (f) (IV), C.R.S., which is not in good faith shall subject the member of the board, person, or group to civil liability for damages to be determined by a court of competent jurisdiction.

Source: L. 59: p. 128, § 2. CRS 53: § 2-2-2. C.R.S. 1963: § 2-1-2. L. 67: p. 962, § 1. L. 76: (5) added, p. 622, § 7, effective July 1. L. 77: (1) R&RE, p. 597, § 2, effective July 1. L. 79: (4) repealed, p. 912, § 16, effective July 1. L. 90: (1) and (3) amended, p. 744, § 3, effective July 1. L. 2000: (1) amended, p. 1582, § 2, effective July 1. L. 2003: (6) amended, p. 1394, § 2, effective August 6. L. 2004: (6)(a) amended, p. 1792, § 1, effective August 4.

Cross references: For provisions concerning the termination schedule for the state board of accountancy, see § 12-2-132.

12-2-104. Powers and duties of board. (1) The board has the power and duty to:

(a) Elect annually from among its members a chair and prescribe the duties of such office;

(b) Make such rules and regulations, not inconsistent with the laws of this state, as may be necessary for the orderly conduct of its affairs and for the administration of this article, pursuant to the provisions of article 4 of title 24, C.R.S.;

(c) Make appropriate rules of professional conduct in order to establish and maintain a high standard of integrity in the profession of public accounting. Any rule of professional conduct applies with equal force to all persons holding certificates under this article. No rule of professional conduct shall be promulgated which will work to the disadvantage of one group and in favor of another. Every person practicing as a certified public accountant in the state shall be governed and controlled by such rules. All rules of professional conduct shall be promulgated pursuant to the provisions of article 4 of title 24, C.R.S.

(d) to (f) Repealed.

(g) Prescribe forms for and receive applications for certificates and grant certificates, including contracting with people to receive and review the applications as the agent of the board;

(h) Give examinations to applicants and, as necessary, contract for assistance in administering the examination;

(i) Deny the issuance or renewal of, suspend for a specified period, or revoke a certificate; issue a letter of admonition to or place on probation or fine any person who, while holding a certificate, violates this article; issue confidential letters of concern; issue cease-and-desist orders; or impose other conditions and limitations;

(j) Keep a record of all certificates, suspensions, and revocations and of its own proceedings;

(k) Administer this article and exercise and perform any other powers and duties granted or directed by the general assembly;

(l) Collect all fees prescribed by this article.

(m) Repealed.

(2) Publications of the board circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

Source: L. 59: p. 129, § 3. CRS 53: § 2-2-3. C.R.S. 1963: § 2-1-3. L. 64: p. 114, § 7. L. 77: (1)(b) and (1)(c) amended, p. 597, § 3, effective July 1. L. 79: (1)(f) repealed and (2) added, pp. 434, 441, §§ 2, 31, effective July 1. L. 81: (1)(i) amended, p. 659, § 1, effective July 1. L. 83: (2) amended, p. 827, § 11, effective July 1. L. 90: (1)(a), (1)(c), (1)(g), (1)(h), and (1)(k) amended, (1)(d) and (1)(e) repealed, and (1)(i) R&RE, pp. 745, 757, §§ 4, 30, 5, effective July 1. L. 96: (2) amended, p. 1231, § 58, effective August 7. L. 97: (1)(m) added, p. 200, § 1, effective August 6. L. 2000: (1)(m) repealed, p. 1582, § 3, effective July 1. L. 2006: (1)(i) amended, p. 764, § 1, effective July 1. L. 2008: (1)(j) amended, p. 692, § 2, effective August 5. L. 2010: (1)(a) and (1)(g) amended, (HB 10-1236), ch. 146, p. 502, § 16, effective July 1. L. 2011: (1)(i) amended, (HB 11-1015), ch. 2, p. 2, § 1, effective March 1.

ANNOTATION

State board of accountancy may not, by regulation, prohibit unlicensed accountants from performing "reviews" because the statutes prohibit unlicensed accountants from performing "audits" and the board's regulation is

in conflict with such statutes and therefore beyond the board's authority. *Cartwright v. State Bd. of Accountancy*, 796 P.2d 51 (Colo. App. 1990).

12-2-105. Rules and regulations. (Repealed)

Source: L. 59: p. 139, § 20. CRS 53: § 2-2-20. C.R.S. 1963: § 2-1-20. L. 77: Entire section repealed, p. 602, § 14, effective July 1.

12-2-106. Fees. (1) A fee authorized to be established pursuant to section 24-34-105, C.R.S., shall be paid for each application made to the board, whether it is an application for examination or reexamination or for issuance, renewal, reactivation, or reinstatement of a certificate of certified public accountant, an application for registration with the board as a public accounting firm, or any other application requiring formal action or consideration by the board. The fee required shall not be returnable irrespective of the action taken by the board.

(2) A fee authorized to be established pursuant to section 24-34-105, C.R.S., shall be paid for each examination in which the candidate is examined in the subjects prescribed by the board.

(3) Any person making application for a certificate of certified public accountant under section 12-2-113 shall pay a fee authorized to be established pursuant to section 24-34-105, C.R.S., in addition to the fee required in subsection (1) of this section.

(4) (Deleted by amendment, L. 2010, (HB 10-1236), ch. 146, p. 502, § 17, effective July 1, 2010.)

(5) Nothing in this section shall be construed to authorize the board to impose any notice, fee, or other submission requirement on a certified public accountant or registered

public accountant from another state or a foreign partnership, corporation, limited partnership, limited liability limited partnership, or limited liability company, that is practicing accountancy in this state pursuant to section 12-2-121 (2).

Source: **L. 59:** p. 135, § 13. **CRS 53:** § 2-2-13. **C.R.S. 1963:** § 2-1-13. **L. 67:** p. 48, § 1. **L. 79:** (1) to (3) amended, p. 1643, § 64, effective July 19. **L. 90:** (1) to (3) amended, p. 745, § 6, effective July 1. **L. 2008:** (5) added, p. 692, § 3, effective August 5. **L. 2010:** (1) to (4) amended, (HB 10-1236), ch. 146, p. 502, § 17, effective July 1.

12-2-107. Disposition of fees. All fees shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for the expenditures of the board incurred in the performance of its duties under this article, which expenditures shall be made out of such appropriations upon vouchers and warrants drawn pursuant to law.

Source: **L. 59:** p. 130, § 4. **CRS 53:** § 2-2-4. **C.R.S. 1963:** § 2-1-4. **L. 73:** p. 1365, § 2. **L. 79:** Entire section amended, p. 1644, § 65, effective July 19.

12-2-108. Certificate of certified public accountant - issuance - renewal - reinstatement - rules. (1) The board shall grant a certificate of certified public accountant to any applicant who:

- (a) Meets the requirements of section 12-2-113;
 - (b) Satisfies the board of the applicant's continued competence; or
 - (c) (I) Passes a written examination pursuant to section 12-2-111; and
 - (II) Meets the requirements of section 12-2-109.
- (2) Repealed.

(3) All certificates shall expire pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her certification pursuant to the schedule established by the director of the division of professions and occupations, such certificate shall expire. Any person whose certificate has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(4) and (5) (Deleted by amendment, L. 2004, p. 1793, § 2, effective August 4, 2004.)

(6) Any person who practices certified public accounting after the expiration of his or her certificate shall be practicing in violation of this article. The board may refuse to reactivate or reinstate any expired certificate for conduct that constitutes a violation of this article.

(7) Effective on the first renewal period established by the board after May 31, 2011, the board shall not renew the certificate of a holder who issues attest or compilation reports unless the certificate holder performs public accounting within a partnership, professional corporation, or limited liability company or the certificate holder has undergone a peer review conducted according to rules promulgated by the board that meet the standards for performing and reporting on a peer review of the American institute of certified public accountants or an equivalent standard.

Source: **L. 59:** p. 130, § 5. **CRS 53:** § 2-2-5. **C.R.S. 1963:** § 2-1-5. **L. 73:** p. 514, § 3. **L. 77:** (1)(a) repealed, p. 644, § 13, effective March 16; entire section R&RE, p. 597, § 4, effective July 1. **L. 81:** (1)(a) and (2) repealed and (1)(c) amended, pp. 659, 661, §§ 2, 8, effective July 1. **L. 90:** (1)(d) and (3) to (6) added, p. 746, §§ 7, 8, effective July 1. **L. 2000:** (1)(c), (1)(d), and (5) amended and (1)(e) added, p. 1582, § 4, effective July 1. **L. 2004:** (3) to (5) amended, p. 1793, § 2, effective August 4. **L. 2010:** (1) R&RE, (6) amended, and (7) added, (HB 10-1236), ch. 146, pp. 494, 506, §§ 4, 29, effective July 1.

12-2-109. Educational and experience requirements - rules - repeal. (1) Prior to July 1, 2015, a person meets the educational and experience requirements necessary to be issued a certificate of certified public accountant if the person has:

(a) Successfully completed a course of study concerning the subject of professional ethics, approved by the board, and has passed a written examination concerning such subject prepared and given by educational institutions or professional organizations deemed qualified by the board to administer such examination;

(b) Received a baccalaureate degree conferred by an accredited college or university with an accounting program approved by the board, and has a concentration in accounting or what the board determines to be the equivalent thereof or has a nonaccounting concentration supplemented by what the board determines to be the equivalent of an accounting concentration, including related courses in other areas of business administration, and either:

(I) Has one year's experience that:

(A) Meets the requirements set by the board by rule;

(B) Is in any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills, which may be gained through employment in government, industry, academia, or public practice; and

(C) Is verified by an actively licensed certified public accountant; or

(II) Has not less than thirty semester hours' additional study when the baccalaureate is the highest degree held, the total educational program to include an accounting concentration or its equivalent and such related subjects as the board determines to be appropriate.

(2) On and after July 1, 2015, a person meets the educational and experience requirements necessary to be issued a certificate of certified public accountant if the applicant:

(a) (I) Has a baccalaureate or higher degree conferred by an accredited college or university with an accounting program approved by the board or has a baccalaureate with a nonaccounting concentration supplemented by what the board determines to be the equivalent of an accounting concentration, including related courses in other areas of business administration; and

(II) Has completed at least one hundred fifty semester hours of college education approved by the board;

(b) Has successfully completed a course of study concerning the subject of professional ethics approved by the board and passed a written examination concerning such subject prepared and given by educational institutions or professional organizations deemed qualified by the board to administer the examination; and

(c) Has one year's experience that:

(I) Meets the requirements set by the board by rule;

(II) Is in any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills, which may be gained through employment in government, industry, academia, or public practice; and

(III) Is verified by an actively licensed certified public accountant who meets the requirements set by the board by rule.

(3) Subsection (1) of this section and this subsection (3) are repealed, effective July 1, 2015.

Source: L. 59: p. 130, § 6. CRS 53: § 2-2-6. C.R.S. 1963: § 2-1-6. L. 67: p. 962, § 2. L. 70: p. 90, § 1. L. 77: Entire section R&RE, p. 598, § 5, effective July 1. L. 81: (1)(c) amended, p. 659, § 3, effective July 1. L. 2010: IP(1)(a), (1)(a)(II), (1)(b), and (1)(c) amended and (2) and (3) added, (HB 10-1236), ch. 146, p. 494, § 5, effective July 1. L. 2011: (1), IP(2), and (2)(a)(II) amended, (HB 11-1015), ch. 2, p. 2, § 2, effective March 1.

ANNOTATION

This section requires that alternative methods for certification be made available to ap-

plicants. *Ettelman v. State Bd. of Accountancy*, 849 P.2d 795 (Colo. App. 1992).

12-2-110. Alternate educational and experience requirements. (Repealed)

Source: L. 59: p. 131, § 7. CRS 53: § 2-2-7. C.R.S. 1963: § 2-1-7. L. 90: Entire section repealed, p. 757, § 30, effective July 1.

12-2-111. Examinations - reexaminations - rules. (1) The board shall provide licensure examinations as often as necessary to provide candidates a reasonable opportunity to take the examination. Examinations shall adequately test a candidate's knowledge of accounting, auditing, and any other related subject the board deems relevant and necessary. Any additional examination subject shall be designated by the board by rule. The board shall set the passing score for an examination at a level to adequately reflect the minimum level of competency necessary for the practice of accountancy.

(2) The board shall establish by rule the standards for granting conditional examination credit for candidates who pass one or more but not all of the sections of the examination.

(3) The board may use the standard examinations and advisory grading service promulgated by the American institute of certified public accountants, which examination shall be deemed prima facie to meet the requirements of this section.

(4) A candidate for a certificate of certified public accountant who meets the educational requirements set by the board by rule is entitled to take an examination.

(5) Any candidate who has passed any or all sections of an examination in another state shall be credited for passing such sections if the sections passed are determined by the board to be equivalent to sections of the examination offered in this state and if the testing requirements in the other state are substantially the same as in this state.

(6) If a candidate fails an examination or fails to pass in all subjects as provided in subsection (5) of this section, the board may require the candidate to take additional study before taking another examination.

(7) Repealed.

(8) (Deleted by amendment, L. 93, p. 349, § 1, effective April 12, 1993.)

Source: L. 59: p. 132, § 8. CRS 53: § 2-2-8. C.R.S. 1963: § 2-1-8. L. 67: p. 962, § 3. L. 77: (1), (4), (5), and (8) amended and (7) repealed, pp. 598, 602, §§ 6, 14, effective July 1. L. 81: (4) amended, p. 660, § 4, effective July 1. L. 90: (5) and (8) amended, p. 747, § 9, effective July 1. L. 93: (1), (2), (5), and (8) amended, p. 349, § 1, effective April 12. L. 2010: (1), (4), and (6) amended, (HB 10-1236), ch. 146, p. 495, § 6, effective July 1.

12-2-112. Approval of schools. (1) The board shall approve the accounting program of the schools that meet the following requirements:

(a) The school has a curriculum designed to give the candidate proficiency in those subjects in which the candidate must pass an examination to be licensed.

(b) Such school shall have adequate equipment and resources, including suitable facilities for practical instruction and shall maintain an adequate professional library. It shall provide a sufficient number of full-time salaried instructors with satisfactory professional training. It shall provide a satisfactory major in accountancy and allied subjects. It shall require for admission the satisfactory completion of an approved four-year secondary school course of study or the equivalent.

(2) If any applicant is a graduate from a school which has not at the time of the filing of the application been approved by the board, the board may make an investigation to determine whether or not the school did, at the time of said applicant's attendance, meet the requirements set forth in subsection (1) of this section. If the board finds that such school did, at that time, meet the requirements set forth in said subsection (1), the board may approve said school as of the time of the applicant's graduation therefrom.

(3) The board may, after a hearing, withdraw its approval of any school which fails to meet the requirements of the law and the standards of the board. The board shall give notice to the school complained against and shall hold a hearing on the complaint within a reasonable time after notice is given.

(4) Before disapproving any school for which approval is sought, the board shall give notice to the school of its contemplated action and shall hold a hearing within a reasonable time after notice is given, affording such school an opportunity to be heard.

Source: L. 59: p. 133, § 9. CRS 53: § 2-2-9. C.R.S. 1963: § 2-1-9. L. 77: IP(1) and (1)(b) amended, p. 599, § 7, effective July 1. L. 2010: IP(1) and (1)(a) amended, (HB 10-1236), ch. 146, p. 502, § 18, effective July 1.

12-2-113. Issuance of certificate by reciprocity or by passing examination of another state. (1) The board, in its discretion, may waive the examination of persons qualified under this subsection (1) and may issue a certificate of certified public accountant to:

(a) Any person who is the holder of a certificate of certified public accountant issued after examination under the laws of another state and who possesses the qualifications prescribed in section 12-2-108 for an applicant applying for a certificate as of the time of the issuance of the certificate by such other state or possesses substantially equivalent qualifications;

(b) A person who has passed an examination under the laws of another state and who possesses the qualifications prescribed in section 12-2-108 at the time the person applies for a certificate in this state or possesses substantially equivalent qualifications; or

(c) Any person who is the holder of a certificate, license, or degree in a foreign country which constitutes a recognized qualification for the practice of public accounting in such country, which is comparable to that of a certified public accountant in this state, and which is in full force and effect.

Source: L. 59: p. 134, § 10. CRS 53: § 2-2-10. C.R.S. 1963: § 2-1-10. L. 67: p. 963, § 4. L. 77: Entire section amended, p. 599, § 8, effective July 1. L. 90: (1)(a) and (1)(b) amended, p. 747, § 10, effective July 1. L. 2010: (1)(b) amended, (HB 10-1236), ch. 146, p. 503, § 19, effective July 1.

12-2-114. Existing certificates confirmed. (Repealed)

Source: L. 37: p. 229, § 12. CSA: C. 2A, § 12. CRS 53: §§ 2-1-12(1), 2-2-12. L. 59: p. 134, § 12. C.R.S. 1963: § 2-1-12. L. 90: (1) amended and (2) and (3) repealed, pp. 747, 757, §§ 11, 30, effective July 1. L. 2010: Entire section repealed, (HB 10-1236), ch. 146, p. 503, § 20, effective July 1.

12-2-115. Use of the title “certified public accountant”. (1) (a) A person who has received from the board and holds an active certificate of certified public accountant shall be styled and known as a certified public accountant and may also use the abbreviation “C.P.A.”

(b) A partnership, professional corporation, or limited liability company of certified public accountants that is registered under this article may use the words “certified public accountants” or the abbreviation “C.P.A.s” in connection with its partnership, professional corporation, or limited liability company name.

(2) A person authorized to use the title “certified public accountant” or the abbreviation “C.P.A.” shall provide to any client residing in or headquartered in Colorado, during the course of an engagement, an address and telephone number for the certified public accountant’s firm or, in the case of a sole practitioner, the address and telephone number of the sole practitioner.

(3) (a) Except as authorized in subsection (4) of this section, a person shall not assume or use the title or designation “certified public accountant”, the abbreviation “C.P.A.”, or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant unless the person holds a certificate as a certified public accountant issued under this article or under the laws of any other state.

A person who is inactive pursuant to section 12-2-122.5 may use the title “inactive certified public accountant” or “inactive C.P.A.”

(b) Except as authorized by subsection (1) or (4) of this section, an individual, partnership, professional corporation, or limited liability company shall not assume or use any title or designation using the word “certified”, “registered”, “chartered”, “enrolled”, “licensed”, “independent”, or “approved” in conjunction with the word accountant or auditor or any abbreviation thereof or any title, designation, or abbreviation likely to be confused with “certified public accountant” or the abbreviation “C.P.A.”, including the terms “chartered accountant” and “certified accountant” and the abbreviation “C.A.”

(c) Except as authorized in subsection (4) of this section, a partnership, professional corporation, or limited liability company shall not assume or use the title or designation “certified public accountants”, the abbreviation “C.P.A.s”, or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership, professional corporation, or limited liability company is composed of certified public accountants unless such partnership, professional corporation, or limited liability company is registered as a partnership, professional corporation, or limited liability company of certified public accountants under this article or the laws of any other state.

(4) (a) A certified public accountant from another state or jurisdiction of the United States who is practicing in this state pursuant to section 12-2-121 may use the title “certified public accountant”, the abbreviation “C.P.A.”, or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant.

(b) A foreign partnership, corporation, limited partnership, limited liability limited partnership, or limited liability company that is practicing in this state pursuant to section 12-2-121 may use the title or designation “certified public accountants”, the abbreviation “C.P.A.s”, or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the partnership, corporation, or limited liability company is composed of certified public accountants.

Source: L. 59: p. 134, § 11. CRS 53: § 2-2-11. C.R.S. 1963: § 2-1-11. L. 90: Entire section amended, p. 748, § 12, effective July 1. L. 97: Entire section amended, p. 964, § 2, effective May 21. L. 2008: Entire section amended, p. 692, § 4, effective August 5. L. 2010: Entire section amended, (HB 10-1236), ch. 146, p. 498, § 10, effective July 1.

ANNOTATION

Under the provisions of this section there is no prohibition against the use of the words “public accountant” by a person who has not received from the board of accountancy a certificate of his qualifications to practice as a “certified public accountant”. Colo. Ass’n of Accountants v. Colo. Soc’y of Cert. Pub. Accountants, 152 Colo. 563, 384 P.2d 94 (1963).

Where members of a corporation could not be prohibited from use of the term “public

accountant” under this section, the addition of the words “society of Colorado” comprising the title “public accountants society of Colorado” was not, as a matter of law, confusingly similar to another corporate name “Colorado society of certified public accountants”. Colo. Ass’n of Accountants v. Colo. Soc’y of Cert. Pub. Accountants, 152 Colo. 563, 384 P.2d 94 (1963).

12-2-115.5. Retired certified public accountant. (1) Any person who has received from the board and holds a certificate of certified public accountant, including an expired certificate of certified public accountant that remains subject to renewal, reactivation, or reinstatement, may apply to the board for retired status. The board may grant such status by issuing a retired status certificate of certified public accountant to any person who meets established conditions prescribed by the board.

(2) Any person issued a retired status certificate of certified public accountant may be styled and known as a “retired certified public accountant” or “retired C.P.A.”

(3) During such time as a certified public accountant remains in a retired status, such person shall not perform those acts set forth in section 12-2-120 (6) (a) and (6) (b). The board shall retain jurisdiction over retired status certified public accountants.

Source: L. 97: Entire section added, p. 964, § 1, effective May 21.

12-2-116. Registered accountants. (Repealed)

Source: L. 59: p. 136, § 15. **CRS 53:** § 2-2-15. **C.R.S. 1963:** § 2-1-15. **L. 90:** Entire section R&RE, p. 748, § 13, effective July 1. **L. 2010:** Entire section repealed, (HB 10-1236), ch. 146, p. 503, § 21, effective July 1.

12-2-117. Partnerships, professional corporations, and limited liability companies composed of certified public accountants - registration thereof - definitions. (1) Except as provided in section 12-2-121 (2), a partnership, professional corporation, or limited liability company engaged in this state in the practice of public accounting as certified public accountants shall register with the board as a partnership, professional corporation, or limited liability company of certified public accountants and must meet the following requirements; and, as used in this article, “partnership” includes a registered limited partnership, limited liability partnership, limited liability limited partnership, foreign limited partnership, foreign limited liability partnership, and foreign limited liability limited partnership:

(a) At least one partner, shareholder, or member who shall also be a director or manager thereof must be a certified public accountant or registered firm of this state in good standing.

(b) (I) A simple majority of the ownership of a certified public accounting firm doing business as a public accounting firm in Colorado, in terms of financial interests and voting rights of all partners, officers, shareholders, members, or managers, shall be licensed certified public accountants in good standing in this state or another state.

(II) (Deleted by amendment, L. 2005, p. 240, § 1, effective July 1, 2005.)

(c) Any other partner, shareholder, or member thereof may, but need not, be a certified public accountant of some state, in good standing, or registered firm in this state who at all times owns such person’s partnership interest, corporate share, or membership interest in such person’s own right.

(d) Repealed.

(e) Each resident manager in charge of an office of the partnership, professional corporation, or limited liability company in this state must be a certified public accountant of this state in good standing.

(f) (Deleted by amendment, L. 94, p. 1082, § 1, effective May 4, 1994.)

(2) (a) (I) Application for such registration shall be made upon the affidavit of a partner of such partnership, of a shareholder of such professional corporation, or of a member of such limited liability company who is a certified public accountant of this state in good standing and shall provide:

(A) The names and addresses of the persons who are practicing public accounting for the partnership, professional corporation, or limited liability company;

(B) The names and addresses of the persons who are not certified public accountants, but who are partners of a partnership, shareholders of a professional corporation, or members of a limited liability company;

(C) Disclosure of all of the states in which the partnership, professional corporation, or limited liability company is licensed, registered, or permitted to practice. The application shall also disclose all of the states in which licensure, registration, or permission to practice has been denied, suspended, or revoked.

(D) Any other information the board may reasonably request; and

(E) A registration fee, the amount of which shall be set by the board, to cover the board’s administrative costs.

(II) Each member of the partnership, professional corporation, or limited liability company may receive a copy of the application.

(III) The partner, shareholder, or member designated by the firm shall notify the board in writing within thirty days after any change in the partnership, professional corporation, or limited liability company, including:

(A) Identities and numbers of partners, shareholders, members, managers, or officers; and

(B) Location of places of business of the partnership, professional corporation, or limited liability company.

(IV) The board may suspend or revoke registration of or impose any other discipline the board sees fit to administer to a partnership, professional corporation, or limited liability company that fails to notify the board of any changes outlined in subparagraph (III) of this paragraph (a).

(b) The board shall in each case determine whether the applicant is eligible for registration.

(2.2) Each firm registration expires pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies. The registrant shall renew or reinstate the registration. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a firm fails to renew its registration pursuant to the schedule established by the director of the division of professions and occupations, the registration shall expire. A firm whose registration has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(2.5) As used in subsections (3) and (3.5) of this section, "employee" includes a member of a limited liability company and a partner in a limited partnership, limited liability partnership, or limited liability limited partnership or foreign limited partnership, limited liability partnership, or limited liability limited partnership.

(3) The corporation must be in compliance with the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., and, to the extent applicable under section 7-117-103, C.R.S., with the "Colorado Corporation Code", articles 1 to 10 of title 7, C.R.S., as said articles existed prior to their repeal on July 1, 1994. The limited liability company must be in compliance with the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S. The organizing documents of any partnership, the articles of incorporation of any such corporation, or the articles of organization of any such limited liability company shall contain provisions complying with the following requirements:

(a) The partnership, corporation, or limited liability company shall be organized solely for the purpose of practicing accountancy and such other activities as may from time to time be specifically found by the board to be activities suitable and proper to be performed by certified public accountants only through or under the supervision of at least one person who holds a certificate to practice public accounting as a certified public accountant.

(b) Each partner who is personally engaged within this state in the practice of public accounting shall be a certified public accountant of this state in good standing, and each partner not personally engaged within this state in the practice of public accounting may, but need not, be a certified public accountant of some state in good standing. The president of any such corporation shall be a shareholder and a director, and one or more of such directors shall be certified public accountants of this state in good standing. The manager or managers of any such limited liability company shall be a member or members and one or more of such managers shall be certified public accountants of this state in good standing. Lay directors and officers and managers shall not exercise any authority whatsoever over professional matters.

(c) All partners, shareholders of the corporation, or members of the limited liability company shall be jointly and severally liable for all acts, errors, and omissions of the employees of the partnership, corporation, or limited liability company except during periods of time when the partnership, corporation, or limited liability company maintains in good standing professional liability insurance, or designated or segregated moneys in lieu of such professional liability insurance, which meets the standards set forth in subparagraphs (I) to (V) of this paragraph (c):

(I) The insurance shall insure the partnership, corporation, or limited liability company against liability imposed upon the partnership, corporation, or limited liability company by law for damages resulting from any claim made against the partnership, corporation, or limited liability company arising out of acts, errors, and omissions committed in the performance of professional services for others by those employees of the partnership, corporation, or limited liability company who hold certificates to practice public accounting as certified public accountants.

(II) Such policies shall insure the partnership, corporation, or limited liability company against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all other employees.

(III) The insurance shall be in an amount for each claim of at least fifty thousand dollars multiplied by the number of certified public accountants employed by or members of the partnership, corporation, or limited liability company within this state, and the policy may provide for an aggregate top limit of liability per year for all claims of one hundred fifty thousand dollars also multiplied by the number of certified public accountants employed by or members of the partnership, corporation, or limited liability company within this state; except that no firm shall be required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate top limit of liability for all claims during the year of one million dollars and except that the board, in the public interest, may adopt regulations increasing the minimum amounts of insurance coverage required by this subsection (3). A policy of insurance obtained in accordance with this subparagraph (III) may be issued on a claims-made or occurrence basis.

(IV) (A) The policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured partnership, corporation, or limited liability company or any partner, stockholder, member, or employee thereof; the conduct of any business enterprise in which the insured partnership, corporation, or limited liability company under this article is not permitted to engage but which nevertheless may be owned by the insured partnership, corporation, or limited liability company or in which the insured partnership, corporation, or limited liability company may be a partner or which may be controlled, operated, or managed by the insured partnership, corporation, or limited liability company in its own or in a fiduciary capacity including the ownership, maintenance, or use of any property in connection therewith; and bodily injury to, or sickness, disease, or death of, any person, or to injury to or destruction of any tangible property, including the loss of use thereof.

(B) The policy may be of a type reasonably available in the commercial insurance market and may contain reasonable provisions with respect to policy periods, territory, claims, conditions, exclusions, and other usual matters.

(C) The policy may provide for a deductible, or self-insured retained amount, and may provide for the payment of defense or other costs out of the stated limits of the policy, in either or both cases, all partners, shareholders of the corporation, or members of the limited liability company shall be jointly and severally liable for all acts, errors, and omissions of the employees of the partnership, corporation, or limited liability company to the extent of the amount of such deductible or retained self-insurance, and the amount, if any, by which the payment of defense costs reduces the insurance remaining available for the payment of claims below the minimum limit of insurance required by this paragraph (c).

(V) A partnership, corporation, or limited liability company may maintain, in lieu of the insurance specified in subparagraph (III) of this paragraph (c), moneys specifically designated and segregated as security for the payment of liabilities imposed by law against the partnership, corporation, or limited liability company, or its partners, shareholders, or members, arising out of claims of the type specified in subparagraphs (I) and (II) of this paragraph (c), in the amount of at least fifty thousand dollars multiplied by the number of certified public accountants employed by or members of the partnership, corporation, or limited liability company within this state; except that such amount is not required to exceed one million dollars and except that the board, in the public interest, may adopt rules increasing the minimum amount of designated and segregated moneys required by this subparagraph (V). The partnership, corporation, or limited liability company remains in compliance with this section notwithstanding amounts paid from the designated or segre-

gated moneys in any one calendar year in settling or discharging such claims, so long as the amount of the designated and segregated moneys is increased to at least the minimum required amount as of the first business day of the next calendar year. A partnership, corporation, or limited liability company is in compliance with this subparagraph (V) if it maintains moneys in the required amount in trust or in bank escrow in the form of cash, bank certificates of deposit, or United States treasury obligations, or maintains in effect bank unconditional, irrevocable letters of credit in the required amount or insurance or surety company bonds in the required amount. Such moneys or equivalency shall be maintained in or issued by a qualified United States financial institution as defined by section 10-1-102 (17), C.R.S.

(d) A partnership name shall be ended by words or abbreviations permitted pursuant to the law under which the partnership is organized. The corporate name shall be ended by the word "Corporation" or "Incorporated" or by the words "Professional Corporation" or by the abbreviations "Corp.", "Inc.", or "P.C.". The name of any limited liability company shall be ended by the words "Limited Liability Company" or the abbreviation "LLC" or the word limited may be abbreviated as "Ltd.", and the word company may be abbreviated as "Co.". An assumed or trade name may be used if it is not misleading and clearly indicates that the firm is engaged in providing accounting services.

(3.5) No limited liability company, limited liability partnership, limited partnership, or limited liability limited partnership, or foreign limited partnership, limited liability partnership, or limited liability limited partnership engaged in the practice of public accounting in this state and in one or more other jurisdictions shall be required to include a provision in its articles of organization or organizing documents as otherwise required by subsection (3) of this section, but shall be subject, with respect to the practice of public accounting within this state, to the requirements of paragraphs (a), (b), (c), and (d) of subsection (3) of this section.

(3.7) Effective on the first renewal period established by the board after May 31, 2011, the board shall not renew the registration of a firm that issues attest or compilation reports unless the registered partnership, professional corporation, or limited liability company has undergone a peer review conducted according to rules promulgated by the board that meet the standards for performing and reporting on a peer review of the American institute of certified public accountants or an equivalent standard.

(4) The partnership, corporation, or limited liability company may exercise the powers and privileges conferred upon partnerships, corporations, and limited liability companies by the laws of Colorado in furtherance of and subject to its partnership, corporate, or limited liability company purposes and may invest its funds in a manner not incompatible with the practice of public accounting as certified public accountants. Any stock purchased by the corporation, or membership interest purchased by the limited liability company or partnership interest purchased by the partnership may be made out of capital as well as surplus without regard to the impairment of the partnership capital, corporation capital, or limited liability company capital.

(5) The partnership, corporation, or limited liability company shall do nothing in this state which, if done by a person who holds a certificate as a certified public accountant within this state and employed by it, would violate the provisions of this article. Any violation by the partnership, corporation, or limited liability company of this article shall be grounds for the board to deny, revoke, suspend, or refuse to renew its registration, or the board may fine, issue a confidential letter of concern to, issue a letter of admonition to, or place on probation the registrant.

(6) Nothing in this section shall diminish or change the obligation of each person who holds a certificate of certified public accountant employed by the partnership, corporation, or limited liability company within this state to conduct such person's practice in accordance with the provisions of this article. Any person who holds a certificate to practice public accounting as a certified public accountant who, by act or omission, causes the partnership, corporation, or limited liability company to act or fail to act in a way which violates this article is personally responsible for such act or omission and subject to discipline therefor.

(7) Foreign partnerships, corporations, limited partnerships, limited liability limited partnerships, or limited liability companies may engage in the practice of public accounting in this state as certified public accountants so long as their organizing documents, articles of incorporation, or articles of organization provide that such partnership, corporation, limited partnership, limited liability limited partnership, or limited liability company is organized solely for the purpose of practicing accountancy and such other activities as may from time to time be specifically found by the board to be activities suitable and proper to be performed by certified public accountants and comply with and meet the requirements of subsection (3) of this section.

(8) Except as provided in this section, partnerships, professional corporations, and limited liability companies shall not practice public accounting as certified public accountants.

(9) Nothing in this section shall modify the accountant-client privilege specified in section 13-90-107 (1) (f), C.R.S.

(10) When any law of this state or any rule or regulation of any agency or other authority established under the constitution or laws of this state requires or authorizes any audit, financial report, or statement to be made, approved, or certified by a certified public accountant, such audit, report, or statement may be made, approved, or certified by a partnership, professional corporation, or limited liability company registered in this state.

Source: L. 59: p. 136, § 14. CRS 53: § 2-2-14. C.R.S. 1963: § 2-1-14. L. 70: p. 90, § 2. L. 90: IP(1), (1)(b), (1)(c), (1)(e), and (2) amended, (1)(d) repealed, and (3) to (10) added, pp. 748, 757, §§ 14, 30, effective July 1. L. 93: Entire section amended, p. 24, § 2, effective July 1; IP(3) amended, p. 862, § 31, effective July 1, 1994. L. 94: Entire section amended, p. 1082, § 1, effective May 4. L. 95: IP(1) amended and (2.5) and (3.5) added, p. 808, § 25, effective May 24. L. 97: (3)(c) and (3.5) amended, p. 1522, § 22, effective June 3. L. 2000: (1), (2), (2.5), (3.5), and (7) amended, p. 1583, § 5, effective July 1. L. 2001: IP(3) and (3)(b) amended, p. 1268, § 8, effective June 5. L. 2003: (3)(c)(V) amended, p. 619, § 22, effective July 1. L. 2005: (1)(b) amended, p. 240, § 1, effective July 1. L. 2008: IP(1) amended, p. 692, § 5, effective August 5. L. 2010: IP(1), (2)(b), and (5) amended and (2.2) and (3.7) added, (HB 10-1236), ch. 146, p. 499, § 11, effective July 1.

Editor's note: Amendments to this section and the introductory portion to subsection (3) of this section by House Bill 93-1011 and House Bill 93-1154 were harmonized.

ANNOTATION

Professional corporations with one accountant must register pursuant to subsection (1). The plural term "accountants" includes the sin-

gular term "accountant" for purposes of this section. *Colo. State Bd. of Accountancy v. Paroske*, 39 P.3d 1283 (Colo. App. 2001).

12-2-118. Partnerships or professional corporations composed of registered accountants - registration thereof. (Repealed)

Source: L. 59: p. 137, § 16. CRS 53: § 2-2-16. C.R.S. 1963: § 2-1-16. L. 70: p. 91, § 3. L. 90: Entire section repealed, p. 757, § 30, effective July 1.

12-2-119. Continuing education.

(1) to (4) Repealed.

(5) As a condition of renewing, reactivating, or reinstating a certificate of certified public accountant, every applicant shall comply with continuing education requirements adopted by the board.

(6) The board shall promulgate rules and regulations governing the following:

(a) The basic requirements for continuing education; except that the board shall not require continuing education of more than eighty hours every two years;

(b) A delineation of qualifying programs;

(c) A system of control and reporting.

(7) In exercising its power under subsection (6) of this section, the board shall, as a basis for a high standard of practice by certified public accountants, establish requirements which will assure reasonable currency of knowledge. The requirements shall assure that a variety of alternative means of compliance with continuing education requirements are available to certificate holders and shall take cognizance of specialized areas of practice.

(8) The board shall make exceptions from continuing education requirements for holders of certificates who are not engaged in public practice or who cannot continue their education for reasons of health, military service, or other good cause. If such holders of certificates return to the practice of public accounting, the holders of certificates shall meet such continuing education requirements as the board may determine.

(9) The board shall determine in each case whether a holder of certificate of certified public accountant has complied with continuing education requirements adopted by the board.

Source: L. 59: p. 137, § 17. CRS 53: § 2-2-17. C.R.S. 1963: § 2-1-17. L. 67: pp. 48, 963, §§ 2, 3, 5. L. 70: p. 92, § 4. L. 73: p. 164, § 1. L. 79: (2) amended, p. 1644, § 66, effective July 19. L. 90: (1) to (4) repealed and (5), (6)(a), (7), and (9) amended, pp. 757, 748, §§ 30, 15, effective July 1. L. 2005: (6)(a) amended, p. 241, § 2, effective July 1.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8).

12-2-120. Unlawful acts.

(1) and (2) (Deleted by amendment, L. 2010, (HB 10-1236), ch. 146, p. 500, § 12, effective July 1, 2010.)

(3) and (4) Repealed.

(5) (Deleted by amendment, L. 2010, (HB 10-1236), ch. 146, p. 500, § 12, effective July 1, 2010.)

(6) (a) (I) No person, partnership, professional corporation, or limited liability company shall issue, author, or publish any opinion or certificate relating to any accounting or financial statement if such opinion or certificate utilizes any title or designation, the use of which is prohibited by law.

(II) No person, partnership, professional corporation, or limited liability company shall, without an active certificate of certified public accountant or a valid registration:

(A) As an independent auditor, make or conduct an investigation, examination, or audit of the financial statements or supporting records of any person, organization, or corporation, to determine the accuracy or fairness with which they present the financial position, changes in financial position, or financial results of operations of such person, organization, or corporation;

(B) Attest or express an opinion, as an independent auditor, as to the financial position, changes in financial position, or financial results of the operation of any person, organization, or corporation, or as to the accuracy or reliability of any financial information contained in any such accounting or financial statement.

(III) The requirement in subparagraph (II) of this paragraph (a) that a person, partnership, professional corporation, or limited liability company have an active certificate of certified public accountant or a valid registration issued by the board shall not apply to a certified public accountant from another state or a foreign partnership, professional corporation, or limited liability company practicing accountancy in this state pursuant to section 12-2-121 (2).

(b) The provisions of paragraph (a) of this subsection (6) shall not prohibit any officer or employee of a corporation, partner or employee of a partnership, member or employee of a limited liability company, or individual or employee of an individual from:

(I) Making or conducting such investigation, examination, or audit; or

(II) Issuing or authoring an assessment or certificate utilizing any wording designating the position, title, or office that the person holds concerning the financial affairs of such corporation, partnership, limited liability company, or individual.

(c) The provisions of paragraph (a) of this subsection (6) shall not prohibit any act of a public official or public employee in the performance of his duties as such or affect the qualifications of any person to testify as a witness before any court or administrative agency of the state of Colorado who is determined to be qualified by such court or agency.

(d) The term "independent auditor" as used in this section shall mean any person or corporation engaged or employed to make or conduct an audit of the financial statements or supporting records of any person, organization, or corporation, to determine, on the basis of such audit, the accuracy or fairness with which they present the financial position, changes in financial position, or financial results of operations of such person, organization, or corporation, other than an officer, employee, or partner of the person, organization, or corporation under audit.

(e) The provisions of paragraph (a) of this subsection (6) shall not prohibit the performance by persons other than certified public accountants of other services involving the use of accounting skills, including the preparation of tax returns and the preparation of financial statements without the expression of opinions or assurances thereon.

(7) and (8) Repealed.

(9) Nothing in this section shall be construed to prohibit any person from preparing or assisting in the preparation of any report or tax return to any agency of the federal, state, or local government or other political subdivision if such preparation or assistance is otherwise permissible under law or under the regulations of such agency or from affixing the signature of the person or firm so preparing or assisting in the preparation of any such report or return to said report or return.

(10) and (11) Repealed.

Source: L. 59: p. 141, § 24. CRS 53: § 2-2-24. C.R.S. 1963: § 2-1-24. L. 70: p. 93, § 9. L. 77: (6) R&RE and (7) and (8) repealed, pp. 600, 602, §§ 9, 14, effective July 1. L. 81: (6)(e) added, p. 660, § 5, effective July 1. L. 90: (1), (2), (5), (6)(a)(I), and IP(6)(a)(II) amended and (3), (4), (10), and (11) repealed, pp. 751, 757, §§ 16, 30, effective July 1. L. 94: (2), (5), (6)(a), and (6)(b) amended, p. 1086, § 2, effective May 4. L. 2008: (1), (2), and (5) amended and (6)(a)(III) added, p. 693, §§ 6, 7, effective August 5. L. 2010: (1), (2), (5), and (6)(b)(II) amended, (HB 10-1236), ch. 146, p. 500, § 12, effective July 1.

ANNOTATION

Law reviews. For note, "Licensing of Occupations and Professions in Colorado", see 35 Dicta 235 (1958). For comment, "Extensions of Accountants' Liability for Negligence: One Step Closer to a New Implied Warranty of Results", see 56 U. Colo. L. Rev. 265 (1985).

State board of accountancy may not, by regulation, prohibit unlicensed accountants

from performing "reviews" because subsection (6) (a) prohibits unlicensed accountants from performing "audits" and the board's regulation is in conflict with such subsection and therefore the regulation is beyond the board's authority. *Cartwright v. State Bd. of Accountancy*, 796 P.2d 51 (Colo. App. 1990).

12-2-121. Exceptions - acts not prohibited - rules. (1) Nothing in this article shall prohibit any person not a certified public accountant from serving as an employee of or an assistant to a certified public accountant holding an active certificate or serving as an employee or assistant of a validly registered partnership, professional corporation, or limited liability company composed of certified public accountants. Such employee or assistant shall not issue any accounting or financial statement over his name.

(2) (a) Nothing in this article shall prohibit a certified public accountant whose principal place of business is located in another state or jurisdiction of the United States from practicing in this state on professional business, as defined by rules promulgated by

the board. Such practice shall be conducted in conformity with rules promulgated by the board. Notwithstanding the requirements of section 12-2-117, a foreign partnership, corporation, limited partnership, limited liability limited partnership, or limited liability company may engage in the practice of accountancy in this state without registering with the board.

(b) Nothing in this article shall prohibit:

(I) An accountant who holds a certificate, degree, or license in a foreign country, constituting a recognized qualification for the practice of public accounting in such country, from practicing in this state on professional business incident to his or her regular practice outside this state, as defined by the board. Such practice shall be conducted in conformity with rules promulgated by the board.

(II) and (III) Repealed.

(c) A certified public accountant from another state or jurisdiction of the United States who is practicing in this state pursuant to this subsection (2) and the firm that employs the certified public accountant simultaneously consent, as a condition of practicing in this state:

(I) To be subject to the jurisdiction of and disciplinary authority of the board;

(II) To comply with the requirements of this subsection (2) and rules promulgated by the board pursuant to this subsection (2);

(III) That if the certified public accountant's certificate, license, or registration issued by the state in which the certified public accountant's principal place of business is located is no longer valid, the certified public accountant will cease to offer or render professional services in this state, either individually or on behalf of a firm; and

(IV) To appoint the state board or entity that issued a certificate, license, or registration to the certified public accountant as the agent for service of process in any action or proceeding brought by the board against the certified public accountant.

(d) The board may recover its reasonable costs incurred as part of its investigative, administrative, and disciplinary proceedings against a certified public accountant from another state or jurisdiction of the United States or from a foreign country if the board:

(I) Enters a final order against the certified public accountant, finding that the certified public accountant violated a provision of this article, a rule adopted by the board, or an order of the board with which the certified public accountant is obligated to comply and the board has the authority to enforce; or

(II) Enters into a consent or settlement agreement in which the board finds, or the certified public accountant admits or does not contest, that he or she violated a provision of this article, a rule adopted by the board, or an order of the board with which the certified public accountant is obligated to comply and the board has the authority to enforce.

Source: L. 59: p. 143, § 25. CRS 53: § 2-2-25. C.R.S. 1963: § 2-1-25. L. 67: p. 964, § 8. L. 70: p. 94, § 10. L. 90: (1) amended, p. 752, § 17, effective July 1. L. 94: (1) amended, p. 1087, § 3, effective May 4. L. 2005: (2) amended, p. 241, § 3, effective July 1. L. 2008: (2) amended, p. 690, § 1, effective August 5. L. 2010: (2)(a) amended and (2)(b)(II) and (2)(b)(III) repealed, (HB 10-1236), ch. 146, pp. 503, 501, §§ 22, 13, effective July 1.

12-2-122. Single act evidence of practice. Any person who displays, utters, or causes to be displayed or uttered a card, sign, advertisement, or other printed, engraved, or written instrument or device bearing such person's name in conjunction with the words "certified public accountant", the abbreviation "C.P.A.", or any title, designation, or abbreviation prohibited by section 12-2-115 may be presumed in any action brought under section 12-2-126 to have held himself or herself out to be a certified public accountant holding an active certificate of certified public accountant pursuant to section 12-2-108. In any legal action brought under this article, evidence of the commission of a single act prohibited by this article is sufficient to justify an injunction.

Source: L. 59: p. 144, § 28. CRS 53: § 2-2-28. C.R.S. 1963: § 2-1-28. L. 90: Entire section amended, p. 752, § 18, effective July 1. L. 2010: Entire section amended, (HB 10-1236), ch. 146, p. 501, § 14, effective July 1.

12-2-122.5. Inactive certificant. (1) The holder of a certificate of certified public accountant, upon written notice by first class mail to the board, shall have his or her name transferred to an inactive list and shall not be required to comply with the continuing education requirements for certificate renewal pursuant to section 12-2-119 so long as he or she remains inactive. Each inactive certificant shall register in the same manner as active certificate holders and pay a fee pursuant to section 12-2-108 (3). At such time as an inactive certificant wishes to resume the practice of public accounting as a certified public accountant, he or she shall file an application therefor, meet any education requirements imposed by the board, and pay a fee as established by the director of the division of professions and occupations within the department of regulatory agencies.

(2) During such time as a certified public accountant remains in an inactive status, the certified public accountant shall not perform those acts restricted to active certified public accountants pursuant to section 12-2-120 (6) (a). The board shall retain jurisdiction over inactive certified public accountants for the purposes of disciplinary action pursuant to section 12-2-123.

Source: L. 90: Entire section added, p. 753, § 19, effective July 1. L. 2000: (1) amended, p. 1585, § 6, effective July 1. L. 2010: Entire section amended, (HB 10-1236), ch. 146, p. 504, § 23, effective July 1.

12-2-123. Grounds for disciplinary action - administrative penalties. (1) After notice and hearing as provided in section 12-2-125, the board may deny the issuance of, refuse to renew, revoke, or suspend any certificate of a certified public accountant issued under this article or any prior law of this state or may fine, issue a letter of admonition to, or place on probation the holder of any certificate and impose other conditions or limitations for any of the following causes:

(a) Fraud or deceit in obtaining or in attempting to obtain a certificate as a certified public accountant or in obtaining registration under this article;

(b) Fraud or negligence in the practice of public accounting in Colorado or any other state or in the filing of or failure to file the certified public accountant's own income tax returns;

(c) Violation of any provision of this article, of any final rule or regulation promulgated by the board, or of any valid agency order;

(d) Violation of a rule of professional conduct promulgated by the board under the authority granted by this article;

(e) Conviction of a felony under the laws of any state or of the United States, and, for the purposes of this paragraph (e), a plea of guilty or a plea of nolo contendere accepted by the court shall be considered as a conviction;

(f) Conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States, and, for the purposes of this paragraph (f), a plea of guilty or a plea of nolo contendere accepted by the court shall be considered as a conviction;

(g) Discipline taken against the person's authority to practice as a certified public accountant or a public accountant in any jurisdiction;

(h) Discipline taken against the person's right to practice before any state or federal agency or agency outside the United States or the public company accounting oversight board, created by the federal "Sarbanes-Oxley Act of 2002", 15 U.S.C. sec. 7201 et seq., for improper conduct or willful violation of the rules or regulations of such state or federal agency or the public company accounting oversight board;

(i) Repealed.

(j) Providing public accounting services to the public for a fee without an active certificate of certified public accountant or a valid registration or acting as a member, partner, or shareholder of a partnership or professional corporation registered pursuant to section 12-2-117;

(k) and (l) Repealed.

(m) Failure to comply with the requirements for continuing education as prescribed by the board;

(n) An act or omission which fails to meet generally accepted accounting principles or generally accepted auditing standards in the profession;

(o) Use of false, misleading, or deceptive advertising;

(p) Habitual intemperance with respect to or excessive use of a habit-forming drug, controlled substance as defined in section 18-18-102 (5), C.R.S., or alcoholic beverage that renders the certified public accountant unfit to practice public accounting;

(q) Failure to retain records of the work performed for each client for a period of five years;

(r) Failure of a partnership, professional corporation, or limited liability company to register with the board pursuant to section 12-2-117 and to renew the registration as prescribed by the board.

(2) In considering the conviction of crimes, as provided in paragraphs (e) and (f) of subsection (1) of this section, the board shall be governed by the provisions of section 24-5-101, C.R.S.

(3) (Deleted by amendment, L. 2010, (HB 10-1236), ch. 146, p. 497, § 9, effective July 1, 2010.)

(4) No certificant whose certificate is revoked shall be allowed to apply for reinstatement of such certificate earlier than two years after the effective date of the revocation.

(5) (a) In addition to any other penalty that may be imposed pursuant to this section, any person violating this article or any rules promulgated pursuant to this article may be fined upon a finding of misconduct by the board as follows, either:

(I) In a proceeding against a certificant, a fine not in excess of five thousand dollars per violation; or

(II) In a proceeding against a registrant, a fine not in excess of ten thousand dollars per violation.

(b) All fines collected pursuant to this subsection (5) shall be transferred to the state treasurer, who shall credit such moneys to the general fund.

Source: L. 59: p. 138, § 18. CRS 53: § 2-2-18. C.R.S. 1963: § 2-1-18. L. 67: p. 964, § 6. L. 70: p. 92, § 5. L. 73: pp. 165, 514, §§ 2, 4. L. 77: (1)(i) repealed, p. 644, § 13, effective March 16; (1)(i) repealed and (1)(j) amended, pp. 601, 602, §§ 10, 14, effective July 1. L. 81: IP(1) amended and (1)(n) added, p. 660, § 6, effective July 1. L. 90: IP(1), (1)(a) to (1)(f), (1)(j), (1)(m), and (1)(n) amended, (1)(k) and (1)(l) repealed, and (1)(o) to (1)(r) and (3) to (5) added, pp. 753, 757, 754, §§ 20, 30, 21, effective July 1. L. 94: (1)(r) amended, p. 1087, § 4, effective May 4. L. 2000: (1)(j) amended, p. 1585, § 7, effective July 1. L. 2004: (1)(p) amended, p. 1192, § 25, effective August 4; (3) and (5)(b) amended, p. 1793, § 3, effective August 4. L. 2010: IP(1), (1)(b), (1)(g), (1)(h), (1)(p), (1)(r), (3), and (5)(a) amended, (HB 10-1236), ch. 146, pp. 496, 497, §§ 7, 9, effective July 1. L. 2012: (1)(p) amended, (HB 12-1311), ch. 281, p. 1609, § 9, effective July 1.

Cross references: For an alternative disciplinary action for persons certified pursuant to this article, see § 24-34-106.

ANNOTATION

Law reviews. For note, “Licensing of Occupations and Professions in Colorado”, see 35 *Dicta* 235 (1958).

For evidence sufficient to support finding of gross negligence, see *Mertsching v. Webb*, 757 P.2d 1102 (Colo. App. 1988).

Applied in *McGee v. State Bd. of Accountancy*, 169 Colo. 87, 453 P.2d 800 (1969); *People ex rel. State Bd. of Accountancy v. McFarland*, 37 Colo. App. 93, 543 P.2d 112 (1975).

12-2-123.5. Response to board communication. A certificant shall, at the request of the board, respond to communications from the board within thirty days after the mailing of any communication.

Source: L. 90: Entire section added, p. 755, § 22, effective July 1. **L. 2010:** Entire section amended, (HB 10-1236), ch. 146, p. 504, § 24, effective July 1.

12-2-124. Revocation or suspension of partnership, professional corporation, or limited liability company registration. (1) After notice and hearing as provided in section 12-2-125, the board shall revoke the registration of a partnership, professional corporation, or limited liability company if, at the time of such hearing, the partnership, professional corporation, or limited liability company does not have all the qualifications prescribed by the section of this article under which it qualified for registration.

(2) After notice and hearing as provided in section 12-2-125, the board may deny, revoke, suspend, or refuse to renew the registration of a partnership, professional corporation, or limited liability company or the board may fine, issue a letter of admonition to, or place on probation a registrant for any of the causes enumerated in section 12-2-123 or for the following additional causes:

(a) The revocation, suspension, or refusal to renew the certificate of any partner, shareholder, or member;

(b) The cancellation, revocation, suspension, or refusal to renew the authority of the partnership or any partner thereof to practice public accounting in any other jurisdiction;

(c) The cancellation, revocation, suspension, or refusal to renew the authority of the professional corporation, limited liability company, or foreign corporation or limited liability company or any shareholder or member thereof to practice public accounting by any other state or federal jurisdiction, or jurisdiction outside the United States or the public company accounting oversight board, created by the federal “Sarbanes-Oxley Act of 2002”, 15 U.S.C. sec. 7201 et seq.

Source: L. 59: p. 139, § 19. **CRS 53:** § 2-2-19. **C.R.S. 1963:** § 2-1-19. **L. 70:** p. 92, § 6. **L. 90:** (1), IP(2), and (2)(a) amended, p. 755, § 23, effective July 1. **L. 94:** Entire section amended, p. 1088, § 5, effective May 4. **L. 2010:** (2) amended, (HB 10-1236), ch. 146, p. 496, § 8, effective July 1. **L. 2011:** IP(2) amended, (HB 11-1015), ch. 2, p. 4, § 3, effective March 1.

12-2-125. Hearings before board - notice - procedure - review. (1) (a) The board may initiate proceedings under this article, either on its own motion or on the complaint of any person.

(b) The board, through the department of regulatory agencies, may employ administrative law judges on a full-time or part-time basis to conduct hearings as provided by this article or on any matter within the board’s jurisdiction upon such conditions and terms as the board may determine.

(2) Except as otherwise provided in this article, all proceedings before the board with respect to the denial, suspension, or revocation of certificates or registrations issued under this article shall be conducted pursuant to the provisions of sections 24-4-104 and 24-4-105, C.R.S.

(3) If, after having been served with the notice of hearing as provided for in this section, the accused fails to appear at the hearing and defend, the board may proceed to hear evidence against the accused and may enter such order as is justified by the evidence, which order shall be final unless the accused petitions for a review thereof as provided in this section. Within thirty days after the date of any order, upon a showing of good cause for failing to appear and defend, the board may reopen the proceedings and may permit the accused to submit evidence in his or her behalf.

(4) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board.

(4.5) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(5) At all hearings, the attorney general of this state or one of the attorney general's designated assistants shall appear and represent the board.

(6) The decision of the board shall be by majority vote thereof.

Source: L. 59: p. 140, § 21. CRS 53: § 2-2-21. C.R.S. 1963: § 2-1-21. L. 77: Entire section R&RE, p. 601, § 11, effective July 1. L. 90: (1) and (2) amended, p. 756, § 24, effective July 1. L. 2004: (4) amended and (4.5) added, p. 1794, § 4, effective August 4. L. 2010: (3) and (5) amended, (HB 10-1236), ch. 146, p. 504, § 25, effective July 1.

ANNOTATION

Power to initiate proceedings involved prior to 1977 amendment. McGee v. State Bd. of Accountancy, 169 Colo. 87, 453 P.2d 800 (1969).

This section does not violate the defendant's right of due process as the state board of accountancy is required by statute to initiate proceedings, hear evidence, and render decisions and the board has no statutory authority to use a hearing officer for such proceedings. Mertsching v. Webb, 757 P.2d 1102 (Colo. App. 1988).

Notice held sufficient. The requirements of this section were met by the notice given where appellant was timely notified of the time and place of the hearing, his right to participate, and the possible suspension or revocation of his certificate which could result from the hearing, and the citation of the statutory sections under which the board was operating, and the language "for dishonesty in the practice of public accounting and conduct discreditable to the public accounting profession" adequately set out the "nature of the charges" as required by the statute. Due process requires no more, especially where there was adequate opportunity for appellant to learn the specific details of the charges, where he had ample time to prepare his defense, and where he was able to present those defenses. Hentges v. Bartsch, 35 Colo. App. 384, 533 P.2d 66 (1975).

Notice requirements of section control over administrative procedure act. Subsection (2) is in conflict with the more detailed notice requirements of the state administrative procedure act. Therefore, the notice requirements of this subsection control. Hentges v. Bartsch, 35 Colo. App. 384, 533 P.2d 66 (1975).

The notice and hearing requirements of the administrative procedure act, section 24-4-104(3), are of no significance where there is a specific statute concerning the notice and hearing requirements in proceedings before the board of accountancy. People ex rel. State Bd. of Accountancy v. McFarland, 37 Colo. App. 93, 543 P.2d 112 (1975).

Board of accountancy is not bound by technical rules on admission of documentary evidence. Hentges v. Bartsch, 35 Colo. App. 384, 533 P.2d 66 (1975).

The board is not bound by technical rules of evidence. People ex rel. State Bd. of Accountancy v. McFarland, 37 Colo. App. 93, 543 P.2d 112 (1975).

Copies of cancelled checks were competent evidence. Where two sets of copies of cancelled checks were put into evidence from separate disinterested sources, and the two sets were identical, the evidence is competent under the standards set out in the board statute and the state administrative procedure act. Hentges v. Bartsch, 35 Colo. App. 384, 533 P.2d 66 (1975).

Hearing alleviated profiling prejudice. The fact that one member of the board had expressed his opinion that defendant was guilty of negligence prior to the filing of charges would not justify invalidating the final judgment of the board revoking defendant's license where the record showed the defendant was given a full and fair hearing in which evidence was presented that abundantly supported the findings of the board. People ex rel. State Bd. of Accountancy v. McFarland, 37 Colo. App. 93, 543 P.2d 112 (1975).

12-2-126. Investigations, examinations, and cease-and-desist orders against unlawful act. (1) (a) (I) The board, on its own motion based on reasonable grounds or on the signed, written complaint of any person, may investigate any person who has engaged,

is engaging, or threatens to engage in any act or practice that constitutes a violation of any provision of this article. The board or any member thereof may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board.

(II) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(b) (I) Complaints of record that are dismissed by the board and the results of investigation of such complaints shall be closed to public inspection.

(II) Upon completing an investigation, the board shall make one of the following findings:

(A) The complaint is without merit and no further action need be taken.

(B) There is no reasonable cause to warrant further action.

(C) The investigation discloses an instance of conduct that does not warrant formal action and should be dismissed, but the investigation discloses indications of possible errant conduct that could lead to serious consequences if not corrected. If this finding is made, the board shall send a confidential letter of concern to the licensee or registrant.

(D) The investigation discloses an instance of conduct that does not warrant formal action but should not be dismissed as being without merit. If this finding is made, the board may send a letter of admonition to the licensee or registrant by certified mail.

(E) The investigation discloses facts that warrant further proceedings by formal complaint. If this finding is made, the board shall refer the complaint to the attorney general for preparation and filing of a formal complaint.

(III) (A) When a letter of admonition is sent to a licensee or registrant, the board shall include in the letter a notice that the licensee or registrant has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(B) If the request for adjudication is timely made, the letter of admonition is vacated and the board shall proceed by means of formal disciplinary proceedings.

(IV) The board shall conduct all proceedings pursuant to this subsection (1) expeditiously and informally so that no licensee or registrant is subjected to unfair and unjust charges and that no complainant is deprived of the right to a timely, fair, and proper investigation of a complaint.

(c) Complaints of record that are not dismissed by the board and are the results of investigations of such complaints shall be closed to public inspection and any meeting concerning such complaints shall be closed to the public during the investigatory period and until a stipulated agreement is reached between the applicant or certificate holder and the board or until notice of hearing and charges are filed and served on an applicant or certificate holder. Except for confidential books of account, financial records, advice, reports, or working papers provided by the client, the certified public accountant, or the certified public accounting firm, the board's records and papers shall be subject to the provisions of sections 24-72-203 and 24-72-204, C.R.S., regarding public records and confidentiality.

(2) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a certificate holder or registered firm is acting in a manner that is an imminent threat to the health, safety, and welfare of the public or a person is acting or has acted without the required certificate or registration, the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have

been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or uncertified or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (2), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(3) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or uncertified practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (3) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (3) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (3). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (3) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (3) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required certificate or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or uncertified practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (3), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(4) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any uncertified act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the board may enter into a stipulation with such person.

(5) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(6) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-2-127.

(7) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

Source: L. 59: p. 143, § 26. CRS 53: § 2-2-26. C.R.S. 1963: § 2-1-26. L. 67: p. 965, § 9. L. 70: p. 94, § 11. L. 90: (1) and (2) amended, p. 756, § 25, effective July 1. L. 2000: (1) amended, p. 1586, § 8, effective July 1. L. 2004: (1)(a) amended and (5) added, p. 1795, § 5, effective August 4. L. 2005: (1)(c) amended, p. 241, § 4, effective July 1. L. 2006: (2) to (5) amended and (6) and (7) added, p. 764, § 2, effective July 1. L. 2010: (1)(b)(II) amended and (1)(b)(III) and (1)(b)(IV) added, (HB 10-1236), ch. 146, p. 504, § 26, effective July 1. L. 2011: (2)(a) amended, (HB 11-1015), ch. 2, p. 4, § 4, effective March 1.

ANNOTATION

An entity that has voluntarily relinquished its license is subject to discipline by the state board of accountancy, and, therefore, the board has jurisdiction to issue a subpoena duces tecum to the former licensee after the license is relinquished. Colo. State Bd. of Accountancy v. Arthur Andersen LLP, 116 P.3d 1245 (Colo. App. 2005).

The requirement that the state board investigate a member of the accounting profession's conduct and reach a tentative conclusion as to the gross negligence and dishonesty of that conduct is a proper function to be exercised prior to the bringing of charges. McGee v. State Bd. of Accountancy, 169 Colo. 87, 453 P.2d 800 (1969).

The board of accountancy must make an investigation of complaints prior to presenting a formal charge of misconduct. McGee v. State Bd. of Accountancy, 169 Colo. 87, 453 P.2d 800 (1969).

To say that making such an investigation thereby disqualifies the board is absurd. McGee v. State Bd. of Accountancy, 169 Colo. 87, 453 P.2d 800 (1969).

An administrative body would be derelict in its duties if it failed to conduct a preliminary investigation to determine whether there was some sound basis for a proposed charge against the person over whom it had supervision. McGee v. State Bd. of Accountancy, 169 Colo. 87, 453 P.2d 800 (1969).

The board's investigatory power does not create an exception to the accountant-client privilege created in § 13-90-107. Until the general assembly chooses to create an exception to accountant-client privilege, the board must obtain client consent for disclosure of any information otherwise privileged by the accountant-client relationship. Colo. Bd. of Accountancy v. Zaverla Boosalis Raisch, 960 P.2d 102 (Colo. 1998).

12-2-127. Judicial review. (1) Any person aggrieved by any final action or order of the board and affected thereby is entitled to a review thereof by the court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S.

(2) For the purposes of review, the residence of the board shall be the city and county of Denver.

Source: L. 59: p. 141, § 22. CRS 53: § 2-2-22. C.R.S. 1963: § 2-1-22. L. 67: p. 964, § 7. L. 70: p. 93, § 7. L. 77: Entire section R&RE, p. 602, § 12, effective July 1. L. 90: (1) R&RE, p. 757, § 26, effective July 1.

ANNOTATION

Under the legislative requirements of investigation and notice, one who was called upon to answer charges could not invalidate the final order of the board following a full and open hearing on the ground that in the necessary preliminary investigation a member of the board had reached the conclusion that there was sufficient evidence to justify the filing of charges. McGee v. State Bd. of Accountancy, 169 Colo. 87, 453 P.2d 800 (1969).

Where the views of the member had been reached in the performance of his investigative duty as a member of the state board of accountancy, such an opinion by one of three members of the board which acted unanimously did not justify the supreme court in invalidating the final judgment of the board where the record further showed that petitioner had been given a full and fair hearing in which the evidence abundantly supported the findings of the board.

McGee v. State Bd. of Accountancy, 169 Colo. 87, 453 P.2d 800 (1969).

A court would not be justified in interfering with helpful staff preliminary conferences to expedite the settlement of details without a

very definite showing of prejudice to an aggrieved party or eventual denial of a fair hearing. McGee v. State Bd. of Accountancy, 169 Colo. 87, 453 P.2d 800 (1969).

12-2-128. Reconsideration and review of action of board. The board, on its own motion or upon application, at any time after the imposition of any discipline as provided in section 12-2-123 (1), may reconsider its prior action and reinstate or restore such license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any such further action, or the holding of a hearing with respect thereto, shall rest in the sole discretion of the board.

Source: L. 59: p. 141, § 23. CRS 53: § 2-2-23. C.R.S. 1963: § 2-1-23. L. 70: p. 93, § 8. L. 90: Entire section R&RE, p. 757, § 27, effective July 1.

12-2-129. Unauthorized practice - penalties. Any person who violates section 12-2-115 or 12-2-120 (6) (a) commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and, for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 59: p. 144, § 27. CRS 53: § 2-2-27. C.R.S. 1963: § 2-1-27. L. 67: p. 965, § 10. L. 85: Entire section amended, p. 405, § 1, effective July 1. L. 90: Entire section amended, p. 757, § 28, effective July 1. L. 2002: Entire section amended, p. 1472, § 46, effective October 1. L. 2006: Entire section amended, p. 81, § 1, effective August 7. L. 2010: Entire section amended, (HB 10-1236), ch. 146, p. 501, § 15, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-2-130. Ownership of accountant's working papers. All statements, records, schedules, working papers, and memoranda made by a certified public accountant incident to or in the course of professional service to a client by the certified public accountant, except financial statements submitted by a certified public accountant to a client and books and records prepared for the use of the client, shall be and remain the property of the certified public accountant in the absence of an express agreement to the contrary between the certified public accountant and the client.

Source: L. 59: p. 144, § 29. CRS 53: § 2-2-29. C.R.S. 1963: § 2-1-29. L. 2010: Entire section amended, (HB 10-1236), ch. 146, p. 505, § 27, effective July 1.

Cross references: For the statutory privilege with respect to testimony concerning communications between the certified public accountant and such accountant's client, see § 13-90-107 (1)(f).

12-2-130.5. Ownership of state auditor's work papers. Except for reports submitted to the legislative audit committee and books and records prepared for use by such committee, all statements, records, schedules, working papers, and memoranda prepared by a certified public accountant in the employ of the state auditor's office, in the course of professional service to the legislative audit committee, shall be and remain the property of the state auditor's office and shall be kept confidential unless a majority of the members of the legislative audit committee vote to open such documents.

Source: L. 93: Entire section added, p. 14, § 2, effective March 2.

12-2-131. Professional corporations for the practice of public accounting as certified public accountants or as registered accountants. (Repealed)

Source: L. 70: p. 97, § 12. C.R.S. 1963: § 2-1-30. L. 77: (2)(d)(III) and (2)(e) amended, p. 602, § 13, effective July 1. L. 90: Entire section repealed, p. 757, § 30, effective July 1.

12-2-132. Repeal of article. (1) This article is repealed, effective July 1, 2019.

(2) Prior to such repeal, the state board of accountancy shall be reviewed as provided in section 24-34-104, C.R.S.

Source: L. 2000: Entire section added, p. 1587, § 9, effective July 1. L. 2005: (1) amended, p. 241, § 5, effective July 1. L. 2010: (1) amended, (HB 10-1236), ch. 146, p. 493, § 3, effective July 1.

ARTICLE 3

Alcohol - Manufacture - Sale

12-3-101 to 12-3-106. (Repealed)

Source: L. 96: Entire article repealed, p. 555, § 5, effective April 24.

Editor's note: This article was numbered as article 4 of chapter 85, C.R.S. 1963. For amendments to this article prior to its repeal in 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For the "Colorado Beer Code", see article 46 of this title; for the "Colorado Liquor Code", see article 47 of this title.

ARTICLE 4

Architects

12-4-101 to 12-4-117. (Repealed)

Source: L. 2006: Entire article repealed, p. 763, § 24, effective July 1.

Editor's note: This article was numbered as article 1 of chapter 10, C.R.S. 1963. For amendments to this article prior to its repeal in 2006, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this article were relocated to part 3 of article 25 of this title. For the location of specific provisions, see the editor's notes following each section in said part 3 and the comparative tables located in the back of the index.

Cross references: For current provisions concerning architects, see part 3 of article 25 of this title.

ARTICLE 5

Attorneys-at-law

Cross references: For rules governing admission to the bar and regulation of practice, see the Colorado rules of civil procedure.

Law reviews: For article, "The Interprofessional Code", see 15 Colo. Law. 1795, 1977, and 2183 (1986) and 16 Colo. Law. 31 (1987); for article, "The Pros and Cons of a Captive Legal Malpractice Insurer", see 16 Colo. Law. 244 (1987); for article, "Attorney Liability to Non-Clients" see 17 Colo. Law. 1537 (1988).

12-5-101.	License to practice necessary.	12-5-115.5.	Solicitation of accident victims - waiting period.
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12-5-109.	Persons forbidden to practice.	12-5-118.	Judge not to have law partner.
12-5-110.	Judge not to act as attorney.	12-5-119.	Attorney's lien - notice of claim filed.
12-5-111.	Penalty. (Repealed)	12-5-120.	Other property to which lien attaches.
12-5-112.	Practicing law without license deemed contempt.		
12-5-113.	Special admission of counselors from other states.		
12-5-114.	Notice of charges - time to show cause.		
12-5-115.	Recovery of fees from unlicensed person. (Repealed)		

12-5-101. License to practice necessary. No person shall be permitted to practice as an attorney- or counselor-at-law or to commence, conduct, or defend any action, suit, or plaint in which he is not a party concerned in any court of record within this state, either by using or subscribing his own name or the name of any other person, without having previously obtained a license for that purpose from the supreme court. Said license shall constitute the person receiving the same an attorney- and counselor-at-law and shall authorize him to appear in all the courts of record in this state and there to practice as an attorney- and counselor-at-law according to the laws and customs thereof for and during his good behavior in said practice, and to demand and to receive all such fees as are established for any services which he renders as an attorney- and counselor-at-law in this state. Nothing in this section shall be construed to require membership in a professional organization or bar association as a prerequisite to licensure.

Source: R.S. p. 65, § 1. G.L. § 16. G.S. § 69. L. 07: p. 220, § 1. R.S. 08: § 229. C.L. § 5997. CSA: C. 14, § 1. CRS 53: § 12-1-1. C.R.S. 1963: § 12-1-1. L. 79: Entire section amended, p. 443, § 1, effective April 25.

Cross references: For statutory privilege between attorney and client, see § 13-90-107 (1) (b); for rules of professional conduct governing confidentiality of information, see the Colorado Rules of Professional Conduct, Rule 1.6.

ANNOTATION

- I. General Consideration.
- II. Attorney-client Relations.
- III. Construction of License Provision.
- IV. Practicing Law.
 - A. In General.
 - B. Practicing Law Before Administrative Commission.
 - C. Drafting Legal Documents.
- V. Disbarment for Misbehavior.
- VI. Restraining Illegal Practice of Law.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Justice Court Practice by the Laity", see 9 Dicta 65 (1932). For note, "May an Attorney Unlicensed in Colorado Incorporate a Company Here?", see 9 Rocky Mt. L. Rev. 285 (1937). For article, "Statutes and Cases Concerning Unauthorized Practice of Law in Colorado", see 24 Dicta 257 (1947).

It is within the authority of the supreme court to promulgate rules governing the ad-

mission and regulation of lawyers. An attorney licensed to practice law in another state may not engage in the practice of law in Colorado without obtaining a license or authorization from the supreme court. *Unauthorized Prac. of Law v. Bodhaine*, 738 P.2d 376 (Colo. 1987).

II. ATTORNEY-CLIENT RELATIONS.

Annotator's note. For other annotations concerning attorney-client relations, see the annotations for the Colorado Rules of Professional Conduct contained in the appendix to chapters 18 to 20 of the Colorado Rules of Civil Procedure.

An attorney must be held to the exercise of a reasonable degree of care and skill, and to possess the knowledge requisite to a proper performance of the duties of his profession, failing which, he must respond in damages to his client to the extent of the injury, caused by such failure. *Radetsky v. Montgomery*, 94 Colo. 411, 30 P.2d 858 (1934).

The highest degree of fairness and good faith is required from an attorney. *Lewis v. Helm*, 40 Colo. 17, 90 P. 97 (1907).

The courts will closely scrutinize the dealings between attorneys and their clients, and will relieve the latter from any undue consequences resulting from them whenever the good faith of the contract does not clearly appear. *Lewis v. Helm*, 40 Colo. 17, 90 P. 97 (1907).

Contracts with the client are construed most favorably to the interest of the client. *Keeler v. Hoyt*, 57 Colo. 120, 140 P. 191 (1914).

The attorney is held to a strict compliance with his undertaking. *Keeler v. Hoyt*, 57 Colo. 120, 140 P. 191 (1914).

The plaintiff is entitled to dismiss his action even though he has stipulated with his attorney that the latter shall receive, as his fee, a share of whatever is obtained by the litigation or the settlement thereof. *McPhail v. Spore*, 62 Colo. 307, 162 P. 151 (1916).

If the attorney is entitled to an action for the discontinuance of which he complains he is not to recover under the contract. *McPhail v. Spore*, 62 Colo. 307, 162 P. 151 (1916).

An attorney employed merely to try a litigated case has no implied authority to prosecute an appeal or writ of error or do anything on behalf of his client looking to the review of the judgment. *Tobler v. Nevitt*, 45 Colo. 231, 100 P. 416, (1909).

A recital in the record that the attorney appeared for defendant is only prima facie evidence of authority to appeal. *Great W. Mining Co. v. Woodmas of Alston Mining Co.*, 12 Colo. 46, 20 P. 771 (1888).

It is within the general powers of an attorney at law to submit the suit of his client to arbitration. *Lee v. Grimes*, 4 Colo. 185 (1878).

An attorney has no authority to waive the statute of limitations for his client. *Ferris v. Curtis*, 53 Colo. 340, 127 P. 236 (1912).

It is the duty of counsel in a criminal case to watch the progress of the trial, be informed as to what forms of verdict are submitted to the jury, and request proper forms. *Loos v. People*, 84 Colo. 166, 268 P. 536 (1928).

A regularly licensed attorney must be held to know better than to inject into a legal argument irrelevant and scandalous denunciations of his opponent. *People ex rel. Skelton v. Brown*, 17 Colo. 431, 30 P. 338 (1892).

A legal argument may consist of an appeal to reason or authority. *People ex rel. Skelton v. Brown*, 17 Colo. 431, 30 P. 338 (1892).

The advocate, either orally or in writing, may freely exercise his talents, and employ all the resources of his learning and logic which the scope of the questions afford. *People ex rel. Skelton v. Brown*, 17 Colo. 431, 30 P. 338 (1892).

The advocate is not at liberty to go outside the record for purposes of scandal and abuse. *People ex rel. Skelton v. Brown*, 17 Colo. 431, 30 P. 338 (1892).

In an action against an attorney for damages for his alleged negligence in failing to collect an amount due on account stated, the debtor being insolvent nothing could be collected from her, therefore plaintiff suffered no damage even if the attorney was negligent. *Lawson v. Sigfrid*, 83 Colo. 116, 262 P. 1018 (1927).

In the absence of special authorization an attorney at law cannot accept anything but money in payment of a promissory note placed in his hands for collection, and, if he agrees otherwise, the agreement is void and not binding upon the client. *McCaffrey v. Mitchell*, 98 Colo. 467, 56 P.2d 926, 57 P.2d 900 (1936).

Where an attorney advised his client as to the necessity of purchasing an outstanding title against lands claimed by her, and she refused to do so, whereupon the attorney purchased such title himself, he does not hold the title in trust for the client. *Webber v. Wannemaker*, 39 Colo. 425, 89 P. 780 (1907).

III. CONSTRUCTION OF LICENSE PROVISION.

Law reviews. For comment on *United Sec. Corp. v. Pantex Pressing Mach., Inc.*, appearing below, see 8 Rocky Mt. L. Rev. 289 (1936).

This section is directed towards persons unlicensed to practice law appearing in courts of record. *United Sec. Corp. v. Pantex Pressing Mach., Inc.*, 98 Colo. 79, 53 P.2d 653 (1935).

Under this section proceedings instituted and prosecuted by an unlicensed attorney are without authority, and a judgment resulting

from such proceedings is void. *Bennie v. Triangle Ranch Co.*, 73 Colo. 586, 216 P. 718 (1923).

The license furnishes the evidence that the law demands for the security of the public first that the holder thereof is a person of probity of character, and second, that he is skilled in the law, and, therefore, qualified to practice as an attorney and counselor. *Hittson v. Browne*, 3 Colo. 304 (1877).

In an action by an attorney for his fee, where no issue is raised by the pleadings on the point of plaintiff's right to practice law, evidence that he was not licensed to practice in the state at the time the services were rendered is inadmissible. *Bachman v. O'Reilly*, 14 Colo. 433, 24 P. 546 (1890).

The license to an attorney is "for and during his good behavior", and this condition would be implied, or attached, in the absence of any statute upon that subject. *People ex rel. Bar Ass'n v. Weeber*, 26 Colo. 229, 57 P. 1079 (1899).

The supreme court, having power by express law to grant a license to practice law, has an inherent right to see that the license is not abused or perverted to a use not contemplated by the grant. *People ex rel. Attorney Gen. v. MacCabe*, 18 Colo. 186, 32 P. 280 (1893).

Where an attorney from another state having settled here and applied for license, was advised by the district judge that he was entitled to appear in the courts, though the license had not yet issued, and acting upon this advice, and in constant expectation of receiving his license, he accepted employment as an attorney, but upon being informed that an information in contempt had been exhibited against him, he ceased to practice or hold himself out as an attorney, it was held that, though guilty of a contempt, the case did not require the imposition of any penalty. *People ex rel. Bar Ass'n v. Ellis*, 44 Colo. 176, 96 P. 783 (1908).

On the question whether one who was not a licensed attorney at the time of his election was eligible to the office of district attorney, the court was equally divided. *People v. Hallett*, 1 Colo. 352 (1871).

Applied in *People ex rel. Bar Ass'n v. Taylor*, 56 Colo. 441, 138 P. 762 (1914).

IV. PRACTICING LAW.

A. In General.

There is no all inclusive definition of what constitutes the practice of law. *Denver Bar Ass'n v. Pub. Utils. Comm'n*, 154 Colo. 273, 391 P.2d 467 (1964).

Generally one who acts in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another and in counseling, advising and assisting him in connection with these rights and duties is en-

gaged in the practice of law. *Denver Bar Ass'n v. Pub. Utils. Comm'n*, 154 Colo. 273, 391 P.2d 467 (1964).

Services of an attorney not licensed in Colorado are compensable as attorney fees where no court appearances made and the work performed consisted of obtaining a variance from a municipal zoning code. *Catow v. Knox*, 709 P.2d 964 (Colo. App. 1985).

Consulting services performed by an out-of-state lawyer do not constitute unauthorized practice of law under canon 3 of the Colorado code of professional responsibility and therefore may be compensated as attorney fees. *Dietrich Corp. v. King Res. Co.*, 596 F.2d 422 (10th Cir. 1979).

The collection agency was not practicing law where it had not agreed to furnish, nor had it furnished, legal advice or legal services to the creditors, but, rather, as assignee of the accounts and notes, it was the one entitled to bring the action to collect alleged indebtednesses, and it engaged its own counsel. *Thibodeaux v. Creditors Serv., Inc.*, 191 Colo. 215, 551 P.2d 714 (1976).

An independent civil action is not the only means by which an attorney can enforce the statutory charging lien. *Gee v. Crabtree*, 192 Colo. 550, 560 P.2d 835 (1977).

General partners appearing pro se may not represent partnership. A partnership must be considered as an entity separate and apart from the general partners for purposes of defining parties who may appear for others in courts of record. *E & A Assoc. v. First Nat. Bank of Denver*, 899 P.2d 243 (Colo. App. 1994).

Preparation and submission of pleadings, the cross-examination of witnesses in a trial court, and presentation of argument to the court all constitute the practice of law. *People v. LaPorte Church of Christ*, 830 P.2d 1150 (Colo. App. 1992).

A pastor who is not an attorney is prohibited from representing in court the church which he pastors. Preparation and submission of pleadings, cross-examination of witnesses, and presentation of argument to the court constitutes the unauthorized practice of law. *People v. LaPorte Church of Christ*, 830 P.2d 1150 (Colo. App. 1992).

Pastor who was neither a corporate officer nor an attorney could not represent defendant church on appeal from an order assessing fees for violating the financial disclosure requirements of the Colorado Reform Act under alternate theories that defendant church was a defacto corporation or an unincorporated association. *People v. LaPorte Church of Christ*, 830 P.2d 1150 (Colo. App. 1992).

A nonlawyer conservator or guardian in this state is a statutory legal representative only and is therefore prohibited from practicing law and serving as legal counsel in court. The powers granted to conservators under § 15-14-

425 and to guardians under §§ 15-14-315 and 15-14-315.5 do not establish an exception to this section regarding the practice of law. In re Kanefsky, 260 P.3d 327 (Colo. App. 2010).

B. Practicing Law Before Administrative Commission.

Law reviews. For note, "May a Layman Appear Before the Colorado Public Utilities Commission", see 9 Rocky Mt. L. Rev. 188 (1937).

The following would constitute the practice of law before administrative commissions: (1) Where one instructs and advises another in regard to the applicable law on an agency matter so that he may properly pursue his affairs and be informed as to his rights and obligations. (2) Where one prepares for another documents requiring familiarity with legal principles beyond the ken of the ordinary layman. (3) Where one prepares for another, for filing before the administrative agency, applications, pleadings, or other procedural papers requiring legal knowledge and technique. (4) Where one appears for another before an administrative tribunal in adversary or public proceedings involving the latter's rights of life, liberty or property according to the law of the land. (5) Where one, on behalf of another, examines and cross-examines witnesses and makes objections or resists objections to the introduction of testimony, the exercise of which requires legal training, knowledge, and skill. (6) Where one represents another in a rate-making or rate-revision case and the question of deprivation of property without due process of law is present. Denver Bar Ass'n v. P.U.C., 154 Colo. 273, 391 P.2d 467 (1964).

As an arm of the general assembly, the public utilities commission may authorize by rule certain things, the doing of which does not constitute the practice of law. Denver Bar Ass'n v. P.U.C., 154 Colo. 273, 391 P.2d 467 (1964).

Among the more common of these activities, in which laymen may represent others, are: (1) The completion of forms which do not require any knowledge and skill beyond that possessed by the ordinarily experienced and intelligent layman. (2) Representation of another in a hearing relating to the making or revision of rates, except where the question of deprivation without due process of law is present. (3) Performing the services of engineers, experts, accountants and clerks. (4) Acting in an agency proceeding involving the adoption of a rule of future action which affects a group and where no vested rights of liberty or property are at stake. Denver Bar Ass'n v. P.U.C., 154 Colo. 273, 391 P.2d 467 (1964).

As to matters in which no legal principle is involved and the subject matter of the hearing has a value or represents an amount insufficient to warrant the employment of an

attorney, permission is granted until withdrawn by the supreme court to permit laymen to represent others in accordance with rule 7(b) of the public utilities commission even though such representation may constitute practicing law. Denver Bar Ass'n v. P.U.C., 154 Colo. 273, 391 P.2d 467 (1964).

Although the public utilities commission is an administrative agency of the general assembly, its actions would be characterized as judicial where it resolves disputes of adjudicative facts, and persons appearing in representative capacities in respect thereto would be practicing law. Denver Bar Ass'n v. P.U.C., 154 Colo. 273, 391 P.2d 467 (1964).

The public utilities commission's actions may be legislative or nonjudicial, and persons appearing in representative capacities in respect to these matters would not be practicing law. Denver Bar Ass'n v. P.U.C., 154 Colo. 273, 391 P.2d 467 (1964).

Whether one in representing another before the public utilities commission under its rule 7(b), is practicing law depends upon the circumstances of the particular case there under consideration. Denver Bar Ass'n v. P.U.C., 154 Colo. 273, 391 P.2d 467 (1964).

The character of the act done, rather than that it is performed before the commission, is the factor which is decisive of whether it constitutes the practice of law. Denver Bar Ass'n v. P.U.C., 154 Colo. 273, 391 P.2d 467 (1964).

A ruling that under all circumstances a lay person could act in a representative capacity before the commission pursuant to the authority contained in its rule 7(b) was error and the judgment was reversed. Denver Bar Ass'n v. P.U.C., 154 Colo. 273, 391 P.2d 467 (1964).

A natural person may appear in his own behalf and represent himself, notwithstanding he may not be a lawyer. Denver Bar Ass'n v. P.U.C., 154 Colo. 273, 391 P.2d 467 (1964).

Generally, a corporation may appear in a court of record only through an attorney. Subject to certain exceptions, proceedings commenced or prosecuted and pleadings filed by a corporation without an attorney are a nullity and will be stricken. In re Estate of Nagel, 950 P.2d 693 (Colo. App. 1997).

Pleadings executed and filed by a non-attorney employee on behalf of a corporation are void as a general rule; there is no statutory exception to the general rule, and the court declined to create a judicial exception. In re Estate of Nagel, 950 P.2d 693 (Colo. App. 1997).

C. Drafting Legal Documents.

The drafting of documents, when merely incidental to the work of a distinct occupation, is not the practice of law, although the documents have legal consequences. Conway-

Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

There are instruments that no one but a well-trained lawyer should ever undertake to draw. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

There are other documents common in the commercial world, and fraught with substantial legal consequences, that lawyers seldom are employed to draw, and that in the course of recognized occupations other than the practice of law are often drawn by laymen. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

The actual practices of the community have an important bearing on the scope of the practice of law. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

When a person who gives legal advice to those for whom he draws instruments, or holds himself out as competent to do so, does work of a legal nature, when the instruments he prepares either define, set forth, limit, terminate, specify, claim or grant legal rights. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

The drawing of wills, as a practice, is the practice of law. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

A layman or a corporation may prepare instruments to which he or it is a party without being guilty of the unauthorized practice of law. Title Guar. Co. v. Denver Bar Ass'n, 135 Colo. 423, 312 P.2d 1011 (1957).

A person who is not a member of the bar may draw instruments such as simple deeds, mortgages, promissory notes, and bills of sale when these instruments are incident to transactions in which such person is interested, provided no charge is made therefor. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

The preparation of receipts and options, deeds, promissory notes, deeds of trust, mortgages, releases of encumbrances, leases, notice terminating tenancies, demands to pay rent or vacate by completing standard and approved printed forms, coupled with the giving of explanation or advice as to the legal effect thereof, constitutes the practice of law. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

Preparation of closing documents, real estate deeds, releases, deeds of trust, and promissory notes, where title insurance is not applied for or written has nothing whatsoever to do with the business of abstracting or insuring

titles to real estate. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

Preparation of closing documents, real estate deeds, releases, deeds of trust, and promissory notes constitutes the practice of law and a power not granted to title insurance companies expressly or by implication under the corporation laws of this state. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

Preparation of closing documents, real estate deeds, releases, deeds of trust, and promissory notes is not necessary to the abstract or title insurance business, it is a separate, distinct and other business, much of which constitutes practice of law. Title Guar. Co. v. Denver Bar Ass'n, 135 Colo. 423, 312 P.2d 1011 (1957).

It would not be in the interest of the public welfare to restrain brokers from drafting the ordinary instruments necessary to effectuate the closing of the ordinary real estate transaction in which they are acting. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

Ordinary conveyancing, part of the every day business of the realtor, may also be done by others without wrongful invasion of the lawyers' field and consequently is something of which the legal profession cannot claim that the public welfare requires restraint by judicial decree. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

V. DISBARMENT FOR MISBEHAVIOR.

Annotator's note. For other annotations concerning the disbarment of attorneys, see the annotations for chapter 20 of the Colorado Rules of Civil Procedure and for the Code of Professional Responsibility contained in the appendix to chapters 18 to 20 of the Colorado Rules of Civil Procedure.

While a lawyer is admitted into a federal court by way of a state court, he is not automatically sent out of the federal court by the same route. Gately v. Sutton, 310 F.2d 107 (10th Cir. 1962).

The two judicial systems of courts, the state judiciatures and the federal judiciary, have autonomous control over the conduct of their officers, among whom, in the present context, lawyers are included. Gately v. Sutton, 310 F.2d 107 (10th Cir. 1962).

The federal courts do not have jurisdiction to review an order of the Colorado supreme court disbaring an attorney in that state for personal and professional misconduct. Gately v. Sutton, 310 F.2d 107 (10th Cir. 1962).

The federal courts have no jurisdiction to

issue writs of mandamus to direct state courts or their judicial officers in the performance of their duties, including disbarment proceedings. *Gately v. Sutton*, 310 F.2d 107 (10th Cir. 1962).

The limits of review of a disbarment by the Colorado supreme court are violations, in the course of disbarment proceedings, of the due process or equal protection clauses of the fourteenth amendment, and a petition for a writ of certiorari to the supreme court of the United States is the only method by which review may be had. *Gately v. Sutton*, 310 F.2d 107 (10th Cir. 1962).

VI. RESTRAINING ILLEGAL PRACTICE OF LAW.

Law reviews. For article, "Unauthorized Practice of Law", see 10 Dicta 284 (1933).

Annotator's note. For other annotations concerning the unauthorized practice of law, see the annotations for Chapter 19 of the Colorado Rules of Civil Procedure and for the Colorado Rules of Professional Conduct contained in the appendix to chapters 18 to 20 of the Colorado Rules of Civil Procedure.

Duly licensed members of the bar may invoke the jurisdiction of the courts to restrain the illegal practice of law by others. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

Attorneys, as officers of the court, may, both for themselves and all the affected members of their profession, institute and maintain a suit to challenge or enjoin the unlawful intrusion into their office and professional field by one who is not licensed to do so. *Conway-*

Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

The fact that no property or pecuniary interest of the plaintiff is involved is not an answer to a suit for an injunction to enjoin the practice of a profession without a license, where the action is in behalf of the public. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

In general a court of equity will grant an injunction only where there is eminent danger or irreparable injury or damage to the plaintiff. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

In order to restrain an unlicensed person from practicing a profession it is not necessary to prove irreparable injury or the threat thereof, where the suit is in behalf of the public. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

Plaintiffs, the Denver and Colorado bar associations, the chairmen of the unauthorized practices committee of each association and licensed attorneys who appear for themselves and all other licensed attorneys and on behalf of the public are entitled to an injunction to prevent the unlawful intrusion into their office and professional field of defendant. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

In such a case, the extent of the damage to the property right is unimportant. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

The existence or threat of real damage is enough to warrant relief. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

12-5-102. No discrimination - issuance of license. No person shall be denied a license to practice on account of race, creed, color, religion, disability, age, sex, sexual orientation, marital status, national origin, or ancestry.

Source: L. 1897: p. 115, § 3. R.S. 08: § 233. C.L. § 6001. CSA: C. 14, § 5. CRS 53: § 12-1-2. C.R.S. 1963: § 12-1-2. L. 2008: Entire section amended, p. 1599, § 14, effective May 29.

Cross references: For the legislative declaration contained in the 2008 act amending this section, see section 1 of chapter 341, Session Laws of Colorado 2008.

ANNOTATION

For case relating to admission of women to practice, prior to specific provision of this section, see *In re Thomas*, 16 Colo. 441, 27 P.

707 (1891) (decided prior to earliest source of § 12-5-102).

12-5-103. License fee. The license fee for admission to practice law in this state shall be as prescribed by the supreme court under rules for admission to the bar.

Source: L. 1891: p. 40, § 1. R.S. 08: § 234. C.L. § 6002. CSA: C. 14, § 6. CRS 53: § 12-1-3. C.R.S. 1963: § 12-1-3.

12-5-104. Clerk of supreme court collects fee. (Repealed)

Source: L. 1891: p. 40, § 2. R.S. 08: § 235. C.L. § 6003. CSA: C. 14, § 7. CRS 53: § 12-1-4. C.R.S. 1963: § 12-1-4. L. 79: Entire section repealed, p. 602, § 30, effective July 1.

12-5-105. Supreme court library fund. (Repealed)

Source: L. 1891: p. 40, § 3. R.S. 08: § 236. C.L. § 6004. CSA: C. 14, § 8. CRS 53: § 12-1-5. C.R.S. 1963: § 12-1-5. L. 79: Entire section repealed, p. 602, § 30, effective July 1.

Cross references: For current provisions concerning the supreme court library fund, see § 13-2-120.

12-5-106. Warrants drawn on fund. (Repealed)

Source: L. 1891: p. 40, § 4. R.S. 08: § 237. C.L. § 6005. CSA: C. 14, § 9. CRS 53: § 12-1-6. C.R.S. 1963: § 12-1-6. L. 79: Entire section repealed, p. 602, § 30, effective July 1.

12-5-107. Clerk of supreme court keeps roll of attorneys. It is the duty of the clerk of the supreme court to make and keep a roll or record of the persons who have been regularly licensed and admitted to practice as attorneys- and counselors-at-law within this state and who have taken the prescribed oath.

Source: R.S. p. 66, § 4. G.L. § 19. G.S. § 72. L. 07: p. 221, § 2. R.S. 08: § 238. C.L. § 6006. CSA: C. 14, § 10. CRS 53: § 12-1-7. C.R.S. 1963: § 12-1-7.

ANNOTATION

Law reviews. For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L.J. 82 (1970).

12-5-108. Supreme court may strike name. No person whose name is not subscribed to or written on the said roll, with the day and year when the same was subscribed thereto or written thereon, shall be admitted to practice as an attorney- or counselor-at-law within this state under the penalty mentioned in section 12-5-112, anything in this article to the contrary notwithstanding; and the justices of the supreme court in open court, at their discretion, shall have power to strike the name of any attorney- or counselor-at-law from the roll for malconduct in his office.

Source: R.S. p. 66, § 5. G.L. § 20. G.S. § 73. R.S. 08: § 239. C.L. § 6007. CSA: C. 14, § 11. CRS 53: § 12-1-8. C.R.S. 1963: § 12-1-8.

ANNOTATION

- I. General Consideration.
- II. Grounds for Striking Name or Disbarment.
- III. Pleading and Practice.
- IV. Review of Disbarment.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Unauthorized Practice of Law", see 10 Dicta 284 (1933).

Annotator's note. For other annotations concerning disbarment, see the annotations for chapters 18 to 20 of the Colorado Rules of Civil Procedure and the Colorado Rules of Professional Conduct contained in the appendix to said chapters.

The section is declaratory of the common law on the subject. In re Walkey, 26 Colo. 161, 56 P. 576 (1899).

This section not only vests this court with a discretion which may be exercised, but, by implication, it enjoins a solemn duty upon the court, which, in a proper case, must be exercised. People ex rel. Elliott v. Green, 7 Colo. 237, 3 P. 65 (1883).

The two judicial systems of courts, the state judicatures and the federal judiciary, have autonomous control over the conduct of their officers, among whom, in the present context, lawyers are included. Gately v. Sutton, 310 F.2d 107 (10th Cir. 1962).

II. GROUNDS FOR STRIKING NAME OR DISBARMENT.

Any misconduct of an attorney which would render his continuance in practice incompatible with the proper respect of the court for itself, or a proper regard for the integrity of the profession, is sufficient under this section to cause his disbarment. People ex rel. Colo. Bar Ass'n v. Weeber, 26 Colo. 229, 57 P. 1079 (1899).

Conduct involving moral turpitude. Violation by attorneys of law intended for the protection of the public, or misapplication by them of funds in violation of the law, whether or not a loss results in the last analysis, constitutes conduct involving moral turpitude. People v. Salazar, 185 Colo. 331, 524 P.2d 298 (1974).

The right of the court to strike his name from its rolls exists for acts of misbehavior other than the commission of a crime. People ex rel. Colo. Bar Ass'n v. Weeber, 26 Colo. 229, 57 P. 1079 (1899).

The court might disbar him for committing a crime, even though he was not convicted. People ex rel. Colo. Bar Ass'n v. Weeber, 26 Colo. 229, 57 P. 1079 (1899).

Where an information in disbarment proceedings charged the respondent with the

crime of embracery, an answer setting up his acquittal upon a criminal charge based upon the same facts was not a defense to the proceeding for disbarment, and a demurrer to the answer was sustained. People ex rel. Colo. Bar Ass'n v. Thomas, 36 Colo. 126, 91 P. 36 (1906).

When an attorney has by his conduct shown himself unworthy of his office, it becomes the duty of the court to revoke the authority it gave him upon his admission. People ex rel. Maupin v. Keegan, 18 Colo. 237, 32 P. 424 (1893).

The conviction of a felony is ground for disbarment. People ex rel. Colo. Bar Ass'n v. Bryce, 36 Colo. 125, 84 P. 816 (1906); People ex rel. Attorney Gen. v. Cowen, 88 Colo. 571, 298 P. 957 (1931); People ex rel. Attorney Gen. v. Kaufman, 90 Colo. 8, 5 P.2d 1114 (1931); People ex rel. Attorney Gen. v. Bentall, 97 Colo. 526, 51 P.2d 352 (1935).

An attorney will be disbarred under this section for procuring witnesses to a forged will. People ex rel. Colo. Bar Ass'n v. Boutcher, 89 Colo. 497, 4 P.2d 910 (1931).

An attorney may be disbarred or suspended for publishing advertisements soliciting divorce cases. People ex rel. Attorney Gen. v. MacCabe, 18 Colo. 186, 32 P. 280 (1892).

Where an attorney at law receives money as collections for his clients by virtue of his employment as an attorney, and refuses and neglects to pay the same over to them upon demand and tender of his fees and expenses, his name will be stricken from the roll of attorneys in this state in disbarment proceedings. People ex rel. Colo. Bar Ass'n v. Nicholas, 36 Colo. 42, 84 P. 67 (1906); People ex rel. Colo. Bar Ass'n v. Kohn, 59 Colo. 353, 149 P. 249 (1915); People ex rel. Colo. Bar Ass'n v. Cary, 80 Colo. 443, 251 P. 597 (1926); People ex rel. Colo. Bar Ass'n v. Winograd, 87 Colo. 384, 287 P. 864 (1930); People ex rel. Colo. Bar Ass'n v. Hillyer, 88 Colo. 428, 297 P. 1004 (1931).

For obtaining money under false pretenses, taking advantage of those who employed him in his professional capacity to defraud them of money which came into his hands by virtue of such employment, and making misrepresentations to a client for the purpose of inducing him to advance money which he appropriated to his own use, the respondent will be disbarred. People ex rel. Colo. Bar Ass'n v. Sindlinger, 28 Colo. 258, 64 P. 191 (1901).

Attorney's actions in utilizing lien to overreach and force payment of more than he was owed warranted his disbarment. People v. Radinsky, 182 Colo. 259, 512 P.2d 627 (1973).

Subornation of perjury is another ground for disbarment. People ex rel. Colo. Bar Ass'n v. McCann, 80 Colo. 220, 249 P. 1093 (1926).

Abuse of process is a ground for disbarment. Civil liabilities may not be enforced by threats of criminal prosecution any more than by threats of physical violence, and conduct of an attorney which has the appearance of resort to such methods is as bad, in law, as the thing itself. *People ex rel. Colo. Bar Ass'n v.*, 90 Colo. 440, 9 P.2d 611 (1932).

Contempt of court is ground for disbarment. Under this section it is not necessary that the indignity of insult to a judge should occur in open court, nor that it constitute a statutory contempt of court, in order to confer on this court jurisdiction to disbar therefor. *People ex rel. Elliott v. Green*, 7 Colo. 237, 3 P. 65 (1883).

Regardless of the power to punish for contempt, there can be no doubt of the existence of a power to strike an offending attorney from the roll. *People ex rel. Elliott v. Green*, 7 Colo. 237, 3 P. 65 (1883).

If subsequent to admission an attorney is guilty of such conduct that he no longer possesses the qualification of good moral character, his name may be stricken from the rolls under the provisions of this section. *People ex rel. Colo. Bar Ass'n v. Sindlinger*, 28 Colo. 258, 64 P. 191 (1901).

An attorney who, in a business transaction, is guilty of conduct involving moral turpitude will be disbarred. *People ex rel. Colo. Bar Ass'n v. Humbert*, 51 Colo. 60, 117 P. 139 (1911).

An attorney who used his position as a director or officer of a bank to arrange financial transactions in a way prohibited by law is properly subject to disbarment. *People v. Salazar*, 185 Colo. 331, 524 P.2d 298 (1974).

Where an attorney having advised, and consented to, the illegal payment of dividends for the purpose of defrauding the public by the promotion of sales of stock, and being one of the promoters of a company operated as a stock selling swindle, is held guilty of unprofessional conduct, his name stricken from the roll of attorneys of Colorado. *People ex rel. Colo. Bar Ass'n v. Allen*, 88 Colo. 283, 295 P. 1107 (1930).

Where attorney had commingled funds in direct violation of the code of professional responsibility and had used his clients' funds for his own personal purposes, disbarment was warranted. *People v. Sarvas*, 185 Colo. 329, 524 P.2d 304 (1974).

Attorney's action in making alterations in court papers with intent to deceive the court is ground for disbarment. *People v. Atencio*, 185 Colo. 326, 524 P.2d 613 (1974).

Where an attorney attempted to reap a benefit for his client through the alteration or destruction of written evidence, such conduct was characterized as reprehensible. *People ex rel. Colo. Bar Ass'n v. Attorney at Law*, 88 Colo. 325, 295 P. 917 (1931).

An attorney who was instrumental in employing persons to wrongfully break into a clubhouse and remove goods therefrom was held guilty of unprofessional conduct and publicly reprimanded. *People ex rel. Colo. Bar Ass'n v. White*, 89 Colo. 306, 1 P.2d 577 (1931).

Where an attorney approached another with an offer, for a money consideration, to influence jurors to vote for an acquittal in a criminal case, he was disbarred and his name stricken from the roll of attorneys. *People ex rel. Attorney Gen. v. Powell*, 87 Colo. 387, 287 P. 858 (1930).

Attorney's action in negligently failing to take measures to procure his client's release from jail after he had represented to client that he would do so is ground for disbarment. *People v. Atencio*, 185 Colo. 326, 524 P.2d 613 (1974).

III. PLEADING AND PRACTICE.

It is the privilege, if not the duty, of every attorney to call to the attention of the supreme court any act of a licensed attorney which may fairly be considered to disqualify him. *People ex rel. Colo. Bar Ass'n v. Class*, 70 Colo. 381, 201 P. 883 (1921).

It is not the proper practice to entertain disbarment proceedings while the conduct complained of is already being investigated in an appropriate action. *People ex rel. Eli v. Benson*, 24 Colo. 358, 51 P. 481 (1897).

Where the alleged wrong is committed during or in connection with the judicial trial of an action, the disbarment proceedings should be postponed, or its hearing suspended until the termination of the action. *People ex rel. Eli v. Benson*, 24 Colo. 358, 51 P. 481 (1897).

Previous good standing and reputation is entitled to much consideration. *People ex rel. Eli v. Benson*, 24 Colo. 358, 51 P. 481 (1897).

In a proceeding to disbar upon charges made by the client, the burden is on the client to prove an attorney's guilt. *People ex rel. Colo. Bar Ass'n v. Johnson*, 40 Colo. 460, 90 P. 1038 (1907).

As accusations of this kind are easy to make and difficult to defend, the court will not be quick to take the naked charge as a proof of guilt, and, acting upon that, not only deprive a member of the bar of the means of making a livelihood, but disgrace him as well. *People ex rel. Colo. Bar Ass'n v. Johnson*, 40 Colo. 460, 90 P. 1038 (1907).

In disbarment proceedings, the burden, under the rule to show cause, is cast upon the respondent to justify his alleged unprofessional conduct. *People ex rel. Colo. Bar Ass'n v. Lindsey*, 86 Colo. 458, 283 P. 539 (1929).

In disbarment proceedings, if respondent fails to deny the charges made against him, he in legal effect admits them to be true. *People ex rel. Attorney Gen. v. Powell*, 87 Colo. 387, 287

P. 858 (1930); *People ex rel. Attorney Gen. v. Cowen*, 88 Colo. 571, 298 P. 957 (1931).

In disbarment proceedings where the petition is upon the relation of the Colorado bar association, neither the petition of the association nor the information of the attorney general is required to be under oath. *People ex rel. Colo. Bar Ass'n v. Mead*, 29 Colo. 344, 68 P. 241 (1902).

In disbarment proceedings the practice is to have the evidence taken and reported by a referee. *People ex rel. Colo. Bar Ass'n v. Mead*, 29 Colo. 344, 68 P. 241 (1902).

The charges should be established by clear, satisfactory and convincing evidence. *People ex rel. Eli v. Benson*, 24 Colo. 358, 51 P. 481 (1897); *People ex rel. Colo. Bar Ass'n v. Tanquary*, 48 Colo. 122, 109 P. 260 (1910).

The fact that an attorney has been acquitted on an embezzlement charge does not affect the question as to whether he has been guilty of unprofessional conduct for which he should be disbarred. *People ex rel. Colo. Bar Ass'n v. Mead*, 29 Colo. 344, 68 P. 241 (1902).

The fact that an attorney, who was convicted of a felony in a sister state, was restored to his civil rights by a pardon of the governor, is not a defense to disbarment proceedings against him for the same offense. *People ex rel. Colo. Bar Ass'n v. Burton*, 39 Colo. 164, 88 P. 1063 (1907).

The court may consider the conduct of such attorney, and if satisfied that it has been of a nature to require his disbarment, may disbar him. *People ex rel. Colo. Bar Ass'n v. Burton*, 39 Colo. 164, 88 P. 1063 (1907).

If an attorney honestly believes he is the owner of money in the hands of an officer taken from a person charged with robbery and held pending a prosecution, and believes it is not the money of the person alleged to have been robbed, although he is altogether wrong upon all points in his attempt to get the money, he is not guilty of attempting to defraud the claimant of the money, or of abuse of the process of the courts such as to cause his disbarment. *People ex rel. Eli v. Benson*, 24 Colo. 358, 51 P. 481 (1897).

In a disbarment proceeding against an attorney for refusing to pay over money collected for his client, it was no defense that the money was collected for the guardian of minor children, and that respondent loaned the money to prevent the husband of his client from getting and using the money for his personal benefit, even if such defense were true. *People ex rel. Carr v. Selig*, 25 Colo. 505, 55 P. 722 (1898).

An attorney at law who refuses to pay over money collected for a client cannot relieve himself from the consequences of the violation of professional duty by paying over the money

after the commencement of disbarment proceedings, though in a proper case it may be considered in mitigation of the punishment. *People ex rel. Carr v. Selig*, 25 Colo. 505, 55 P. 722 (1898).

While ratification of an unauthorized act of an attorney by his client is for some purposes equivalent, in law, to antecedent authority, the principle has no application in disbarment proceedings where the character of the act must be considered as at the time it was committed. *People ex rel. Colo. Bar Ass'n v. Hillyer*, 88 Colo. 428, 297 P. 1004 (1931).

If improper and immoral at that time, it does not become proper and moral by reason of a subsequent forgiveness by the victim. *People ex rel. Colo. Bar Ass'n v. Hillyer*, 88 Colo. 428, 297 P. 1004 (1931).

Where lawyer with prior censures and suspension for dereliction of duty failed to prepare will of aged person for at least eight months after being employed to do so and failed to file written objections to disbarment, disbarment was warranted. *People v. James*, 180 Colo. 133, 502 P.2d 1105 (1972).

Where respondent fails to appear and answer, the proper motion to be filed by petitioner is for default and judgment, and not for judgment on the pleadings. *People ex rel. Attorney Gen. v. Kaufman*, 90 Colo. 8, 5 P.2d 1114 (1931).

An attorney, by reason of his conduct subsequent to disbarment, may be held not entitled to reinstatement. *People ex rel. Colo. Bar Ass'n v. Lindsey*, 93 Colo. 41, 23 P.2d 118 (1933).

IV. REVIEW OF DISBARMENT.

The federal courts do not have jurisdiction to review an order of the Colorado supreme court disbarring an attorney in that state for personal and professional misconduct. *Gately v. Sutton*, 310 F.2d 107 (10th Cir. 1962).

The federal courts have no jurisdiction to issue writs of mandamus to direct state courts or their judicial officers in the performance of their duties, including disbarment proceedings. *Gately v. Sutton*, 310 F.2d 107 (10th Cir. 1962).

While a lawyer is admitted into a federal court by way of a state court, he is not automatically sent out of the federal court by the same route. *Gately v. Sutton*, 310 F.2d 107 (10th Cir. 1962).

Where the limits of review of a disbarment by the Colorado supreme court are violations, in the course of disbarment proceedings, of the due process or equal protection clauses of the fourteenth amendment, a petition for a writ of certiorari to the supreme court of the United States is the only method by which review may be had. *Gately v. Sutton*, 310 F.2d 107 (10th Cir. 1962).

12-5-109. Persons forbidden to practice. No coroner, sheriff, deputy sheriff, or jailer, though qualified, shall be permitted to practice as an attorney in the county in which he is commissioned or appointed, nor shall any clerk of the supreme court or district court be permitted to practice as an attorney- or counselor-at-law in the court in which he is clerk.

Source: R.S. p. 67, § 9. G.L. § 24. G.S. § 77. L. 07: p. 221, § 3. R.S. 08: § 247. C.L. § 6013. CSA: C. 14, § 17. CRS 53: § 12-1-12. C.R.S. 1963: § 12-1-12. L. 64: p. 207, § 11.

12-5-110. Judge not to act as attorney. It is unlawful for judges of the district, county, and municipal courts to counsel or advise in or write any petition or answer or other pleadings in any proceeding, or to perform any service as attorney- or counselor-at-law, or to be interested in any profits or emoluments arising out of any practice in any of said courts, except costs in their own courts; except that county judges in counties of such classes as may be specified by the laws relating to county courts, if licensed attorneys, may practice in courts other than the county court and in matters which have not come before the county court; and further, municipal judges, if licensed attorneys, may practice in courts other than the municipal court and in matters which have not come before the municipal court.

Source: L. 1893: p. 123, § 1. R.S. 08: § 248. C.L. § 6014. CSA: C. 14, § 18. L. 41: p. 261, § 1. CRS 53: § 12-1-14. L. 63: p. 195, § 1. C.R.S. 1963: § 12-1-14. L. 64: p. 207, § 13. L. 73: p. 1396, § 10.

Cross references: For classification of counties, see § 13-6-201.

ANNOTATION

The appearance of a judge for one of the parties in an election contest before the general assembly is not a violation of this section. Such appearance does not constitute practicing law. *People ex rel. Colo. Bar Ass'n v. Class*, 70 Colo. 381, 201 P. 883 (1921); *People ex rel. Colo. Bar Ass'n v. Class*, 70 Colo. 381, 201 P. 883 (1921).

Judges may not express opinions on legal questions not judicially before them, in view of this section. *Laizure v. Baker*, 91 Colo. 292, 14 P.2d 486 (1932).

This section was not repealed by the declaratory judgment act. *Gabriel v. Bd. of Re-*

gents of Univ. of Colo., 83 Colo. 582, 267 P. 407 (1928); *City & County of Denver v. Lynch*, 92 Colo. 102, 18 P.2d 907 (1932).

The trial court judge of a criminal action is in no sense a proper party to an appeal of the criminal action to the supreme court of Colorado. *People v. Hopkins*, 70 Colo. 163, 197 P. 1020 (1921).

The brief submitted by such judge is considered by the court solely as amicus curiae. *People v. Hopkins*, 70 Colo. 163, 197 P. 1020 (1921).

12-5-111. Penalty. (Repealed)

Source: L. 1893: p. 123, § 2. R.S. 08: § 249. C.L. § 6015. CSA: C. 14, § 19. CRS 53: § 12-1-15. C.R.S. 1963: § 12-1-15. L. 2003: Entire section repealed, p. 909, § 2, effective August 6.

12-5-112. Practicing law without license deemed contempt. Any person who, without having a license from the supreme court of this state so to do, advertises, represents, or holds himself out in any manner as an attorney, attorney-at-law, or counselor-at-law or who appears in any court of record in this state to conduct a suit, action, proceeding, or cause for another person is guilty of contempt of the supreme court of this state and of the court in which said person appears and shall be punished therefor according to law. Nothing in this section shall prevent the special admission of counselors residing in other states, as provided in section 12-5-113.

Source: L. 05: p. 157, § 1. R.S. 08: § 251. C.L. § 6017. CSA: C. 14, § 21. CRS 53: § 12-1-17. C.R.S. 1963: § 12-1-17.

ANNOTATION

- I. General Consideration.
- II. Judicial Department Controls Practice of Law.
- III. Practicing Law Without License.
- IV. Drafting Legal Documents.
- V. Enjoining Unlawful Practice of Law.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Justice Court Practice by the Laity", see 9 Dicta 65 (1932). For article, "Who May Practice, and What Constitutes the Practice of Law", see 9 Dicta 251 (1932). For article, "Effective and Ethical Use of Legal Assistants", see 15 Colo. Law. 659 (1986).

This section is not obnoxious to § 21 of art. V, Colo. Const., providing that no bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title. *People ex rel. Colo. Bar Ass'n v. Erbaugh*, 42 Colo. 480, 94 P. 349 (1908).

Applied in *Unauthorized Prac. of Law Comm. v. Grimes*, 654 P.2d 822 (Colo. 1982); *Holter v. Moore & Co.*, 702 F.2d 854 (10th Cir.), cert. denied, 464 U.S. 937, 104 S. Ct. 347, 78 L. Ed.2d 313 (1983); *Unauthorized Prac. of Law Comm. v. Grimes*, 759 P.2d 1 (Colo. 1988).

II. JUDICIAL DEPARTMENT CONTROLS PRACTICE OF LAW.

It is inherent in the judicial department of government under the constitution to control the practice of the law, the admission to the bar of persons found qualified to act as attorneys at law and the removal from that position of those once admitted and found to be unfaithful to their trust. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

While the judicial department cannot be circumscribed or restricted in the performance of these duties, appropriate and essential assistance in discharging them may be afforded by the enactment of statutes. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

As a general proposition, valid permission to practice law cannot be given by the general assembly except subject to the requirements for admission to the bar established by the judicial department. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

This section is not a grant of power to the supreme court or a limitation upon its inherent

powers. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

The judiciary has inherent and plenary powers, with or without legislative enactment, to regulate and control the practice of law to the extent that is reasonably necessary to the proper functioning of the judiciary. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

III. PRACTICING LAW WITHOUT LICENSE.

Law reviews. For article, "Unauthorized Practice of Law", see 10 Dicta 284 (1933). For comment on *United Sec. Corp. v. Pantex Pressing Mach., Inc.*, 98 Colo. 79, 53 P.2d 653 (1935), appearing below, see 8 Rocky Mt. L. Rev. 289 (1936). For note, "May a Layman Appear Before the Colorado Public Utilities Commission", see 9 Rocky Mt. L. Rev. 188 (1937). For comment on *People ex rel. Attorney Gen. v. Newer*, appearing below, see 29 Dicta 153 (1952).

The basic and initial question in determining whether a particular activity amounts to the unauthorized practice of law is whether the individual's appearance is in a representative capacity to protect, enforce, or defend the rights or duties of someone else. *Watt, Tieder, Killian & Hoffar v. U.S. Fidelity & Guaranty Co.*, 847 P.2d 170 (Colo. App. 1992).

It will be observed that the gist of the offense against which the statute is directed is one not licensed as an attorney holding himself out in any manner as being licensed, or committing the overt act of appearing in a court of record to conduct legal proceedings for another. *People ex rel. Attorney Gen. v. Wicks*, 101 Colo. 397, 74 P.2d 665 (1937).

One who, not having a license from the supreme court as provided by statute, advertises himself as a "lawyer", is guilty of a contempt under this section. *People ex rel. Colo. Bar Ass'n v. Taylor*, 56 Colo. 441, 138 P. 762 (1914).

Under this section, one who, through the medium of state, city and telephone directories, falsely holds himself out as an attorney at law, is guilty of contempt. *People ex rel. Colo. Bar Ass'n v. Norton*, 44 Colo. 253, 104 P. 605 (1908); *People ex rel. Colo. Bar Ass'n v. Humbert*, 86 Colo. 426, 282 P. 263 (1929).

One, who, not being licensed to practice law, caused his name to be printed in the city directory, on his office signs, business cards,

and letterheads, followed by the words "Attorney, Solicitor of American and Foreign Patents", or by the words "Attorney, Patent Law and Counsel in Patent Causes", and who, in reply to a letter as to a divorce, replied on one of such letterheads, without stating that he was not engaged in the practice of law, violates this section. *People ex rel. Colo. Bar Ass'n v. Erbaugh*, 42 Colo. 480, 94 P. 349 (1908).

One may hold himself out as an attorney by writing, cards, signs, stationery, etc., but certainly may also, and perhaps even more effectively, hold himself out by his conduct. *People ex rel. Dunbar v. Schmitt*, 126 Colo. 546, 251 P.2d 915 (1952).

Where one engages in the business of advising others on those important and complicated legal problems usually falling within the practice of the profession, pretending that he is qualified to do so, does it openly and constantly, year after year, by conversation and writing, and charges and collects substantial fees therefor, he could no more effectively hold himself out as having the knowledge and the necessary authority to so act. *People ex rel. Dunbar v. Schmitt*, 126 Colo. 546, 251 P.2d 915 (1952).

Evidence showing unauthorized practice. *People ex rel. Dunbar v. Schmitt*, 126 Colo. 546, 251 P.2d 915 (1953).

The evidence adduced at the hearing established beyond a reasonable doubt that the respondent held himself out as being able to perform the services of incorporating business ventures generally required to be performed by a licensed attorney, that the respondent was not licensed to practice law in the state of Colorado, and that he prepared articles of incorporation for which he charged and received a fee in violation of this statute. *People ex rel. Dunbar v. McClellan*, 164 Colo. 202, 434 P.2d 126 (1967).

Since notaries public are by statute empowered to perform certain acts including making "declarations and protests" and taking "affidavits and depositions", where a notary advertises, "legal papers made", such fact is not sufficient or any proof that he intended to exceed the authority conferred upon him as a notary or of an intent to practice law. *People ex rel. Attorney Gen. v. Wicks*, 101 Colo. 397, 74 P.2d 665 (1937).

As to matters in which no legal principle is involved and the subject matter of the hearing has a value or represents an amount insufficient to warrant the employment of an attorney, permission is granted until withdrawn by the supreme court to permit laymen to represent others before the public utilities commission in accordance with rule 7(b) of the public utilities commission even though such representation may constitute practicing law. *Denver Bar Ass'n v. Pub. Utils. Comm'n*, 154 Colo. 273, 391 P.2d 467 (1964).

Where a considerable portion of respondent's time had been devoted to consulting with inmates of Colorado State Hospital, investigations of the legal proceedings resulting in their commitment to the institution, and advice and activities designed to bring about a release of the patients from further detention at said hospital, respondent was practicing law in violation of this section. *People ex rel. Zimmerman v. Flanders*, 121 Colo. 25, 212 P.2d 502 (1949).

The drawing of wills, as a practice, is the practice of law. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

Where a cashier of a county bank drafted, prepared and caused to be executed a will, he engaged in the practice of the law in Colorado without having the requisite license therefor and was held guilty of contempt of the supreme court. *People ex rel. Attorney Gen. v. Woodall*, 128 Colo. 563, 265 P.2d 232 (1954).

For case where party was punished for contempt of the authority of the supreme court for holding himself out as an attorney at law, see *People ex rel. Attorney Gen. v. Brown*, 126 Colo. 222, 247 P.2d 682 (1952).

Under this section, a resident of Colorado licensed to practice law in another state, by accepting employment as an attorney in Colorado without a license to practice, is guilty of contempt. *People ex rel. Attorney Gen. v. Thomas*, 87 Colo. 547, 290 P. 283 (1930).

At the time respondent accepted the legal employment, he disclosed he was not a resident of the state in which he was authorized to practice law, Ohio, but was a resident of the state of Colorado, by his own admission, for a substantial period of time he had engaged in the practice of law in the state of Colorado without having a license from the supreme court so to do, in violation of the provisions of this section. *People ex rel. Attorney Gen. v. Fitkin*, 170 Colo. 388, 461 P.2d 436 (1969).

Services of an attorney not licensed in Colorado are compensable as attorney fees where no court appearances made and the work performed consisted of obtaining a variance from a municipal zoning code. *Catoe v. Knox*, 709 P.2d 964 (Colo. App. 1985).

Consulting services performed by an out-of-state lawyer do not constitute unauthorized practice of law under canon 3 of the Colorado code of professional responsibility and therefore may be compensated as attorney fees. *Dietrich Corp. v. King Res. Co.*, 596 F.2d 422 (10th Cir. 1979).

Because a partnership is not a separate legal entity, but is only treated as such under partnership statutes for certain limited purposes, trial court should reconsider its finding of contempt based on theory that a Virginia partnership and individuals representing it in Colorado courts were engaged in the unauthorized practice of law. *Watt, Tieder, Killian & Hoffar v.*

U.S. Fidelity & Guaranty Co., 847 P.2d 170 (Colo. App. 1992).

A partnership must be considered as an entity separate and apart from the general partners for purposes of defining parties who may appear for others in courts of record. *E & A Assoc. v. First Nat. Bank of Denver*, 899 P.2d 243 (Colo. App. 1994) (disapproving any inference to the contrary in *Watt, Tieder* case, also annotated under this section).

Where respondent violated this section, but it is apparent he did not do so intentionally, the duty of the court does not require his punishment. *People ex rel. Colo. Bar Ass'n v. Ellis*, 44 Colo. 176, 96 P. 783 (1908).

A person is not amenable to discipline for contempt of court for practicing law without a license, for his belief that he had the right to do certain things, which might be construed as practicing law, his intent to do them, or even for an overt act, where the doing of such act was neither charged nor admitted. *People ex rel. Attorney Gen. v. Wicks*, 101 Colo. 397, 74 P.2d 665 (1937).

Applied in *People ex rel. Attorney Gen. v. Gregory*, 135 Colo. 438, 312 P.2d 512 (1957).

IV. DRAFTING LEGAL DOCUMENTS.

The drafting of documents, when merely incidental to the work of a distinct occupation, is not the practice of law, although the documents have legal consequences. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

There are instruments that no one but a well trained lawyer should ever undertake to draw. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

There are other instruments common in the commercial world, and fraught with substantial legal consequences, that lawyers seldom are employed to draw, and that in the course of recognized occupations other than the practice of law are often drawn by laymen. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

The actual practices of the community have an important bearing on the scope of the practice of law. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

A person who gives legal advice to those for whom he draws instruments, or holds himself out as competent to do so, does work of a legal nature, when the instruments he prepares either define, see forth, limit, terminate, specify, claim or grant legal rights. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

However, a person who is not a member of the bar may draw instruments such as simple deeds, mortgages, promissory notes, and bills

of sale when these instruments are incident to transactions in which such person is interested, provided no charge is made therefor. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

The preparation of simple real estate instruments, done without separate charge therefor by licensed real estate brokers only in connection with their established business, and in behalf of their customers and in connection with a bona fide real estate transaction which they are handling as brokers, should not be enjoined as unauthorized practices of law. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

It would not be in the interest of the public welfare to restrain brokers from drafting the ordinary instruments necessary to effectuate the closing of the ordinary real estate transaction in which they are acting. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

Ordinary conveyancing, being part of the every day business of the realtor, may also be done by others without wrongful invasion of the lawyers' field and consequently is something of which the legal profession cannot claim that the public welfare requires restraint by judicial decree. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

V. ENJOINING UNLAWFUL PRACTICE OF LAW.

It is quite generally held that the right to practice law conferred by the state is a special privilege in the nature of a franchise and that the holder thereof may be protected from the invasion of the right thus vested in him. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

The adequate remedy for such invasion is by injunction, and that is so whether the transgressor is an individual or a corporation, though, as to the latter, as contended, quo warranto would lie. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

The right to practice law exists by virtue of a license from the state, and it may be protected from unlawful encroachment by injunction, though the act complained of is a violation of statute which prescribes a penalty. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

With or without statutory authorization or sanction, in a proper case, a person engaged in the unlawful practice may be punished for contempt and may also be enjoined from further similar unlawful action. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

Duly licensed members of the bar may invoke the jurisdiction of the courts to restrain the illegal practice of law by others. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

Attorneys, as officers of the court, may, both for themselves and all the affected members of their profession, institute and maintain a suit to challenge or enjoin the unlawful intrusion into their office and professional field by one who is not licensed to do so. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

In general a court of equity will grant an injunction only where there is imminent danger or irreparable injury or damage to the plaintiff. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

In order to restrain an unlicensed person from practicing a profession, it is not necessary to prove irreparable injury or the threat thereof where the suit is in behalf of the public. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

Plaintiffs, the Denver and Colorado Bar Associations, the chairmen of the unautho-

riized practices committee of each association and licensed attorneys who appear for themselves and all other licensed attorneys and on behalf of the public are entitled to an injunction to prevent the unlawful intrusion into their office and professional field of defendant. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

In such a case, the extent of the damage to the property right is unimportant. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

The existence or threat of real damage is enough to warrant relief. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

The fact that no property or pecuniary interest of the plaintiff is involved is not an answer to a suit for an injunction to enjoin the practice of a profession without a license, where the action is in behalf of the public. *Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957).

12-5-113. Special admission of counselors from other states. Whenever any counselor-at-law residing in any of the adjacent states or territories has business in any of the courts of this state, he may be admitted, on motion, for the purpose of transacting such business and none other.

Source: R.S. p. 68, § 14. G.L. § 29. G.S. § 82. R.S. 08: § 252. C.L. § 6018. CSA: C. 14, § 22. CRS 53: § 12-1-18. C.R.S. 1963: § 12-1-18.

ANNOTATION

Where an attorney from a sister state is admitted to the bar of Colorado for the purpose of representing a defendant in a trial for murder in the first degree, the fact that such counsel does not have an associate resident counsel with him in the case does not nullify the arraignment of defendant or his plea of not guilty. *Martinez v. People*, 134 Colo. 82, 299 P.2d 510 (1956).

Where an attorney from a sister state is voluntarily chosen by a defendant to represent him, and the supreme court authorizes his admission to the Colorado bar for the purpose of conducting the defense, counsel has full power and authority to represent defendant. *Martinez v. People*, 134 Colo. 82, 299 P.2d 510 (1956).

12-5-114. Notice of charges - time to show cause. Every attorney, before his name is stricken off the roll, shall receive a written notice from the clerk of the supreme court stating distinctly the grounds of complaint or the charges exhibited against him, and after such notice he shall be heard in his defense and allowed reasonable time to collect and prepare testimony for his justification. Any attorney whose name, at any time, is stricken from the roll by order of the court shall be considered as though his name had never been written thereon until such time as the said justices, in open court, authorize him to sign or subscribe the same.

Source: R.S. p. 69, § 7. G.L. § 22. G.S. § 75. R.S. 08: § 241. C.L. § 6009. CSA: C. 14, § 13. CRS 53: § 12-1-9. C.R.S. 1963: § 12-1-9.

ANNOTATION

This section does not direct how such notice shall be served. In re Walkey, 26 Colo. 161, 56 P. 576 (1899).

In the absence of specific directions regarding such service, any method adopted from which it appears that respondent received the required notice will be sufficient. In re Walkey, 26 Colo. 161, 56 P. 576 (1899).

This section makes ample provision for restoring to the bar any attorney whose name may have been stricken from the roll by order of the supreme court. People ex rel. Elliott v. Green, 7 Colo. 237, 3 P. 65 (1883).

The court has no power to restore the petitioner to the rolls until it be shown that restitution has been made to the client of the moneys detained. Ex parte Browne, 2 Colo. 553 (1875).

Evidence insufficient to warrant reinstatement to the bar. In re Petition of Howard, 178 Colo. 350, 497 P.2d 1023 (1972).

Whether or not leniency shall be exercised, and how soon, must depend, to a great extent, on the respondent himself. People ex rel. Elliott v. Green, 7 Colo. 237, 3 P. 65 (1883).

12-5-115. Recovery of fees from unlicensed person. (Repealed)

Source: R.S. p. 68, § 12. G.L. § 27. G.S. § 80. R.S. 08: § 250. C.L. § 6016. CSA: C. 14, § 20. CRS 53: § 12-1-16. C.R.S. 1963: § 12-1-16. L. 2003: Entire section repealed, p. 909, § 3, effective August 6.

12-5-115.5. Solicitation of accident victims - waiting period. (1) Except as permitted by section 13-21-301 (3), 10-3-1104 (1) (h), or 10-4-706, C.R.S., no person shall engage in solicitation for professional employment or for any release or covenant not to sue concerning personal injury or wrongful death from an individual with whom the person has no family or prior professional relationship unless the incident for which employment is sought occurred more than thirty days prior to the solicitation.

(2) No person shall accept a referral for professional employment concerning personal injury or wrongful death from any person who engaged in solicitation of an individual with whom the person had no family or prior professional relationship unless the incident for which employment is sought occurred more than thirty days prior to the solicitation.

(3) As used in this section, "solicitation" means an initial contact initiated in person, through any form of written communication, or by telephone, telegraph, or facsimile, any of which is directed to a specific individual, unless requested by the individual, a member of the individual's family, or the authorized representative of the individual. "Solicitation" shall not include radio, television, newspaper, or yellow pages advertisements.

(4) Any agreement made in violation of this section is voidable at the option of the individual suffering the personal injury or death or such individual's personal or other authorized representative.

Source: L. 96: Entire section added, p. 1137, § 1, effective July 1.

12-5-116. Legal aid dispensaries - law students practice. Students of any law school that maintains a legal-aid dispensary where poor or legally underserved persons receive legal advice and services shall, when representing the dispensary and its clients, be authorized to advise clients on legal matters and appear in court or before any arbitration panel as if licensed to practice law.

Source: L. 09: p. 441, § 1. C.L. § 6019. CSA: C. 14, § 23. CRS 53: § 12-1-19. C.R.S. 1963: § 12-1-19. L. 83: Entire section amended, p. 515, § 1, effective July 1. L. 2003: Entire section amended, p. 909, § 4, effective August 6. L. 2007: Entire section amended, p. 26, § 1, effective August 3.

ANNOTATION

Law reviews. For article, "Providing Legal Services for the Poor: A Dilemma and an Opportunity", see 11 Colo. Law. 666 (1982). For article, "Problems in Clinical Integration: A Case Study of the Integrated Clinical Program of the University of Denver College of Law", see 59 Den. L.J. 459 (1982).

A law student acting on behalf of the legal aid society for an alien satisfies the requirements of a "counsel" and is authorized to act as an attorney in a deportation hearing as an ac-

credited representative of a social service organization. *Pilapil v. Immigration & Naturalization Serv.*, 424 F.2d 6, 9 A.L.R. Fed. 915 (10th Cir.), cert. denied, 400 U.S. 908, 91 S. Ct. 152, 27 L. Ed. 2d 147 (1970).

However, despite the language of this section, law students authorized to appear in court must have the approval of the judge of the court in which they propose to appear. *People v. Coria*, 937 P.2d 386 (Colo. 1997).

12-5-116.1. Practice by law student intern. (1) An eligible law student intern, as specified in section 12-5-116.2, may appear and participate in any civil proceeding in any municipal, county, or district court or before any administrative agency in this state or in any county or municipal court criminal proceeding, except when the defendant has been charged with a felony, or in any juvenile proceeding in any municipal or county court or before any magistrate in any juvenile or other proceeding or any parole revocation under the following circumstances:

(a) If the person on whose behalf he is appearing has indicated his consent to that appearance and the law student intern is under the supervision of a supervising lawyer, as specified in section 12-5-116.4;

(b) When representing the office of the state public defender and its clients, if the person on whose behalf he is appearing has indicated his consent to that appearance and the law student intern is under the supervision of the public defender or one of his deputies; and

(c) On behalf of the state or any of its departments, agencies, or institutions, a county, a city, or a town, with the written approval and under the supervision of the attorney general, attorney for the state, county attorney, district attorney, city attorney, town attorney, or authorized legal services organization. A general approval for the law student intern to appear, executed by the appropriate supervising attorney pursuant to this paragraph (c), shall be filed with the clerk of the applicable court and brought to the attention of the judge thereof.

(2) The consent or approval referred to in subsection (1) of this section, except a general approval, shall be made in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

(3) In addition to the activities authorized in subsection (1) of this section, an eligible law student intern may engage in other activities under the general supervision of a supervising lawyer, including but not limited to the preparation of pleadings, briefs, and other legal documents which must be approved and signed by the supervising lawyer and assistance to indigent inmates of correctional institutions who have no attorney of record and who request such assistance in preparing applications and supporting documents for postconviction relief.

Source: L. 83: Entire section added, p. 515, § 2, effective July 1. L. 91: IP(1) amended, p. 354, § 1, effective April 9.

12-5-116.2. Eligibility requirements for law student intern practice. (1) In order to be eligible to make an appearance and participate pursuant to section 12-5-116.1, a law student must:

(a) Be duly enrolled in or a graduate of any accredited law school;

(b) Have completed a minimum of two years of legal studies;

(c) Have the certification of the dean of such law school that he has no personal knowledge of or knows of nothing of record that indicates that the student is not of good moral character and, in addition, that the law student has completed the requirements specified in paragraph (b) of this subsection (1) and is a student in good standing;

(d) Be introduced to the court or administrative tribunal in which he is appearing as a law student intern by a lawyer authorized to practice law in this state;

(e) Neither ask nor receive any compensation or remuneration of any kind for his services from the person on whose behalf he renders services; but such limitation shall not prevent the law student intern from receiving credit for participation in the program upon prior approval of the law school, nor shall it prevent the law school, the state, a county, a city, a town, or the office of the district attorney or the public defender from paying compensation to the law school intern, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require; and

(f) State that he has read, is familiar with, and will be governed in the conduct of his activities under section 12-5-116.1 by the code of professional responsibility adopted by the supreme court.

Source: L. 83: Entire section added, p. 516, § 2, effective July 1. **L. 84:** (1)(e) amended, p. 1116, § 4, effective June 7.

12-5-116.3. Certification of law student intern by law school dean - filing - effective period - withdrawal by dean or termination. (1) The certification by the law school dean, pursuant to section 12-5-116.2 (1) (c), required in order for a law student intern to appear and participate in proceedings:

(a) Shall be filed with the clerk of the supreme court and, unless it is sooner withdrawn, shall remain in effect until the announcement of the results of the first bar examination following the student's graduation. For any student who passes said bar examination, the certification shall continue in effect until the date he is admitted to the bar.

(b) May be withdrawn by the dean at any time by mailing a notice to that effect to the clerk of the supreme court, and such withdrawal may be without notice or hearing and without any showing of cause; and

(c) May be terminated by the supreme court at any time without notice or hearing and without any showing of cause.

Source: L. 83: Entire section added, p. 517, § 2, effective July 1.

12-5-116.4. Qualifications of supervising lawyer. (1) A supervising lawyer, under whose supervision an eligible law student intern appears and participates pursuant to section 12-5-116.1, shall be authorized to practice law in this state and:

(a) Shall be a lawyer in the public sector as provided in section 12-5-116.1 (1) (b) and (1) (c);

(b) Shall assume personal professional responsibility for the conduct of the law student intern; and

(c) Shall assist the law student intern in his preparation to the extent the supervising lawyer considers it necessary.

Source: L. 83: Entire section added, p. 517, § 2, effective July 1.

12-5-116.5. Other rights not affected by provisions for practice by law student intern. Nothing contained in sections 12-5-116 to 12-5-116.4 shall affect the right of any person who is not admitted to practice law to do anything that he might lawfully do prior to the adoption of these sections.

Source: L. 83: Entire section added, p. 517, § 2, effective July 1.

12-5-117. Attorney not to be surety. No attorney- or counselor-at-law shall become surety in any bond or recognizance of any sheriff or coroner, in any bond or recognizance for the appearance of any person charged with any public offense, or upon any bond or

recognizance authorized by any statute to be taken for the payment of any sum of money into court in default of the principal, without the consent of a judge of the district court first had approving said surety.

Source: R.S. p. 69, § 16. G.L. § 31. G.S. § 84. R.S. 08: § 245. C.L. § 6012. CSA: C. 14, § 16. CRS 53: § 12-1-13. C.R.S. 1963: § 12-1-13. L. 64: p. 207, § 12.

ANNOTATION

Where by leave of court, an attorney signs a certiorari bond as surety, he is estopped to deny his obligation on the ground that he was an attorney at the time of signing. Ullery v. Kokott, 15 Colo. App. 138, 61 P. 189 (1900).

Applied in Bottom v. People, 63 Colo. 114, 164 P. 697 (1917).

12-5-118. Judge not to have law partner. A judge shall not have a partner acting as attorney or counsel in any court in his judicial district, county, or precinct.

Source: L. 1887: p. 216, § 431. Code 08: § 466. Code 21: § 467. Code 35: § 467. CRS 53: § 12-1-20. C.R.S. 1963: § 12-1-20. L. 64: p. 208, § 14.

12-5-119. Attorney's lien - notice of claim filed. All attorneys- and counselors-at-law shall have a lien on any money, property, choses in action, or claims and demands in their hands, on any judgment they may have obtained or assisted in obtaining, in whole or in part, and on any and all claims and demands in suit for any fees or balance of fees due or to become due from any client. In the case of demands in suit and in the case of judgments obtained in whole or in part by any attorney, such attorney may file, with the clerk of the court wherein such cause is pending, notice of his claim as lienor, setting forth specifically the agreement of compensation between such attorney and his client, which notice, duly entered of record, shall be notice to all persons and to all parties, including the judgment creditor, to all persons in the case against whom a demand exists, and to all persons claiming by, through, or under any person having a demand in suit or having obtained a judgment that the attorney whose appearance is thus entered has a first lien on such demand in suit or on such judgment for the amount of his fees. Such notice of lien shall not be presented in any manner to the jury in the case in which the same is filed. Such lien may be enforced by the proper civil action.

Source: L. 03: p. 145, § 1. R.S. 08: § 242. C.L. § 6010. CSA: C. 14, § 14. CRS 53: § 12-1-10. C.R.S. 1963: § 12-1-10.

ANNOTATION

- I. General Consideration.
- II. Attorney's Liens in Colorado.
- III. Nature of Lien.
- IV. Applicability and Scope of Lien.
- V. Enforcement.
 - A. In General.
 - B. Notice.
- VI. Possessory Lien Extinguished by Settlement.

I. GENERAL CONSIDERATION.

Law reviews. For article, "A Decade of Colorado Law: Conflict of Laws, Security, Contracts and Equity", see 23 Rocky Mt. L. Rev. 247 (1951). For article, "Mechanics' Liens Rel-

ative to Oil and Gas Operations — Part II", see 34 Dicta 373 (1957). For article, "The Treatment of Attorney's Liens in Colorado", see 16 Colo. Law. 623 (1987). For article, "Perfection and Enforcement of Attorney's Liens in Colorado", see 26 Colo. Law. 57 (March 1997). For article, "Ethical Considerations of Attorney's Liens", see 31 Colo. Law. 51 (April 2002). For article, "Recording Charging Liens Against Real Property: When, Not Whether", see 31 Colo. Law. 121 (October 2002). For article, "Improper Recording of an Attorney's Charging Lien", see 32 Colo. Law. 61 (February 2003). For article, "The Duty of Loyalty and Preparations to Compete", see 34 Colo. Law. 67 (November 2005). For article, "Ethics in Family

Law and the New Rules of Professional Conduct", see 37 Colo. Law. 47 (October 2008).

Annotator's note. Cases material to § 12-5-119 decided prior to its earliest source, L. 03, p. 145, § 1, have been included in the annotations to this section.

Validity and extent of attorney's lien in bankruptcy is determined by state law. In re Life Imaging Corp., 31 Bankr. 101 (Bankr. D. Colo. 1983).

Unfounded claim of lien violates professional code. The assertion of an attorney's lien in circumstances where the attorney has no statutory or legal foundation for a lien and, in fact, has an uncertain claim to the fee being claimed through the lien violates the code of professional responsibility. *People v. Razatos*, 636 P.2d 666 (Colo. 1981), appeal dismissed, 455 U.S. 930, 102 S. Ct. 1415, 71 L. Ed.2d 639 (1982); *People v. Smith*, 830 P.2d 1003 (Colo. 1992); *People v. Mills*, 861 P.2d 708 (Colo. 1993) (decided under DR 1-102 (A)(5)).

II. ATTORNEY'S LIENS IN COLORADO.

Law reviews. For article, "Update on Colorado Appellate Decisions in Colorado Workers' Compensation Law", see 30 Colo. Law. 69 (April 2001).

Under Colorado law, the common law attorney's lien is not preserved, and no lien exists apart from statute. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir.), aff'g *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo. 1958).

No attorney's lien exists apart from this statute. In re *Rosenberg*, 690 P.2d 1293 (Colo. App. 1984).

Attorney's lien was not valid on funds paid directly to law firm by its client for legal services, and therefore fell within the trustee's avoidance power as a preferential transfer. In re *Inv. Bankers, Inc.*, 136 Bankr. 1008 (Bankr. D. Colo. 1989).

There is no common-law attorney's lien in Colorado, and no lien exists apart from this section. *Ranes v. Molen*, 31 Bankr. 70 (Bankr. D. Colo. 1983).

It was clear that an attorney's lien existed either by state statute or by the common law. In re *Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), aff'd sub nom. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

The federal courts have consistently applied the law of the state in determining whether or not an attorney's lien exists in a given situation. In re *Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), aff'd sub nom. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

Homestead exemption statute includes attorney's liens within its ambit and the attorney's lien does not attach to the homestead. If

the debtor has any net equity remaining after the sale of the property in question, the creditor's attorney's lien attaches to that net equity and his claim is unsecured for any amount over that sum. In re *Dickinson*, 185 Bankr. 840 (Bankr. D. Colo. 1995).

Where an attorney's right to a lien exists by virtue of a statute, such right cannot be extended beyond the fair intentment of such statute. In re *Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), aff'd sub nom. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

Colorado has two statutory provisions pertaining to attorney's liens, this section and §12-5-120. In re *Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), aff'd sub nom. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

Attorneys have two kinds of liens peculiar to them in their relationship with their client. In re *Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), aff'd sub nom. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

One kind of lien is a lien which an attorney has upon all the papers of his client in his possession, by virtue of which he may retain all of such papers until full payment is made for his services, and it is called a "retaining lien". In re *Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), aff'd sub nom. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

An attorney also has a lien upon any money, property, choses in action or claims and demands in his hands and on any judgment he may have obtained, and that is denominated a "charging lien". In re *Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), aff'd sub nom. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

It was not the intention of the general assembly to abolish the well-established distinction between the two classes of liens (i.e. retaining liens and charging liens), and to create a lien upon a judgment and its proceeds to secure the payment of attorney's fees earned in matters not at all connected with the suit in which the judgment is rendered. In re *Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), aff'd sub nom. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

This is true even though this section and §12-5-120 did not separate the two classes of liens as clearly as might be desired. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir.), aff'g In re *Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo. 1958).

The Colorado supreme court has declared that this section and §12-5-120 established two distinct classes of liens, each with its own limitation: a general retaining, or possessory lien, and a special, particular, or charging lien. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir.), aff'g In re *Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo. 1958).

Because “claims and demands in suit” is listed separately from judgments, it is clear that it is not necessary to obtain a judgment in order for an attorney’s lien to attach to the settlement proceeds. *Cope v. Woznicki*, 140 P.3d 239 (Colo. App. 2006).

Language in fee contract which would have granted an attorney’s lien against all assets owned by the client covered not only a retaining lien but also a charging lien and, thus, attorney waived the right to assert both types of liens when client had deleted such language from the contract. In *re Rosenberg*, 690 P.2d 1293 (Colo. App. 1984).

Plain language of this section indicates that a retaining lien may exist for fees “due or to become due from any client.” If an attorney who possessed funds of a client had a present interest only in fees already earned, this statutory language would be superfluous. Therefore, bankruptcy attorneys are entitled to prepetition cash retainers for their services following a chapter 11 petition. In *re Printcrafters, Inc.*, 233 Bankr. 113 (Bankr. D. Colo. 1999).

There is no authority in Colorado for an equitable lien apart from this section and §12-5-120. In *re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), *aff’d sub nom. Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

This is in accord with the general rule that where a charging lien is created by statute, the right to the lien exists only in cases specifically provided for by such statute. In *re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), *aff’d sub nom. Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

A lien on the proceeds of litigation should be declared in favor of an attorney in a cause where equitable considerations require that such lien be recognized. *de Bit v. Howard*, 107 Colo. 51, 108 P.2d 1053 (1940).

The purpose of the charging lien is to satisfy the attorney’s equitable claim for services rendered; therefore, the attorney’s lien may attach even though the attorney did not negotiate the settlement. *Cope v. Woznicki*, 140 P.3d 239 (Colo. App. 2006).

Where attorneys do not have nor have they ever had any of the property in their possession upon which they are claiming an attorney’s lien, they are not entitled to a lien on the subject property under this section. In *re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), *aff’d sub nom. Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

Therefore, where an attorney’s representation is merely as attorney in fact, there is no basis upon which he can rightfully claim either a general or special attorney’s lien because there were no funds coming into his hands in the course of his professional employment. *Moore v. People*, 125 Colo. 306, 243 P.2d 425 (1952).

This section is not to be so construed as to prohibit the client from abandoning his claim, or adjusting the controversy with his adversary, acting in good faith, and with no intention of defeating the lien of the attorney. *Gooding v. Lyon*, 63 Colo. 328, 166 P. 564 (1917).

Applied in *Graeber v. McMullin*, 56 F.2d 497 (10th Cir. 1932); *People ex rel. Eaton v. El Paso County Court*, 74 Colo. 123, 219 P. 215 (1923).

III. NATURE OF LIEN.

All attorneys and counselors at law shall have a lien on any money, property, choses in action, or claims and demands in their hands, for any fees or balance of fees due or to become due from any client. In *re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), *aff’d sub nom. Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

All attorneys and counselors at law shall have a lien on any judgment they may have obtained or assisted in obtaining in whole or in part, due or to become due from any client. In *re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), *aff’d sub nom. Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

This section gives to attorneys a lien on all claims and demands in suit and a lien upon all judgments obtained for any fees or balance of fees due or to become due from any client. *Miller v. Houston*, 27 Colo. App. 89, 146 P. 786 (1915).

The attorney’s lien, whether under this section or at common law, is equitable in its nature. *Fillmore v. Wells*, 10 Colo. 228, 15 P. 343 (1887).

The lien is not property in the thing which gives a right of action at law. *Fillmore v. Wells*, 10 Colo. 228, 15 P. 343 (1887).

The lien is a charge upon the thing which is protected in equity. *Fillmore v. Wells*, 10 Colo. 228, 15 P. 343 (1887).

The lien is enforceable by a suit in equity directly against the property burdened therewith, and the amount of the attorney’s compensation, together with the controversies relating to the contract of employment, may be determined in such suit. *Fillmore v. Wells*, 10 Colo. 228, 15 P. 343 (1887).

This section provides no method of formally asserting the lien in the first instance. *Colo. State Bank v. Davidson*, 7 Colo. App. 91, 42 P. 687 (1895).

The lien attaches, upon the recovery of the judgment, by virtue of the statute itself and without action of any kind on the part of the attorney. *Colo. State Bank v. Davidson*, 7 Colo. App. 91, 42 P. 687 (1895).

When an attorney has obtained a judgment for his client, this section immediately operates to invest him with a lien thereon to the

extent of his reasonable fees remaining due and unpaid for his professional services in obtaining the same. *Johnson v. McMillan*, 13 Colo. 423, 22 P. 769 (1889).

The employment of an attorney operates as an equitable assignment of the client's right to the extent of the agreed compensation, in view of this section. *Dankwardt v. Kermode*, 68 Colo. 225, 187 P. 519 (1920).

"Charging lien". A "charging lien" attaches to all the fruits due a client after a suit is commenced, and it attaches immediately upon the obtaining of the judgment. The lien, as between the attorney and the client, is automatic and nothing more need be done to cause the lien to be enforceable against the client. If the attorney files a notice with the court, the lien then becomes enforceable against third parties. *Ranes v. Molen*, 31 Bankr. 70 (Bankr. D. Colo. 1983).

Charging lien not created where money paid to attorney on behalf of debtor in settlement of a lawsuit against a third party remained in attorney's possession when compensable work had been completed. *In re Oiltech, Inc.*, 38 Bankr. 484 (Bankr. D. Nev. 1984).

"Any judgment" defined. "Any judgment", as used in the first sentence, means the fruits of any judgment, including the realty in which a client's interest is preserved. *Dolan v. Flett*, 41 Colo. App. 40, 582 P.2d 694 (1978).

Attachment and enforceability of lien. The statutory charging lien attaches immediately upon the obtainment of a judgment and, as between attorney and client, nothing more need be done to cause the lien to be enforceable; the lien becomes enforceable against third parties when notice is provided. *Dolan v. Flett*, 41 Colo. App. 40, 582 P.2d 694 (1978).

Enforceability of attorney's retaining lien against third parties, unlike a charging lien, is not conditioned upon the requirement of notice. *In re Oiltech, Inc.*, 38 Bankr. 484 (Bankr. D. Nev. 1984).

Lien on fund allocated to payment of bankruptcy creditor. An attorney representing a creditor in a bankruptcy proceeding has a lien on the fund allocated to the payment of his client's claim. *In re Campbell*, 26 Bankr. 145 (Bankr. D. Colo. 1983).

Creditor's statutory attorney's lien obtained pursuant to this section and § 12-5-120 was not merged into the judgment lien he subsequently obtained. *In re Dickinson*, 185 Bankr. 840 (Bankr. D. Colo. 1995).

Where there is a hospital lien and an attorney lien, the effect of the statute is that the attorney is compensated "off the top" absent a contractual arrangement otherwise, before the client receives his share of the proceeds from the tort settlement. *Trevino v. HHL Fin. Servs., Inc.*, 928 P.2d 766 (Colo. App. 1996), aff'd on other grounds, 945 P.2d 1345 (Colo. 1997).

IV. APPLICABILITY AND SCOPE OF LIEN.

A lien cannot be created by the mere fact that an attorney is entitled to be paid for his services. *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), aff'd sub nom. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

An attorney has no legal basis for the assertion of a lien simply to secure a fee obligation where the money being claimed is not in his hands nor involved in a suit. *People v. Razatos*, 636 P.2d 666 (Colo. 1981), appeal dismissed, 455 U.S. 930, 102 S. Ct. 1415, 71 L. Ed. 2d 639 (1982).

To allow such a lien would be to give the attorney creditor a preferred position which the law does not intend. *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), aff'd sub nom. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

Where no suit was ever commenced by an attorney, no claim as lienor could have been filed. *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), aff'd sub nom. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

In order to determine the applicability of this section, the words "in suit" must be carefully considered and understood. *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), aff'd sub nom. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

It is clear from the sentence structure of this section that if there had been an intent to grant a charging lien on all claims turned over to the attorney even before suit is commenced it would necessitate the use of punctuation after the word "claims" or some method to distinguish it from "demands in suit". *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir.), aff'd sub nom. *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo. 1958).

The choice of punctuation lends emphasis to the view that the term "in suit" is intended to modify the word "claims" as well as "demands", and this construction is supported by the prior clause which refers to "claims and demands in their hands". *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir.), aff'd *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo. 1958).

Where no judgment was ever obtained by an attorney, this section is not applicable. *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), aff'd sub nom. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

If a lien is not allowed for services in connection with matters that did not go to suit where a subsequent judgment was recovered for the same client, it would clearly be inconsistent to allow the lien to attach where there was no subsequent judgment. *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), aff'd sub nom. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

A "charging" lien is not allowed to attach prior to the commencement of the suit. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

Where the parties to a writ of error had stipulated to a discontinuance thereof, the court was without jurisdiction to declare a lien upon the properties recovered in favor of the attorneys of the successful party, for securing the fees to which they may be entitled pursuant to contract with the client since the lien, under this section, must be predicated upon a judgment of a court of competent jurisdiction. Lane v. Lyon, 57 Colo. 166, 140 P. 197 (1914).

A claim does not become "in suit" through threat of actions nor preparatory services rendered in contemplation of suit. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'g In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

A claim is not "in suit" before a justice until he has issued summons thereon and delivered the same to an officer to be served, or by the appearance and agreement of the parties without summons and the case docketed, authorizing a justice to receive money only when tendered to him on any claim in a suit before him. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

The term "suit" is a very comprehensive one and is said to apply to any proceeding in a court of justice by which an individual pursues that remedy which the law affords him. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

The modes of proceeding may be various, but, if the right is litigated between the parties in the court of justice, the proceeding is a suit. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

This section recognizes no distinction between judgments for money or personal property and decrees of judgments by which the ownership or possession of land is awarded to plaintiff or his interest therein is preserved. Fillmore v. Wells, 10 Colo. 228, 15 P. 343 (1887).

It gives the attorney a lien upon any judgment obtained by him and belonging to his client. Fillmore v. Wells, 10 Colo. 228, 15 P. 343 (1887).

The attorney's lien attaches under this section, even though the land recovered by the judgment becomes part of a trust estate belonging to wards, and suit may be brought directly against this part of the trust estate without first obtaining individual judgments against the guardians. Fillmore v. Wells, 10 Colo. 228, 15 P. 343 (1887).

The phrase "first lien" creates a lien that takes priority over all other charges or encumbrances on the same property. N. Valley Bank v. McGloin, Davenport, 251 P.3d 1250 (Colo. App. 2010).

Attorney's lien, as a statutory first lien, has priority over a previously perfected security interest. N. Valley Bank v. McGloin, Davenport, 251 P.3d 1250 (Colo. App. 2010).

There is nothing in this section which indicates a purpose to exclude causes of action for personal injuries. Miller v. Houston, 27 Colo. App. 89, 146 P. 786 (1915); Dankwardt v. Kermod, 68 Colo. 225, 187 P. 519 (1920).

An attorney who, upon the retainer of the complaining party and upon an agreement that he shall receive as his compensation a specified share of the recovery, has instituted an action for a tort and has notified the defendant of his claim for a lien is entitled to a lien upon the cause of action for the value of his services. Miller v. Houston, 27 Colo. App. 89, 146 P. 786 (1915).

The attorney's lien reaches all fees due for services rendered, whether the amount of such fees has been agreed upon or is to be settled in suit as upon a quantum meruit. Fillmore v. Wells, 10 Colo. 228, 15 P. 343 (1887).

An attorney has a retaining lien on retained funds to the extent of and for so long as fees and expenses are owed by the client. In re Printcrafters, Inc., 208 Bankr. 968 (Bankr. D. Colo. 1997).

Unreimbursed costs of litigation advanced by attorney are included in attorney's lien. Kallsen v. Big Horn Harvestore Sys., 761 P.2d 291 (Colo. App. 1988).

The attorney's lien is not limited to compensation for services rendered by the attorney in procuring the judgment upon which he relies. Fillmore v. Wells, 10 Colo. 228, 15 P. 343 (1887).

The lien cannot be defeated by the setoff of a judgment against his client growing out of independent transactions prior to the attorney's employment. Dankwardt v. Kermod, 68 Colo. 225, 187 P. 519 (1920).

Because the opposing party had notice of the attorney lien prior to its motion to offset, the attorney lien takes priority over the opposing party's right to offset opposing judgments and obtain a single net judgment in its favor. Stiner v. Planned Mgmt. Servs., 923 P.2d 186 (Colo. App. 1995).

Where an attorney represented parties under an agreement by which he was to receive 33 1/3% of all money or the value of any property received in settlement or payment of their claim against third persons and a settlement of \$5,000 was arrived at and the third persons agreed to pay the living expenses of his clients until the obligation was fully discharged, it was held that the payment of such living

expenses for four years constituted valuable property to which the attorney's lien attached even though no money had been paid on the obligation. *de Bit v. Howard*, 107 Colo. 51, 108 P.2d 1053 (1940).

Attorney's lien upon award to client cannot exceed amount of award. In *re Stewart*, 632 P.2d 287 (Colo. App. 1981).

Since no prepetition fees were owed at the time of the bankruptcy filing, under Colorado law there was no retaining lien. In *re Printcrafters, Inc.*, 208 Bankr. 968 (Bankr. D. Colo. 1997).

Misconduct in other cases not to affect assertion of lien. Misconduct in a particular case, if suspension or disbarment is not involved, should not result in the loss of an attorney's ability to assert his lien in other cases where professional misconduct is not involved. *People ex rel. MacFarlane v. Harthun*, 195 Colo. 38, 581 P.2d 716 (1978).

Lien not extinguished by bankruptcy. Under 11 U.S.C. § 101, an attorney's lien in Colorado is a "statutory" lien, and not a "judicial" lien and, thus, cannot be avoided by a bankruptcy debtor under 11 U.S.C. § 522(f). *Ranes v. Molen*, 31 Bankr. 70 (Bankr. D. Colo. 1983).

An attorney's lien which is valid under state law is not extinguished when the client files bankruptcy. Further, there is no provision in the bankruptcy code for the voiding of a valid statutory attorney's lien. In *re Life Imaging Corp.*, 31 Bankr. 101 (Bankr. D. Colo. 1983).

V. ENFORCEMENT.

A. In General.

The lien under this section is a security, the benefit of which the attorney may or may not avail himself. *Boston & Colo. Smelting Co. v. Pless*, 9 Colo. 112, 10 P. 652 (1885).

Of course, he is not entitled to it unless there remains due him unpaid fees. *Boston & Colo. Smelting Co. v. Pless*, 9 Colo. 112, 10 P. 652 (1885).

An attorney may waive his right to the benefit of his lien under this section. *Fillmore v. Wells*, 10 Colo. 228, 15 P. 343 (1887).

If, without notice that he intends to enforce the lien, an innocent third person purchases the realty covered by the judgment or the judgment debtor make a bona fide settlement of the judgment, the attorney cannot hold the realty on the one hand or look to the debtor on the other. *Fillmore v. Wells*, 10 Colo. 228, 15 P. 343 (1887).

Lien may also be enforced in civil action giving rise to claim. The attorney's charging lien may not only be asserted but may be enforced in the civil action which gave rise to the

lien claim or, in the alternative, in an independent action. Both are "proper civil actions" within the meaning of this section. *Gee v. Crabtree*, 192 Colo. 550, 560 P.2d 835 (1977); In *re Mann*, 697 P.2d 778 (Colo. App. 1984); In *re Shapard*, 129 P.3d 1007 (Colo. App. 2004).

To restrict the means of enforcement of an attorney's lien solely to independent civil actions would be a waste of judicial time as well as contrary to the legislative intent reflected by the statutory language. The trial judge who hears the proceedings which gave rise to the lien is in a position to determine whether the amount asserted as a lien is proper and can determine the means for the enforcement of the lien. *Gee v. Crabtree*, 192 Colo. 550, 560 P.2d 835 (1977).

The trial court may not adjudicate the rights of persons not actually or constructively before it; therefore it erred in divorce action by giving priority to parents' interest in parties' residence over the husband's attorney's charging lien in the proceeds from the sale of the residence. In *re Weydert*, 703 P.2d 1336 (Colo. App. 1985).

Filing a notice of an attorney's lien merely places others on notice that the attorney claims an interest in the funds subject to the lien and does not constitute the commencement of a "proper civil action" for the purpose of enforcing the lien. In *re Mitchell*, 55 P.3d 183 (Colo. App. 2002).

An attorney must enforce a charging lien within the limitation period applicable to enforcement of the underlying debt. *Gold v. Duncan Ostrander & Dingess, P.C.*, 143 P.3d 1192 (Colo. App. 2006).

In a dissolution-of-marriage proceeding, the amount and allocation of fees between parties may not be challenged independently by lien claimant. In *re Shapard*, 129 P.3d 1007 (Colo. App. 2004).

There is no right to a jury trial in action to establish an attorney's lien since it is equitable in nature, and counterclaim for breach of contract does not change nature of the action. In *re Rosenberg*, 690 P.2d 1293 (Colo. App. 1984).

Court erred in enjoining enforcement of attorney's lien where it failed to give notice to all the parties involved and where it failed to determine the validity of the lien and whether there existed any property which could be reached to enforce it. *Seitz v. Seitz*, 33 Colo. App. 180, 516 P.2d 654 (1973).

Attorney lien statute does not create implied exception to protections offered to workers' compensation benefits, because the workers' compensation statute unequivocally exempts workers' compensation benefits from any remedy ordinarily available to satisfy a debt, with only one explicit exception. *James E. Freemyer, P.C. v. Indus. Claim Appeals Office*, 32 P.3d 564 (Colo. App. 2000).

B. Notice.

This section goes no further than to give the attorney the right to file a notice of lien, which filing only perfects his right, if any, in the subject matter of the action. In re Crabtree, 37 Colo. App. 149, 546 P.2d 505 (1975), rev'd on other grounds, 192 Colo. 550, 560 P.2d 835 (1977).

If the attorney expects satisfaction of his claim out of the judgment, he must so notify the judgment debtor, and the notice must be followed, within a reasonable time, by suit. Colo. State Bank v. Davidson, 7 Colo. App. 91, 42 P. 687 (1895).

The notice must be followed within a reasonable time by suit. Colo. State Bank v. Davidson, 7 Colo. App. 91, 42 P. 687 (1895).

The judgment debtor must be notified of the attorney's intention to take advantage of the statute. Boston & Colo. Smelting Co. v. Pless, 9 Colo. 112, 10 P. 652 (1885).

In order to render the lien valid as against the judgment debtor, he must have notice that their fees were unpaid in whole or in part, and that they relied upon the judgment as security therefor. Boston & Colo. Smelting Co. v. Pless, 9 Colo. 112, 10 P. 652 (1885); Fillmore v. Wells, 10 Colo. 228, 15 P. 343 (1887); Johnson v. McMillan, 13 Colo. 423, 22 P. 769 (1889).

Since no particular form of notice is provided in this section, the common law rule of notice prevails. Boston & Colo. Smelting Co. v. Pless, 9 Colo. 112, 10 P. 652 (1885); Fillmore v. Wells, 10 Colo. 228, 15 P. 343 (1887); Johnson v. McMillan, 13 Colo. 423, 22 P. 769 (1889).

In the case of demands in suit and in the case of judgments obtained in whole or in part by any attorney, an attorney may file with the clerk of the court wherein such cause is pending, notice of his claim as lienor. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

The statutory notice to the judgment debtor of the intention of such attorney to claim a lien on the judgment is unnecessary where the debtor has actual knowledge of such claim. Aleman v. Annable, 110 Colo. 61, 129 P.2d 987 (1942).

The notice that this section provides "may" be filed with the clerk of the court is not a prerequisite to the validity of the lien. Collins v. Thuringer, 92 Colo. 433, 21 P.2d 709 (1933).

As between attorney and client, the lien is valid without notice. Collins v. Thuringer, 92 Colo. 433, 21 P.2d 709 (1933).

The provision in this section concerning notice is intended to give constructive notice, so as to preserve the attorney's lien in the event that the judgment debtor should settle the judgment without having actual notice of the lien

claim or some third person, without having such actual notice, should acquire an interest in the judgment or in its proceeds. Collins v. Thuringer, 92 Colo. 433, 21 P.2d 709 (1933).

In the former statute there was no provision permitting an attorney to file a notice of his lien claim and making it constructive notice thereof. Fillmore v. Wells, 10 Colo. 228, 15 P. 343 (1887); Collins v. Thuringer, 92 Colo. 433, 21 P.2d 709 (1933).

Perfection of an attorney's lien as to third parties is not retroactive so as to have priority over bona fide purchaser for value. In re Mailin Oil Co., 67 Bankr. 284 (Bankr. D. Colo. 1986).

Priority of liens. Where notice of the attorney's lien was properly filed before the entry of judgment and before the state's assertion of a lien, the attorney's lien had priority. Matter of Estate of Benney, 771 P.2d 7 (Colo. App. 1988).

If a judgment debtor, without notice that the attorney intends to enforce his lien, should make a bona fide settlement of the judgment or if an innocent third person, without such notice, should purchase the fruits of the judgment or should acquire an interest in the judgment, the attorney's lien would be lost. Collins v. Thuringer, 92 Colo. 433, 21 P.2d 709 (1933).

Lien can be enforced against settlement funds once the settlement agreement has been carried out, but only to the extent that the client has an interest in the funds. Any allegations regarding a breach of the settlement agreement must be disposed of before the court can enter an order enforcing the attorney's lien. MCI Constructors v. District Court, 799 P.2d 40 (Colo. 1990).

VI. POSSESSORY LIEN EXTINGUISHED BY SETTLEMENT.

The general, retaining, or possessory lien attaches to all papers, books, documents, securities, and money coming into an attorney's possession in the course of his professional employment. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'd In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

The attorney has a right to retain them in his possession until the general balance due him for legal services is paid, whether such services grew out of the special matters then in his hands or other legal matters. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'd In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

It does not create an equitable charge which follows the proceeds received in settlement of a claim, such as where a "claim" of the bankrupt against the leaders was extinguished by the agreed settlement. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'd In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

Where a settlement extinguished the claim by necessity, it also extinguished any "possessory" lien which attached to the claim itself. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir.), aff'g *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo. 1958).

Moreover, even if it were held that a possessory lien attaches to any claim turned over to an attorney when that claim is placed in his hands, such a lien does not continue after the claim is extinguished so as to be transferred as

an equitable charge against property received in settlement. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir.) aff'g *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo. 1958).

To do so would violate the distinction between the "possessory" and "charge" liens and go contrary to the caution expressed that the two must not be confused. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir.), aff'g *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo. 1958).

12-5-120. Other property to which lien attaches. An attorney has a lien for a general balance of compensation upon any papers of his client which have come into his possession in the course of his professional employment and upon money due to his client in the hands of the adverse party in an action or proceeding in which the attorney was employed from the time of giving notice of the lien to that party.

Source: L. 03: p. 146, § 2. R.S. 08: § 243. C.L. § 6011. CSA: C. 14, § 15. CRS 53: § 12-1-11. C.R.S. 1963: § 12-1-11.

ANNOTATION

Law reviews. For article, "The Treatment of Attorney's Liens in Colorado", see 16 Colo. Law. 623 (1987). For article, "Perfection and Enforcement of Attorney's Liens in Colorado", see 26 Colo. Law. 57 (March 1997). For article, "Ethical Considerations of Attorney's Liens", see 31 Colo. Law. 51 (April 2002). For article, "Recording Charging Liens Against Real Property: When, Not Whether", see 31 Colo. Law. 121 (October 2002).

It was not the intention of the general assembly to abolish the well-established distinction between the two classes of liens (i.e. retaining liens and charging liens) and to create a lien upon a judgment and its proceeds to secure the payment of attorney's fees earned in matters not at all connected with the suit in which the judgment is rendered. *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), aff'd sub nom. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

Under Colorado law, the common law attorney's lien is not preserved and no lien exists apart from statute. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir.), aff'g *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo. 1958).

Colorado has two statutory provisions pertaining to attorney's liens, § 12-5-119 and this section. *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), aff'd sub nom. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

Section 12-5-119 and this section did not separate the two classes of liens as clearly as might be desired. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir.), aff'g *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo. 1958).

The Colorado supreme court has declared that § 12-5-119 and this section established

two distinct classes of liens, each with its own limitation. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir.), aff'g *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo. 1958).

Where an attorney's right to a lien exists by virtue of a statute, such right cannot be extended beyond the fair intentment of such statute. *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), aff'd sub nom. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

There is no authority in Colorado for an equitable lien apart from § 12-5-119 and this section. *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), aff'd sub nom. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir. 1958).

This is in accord with the general rule that where a charging lien is created by statute, the right to the lien exists only in cases specifically provided for by such statute. *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo.), aff'd sub nom. *Donaldson v. Gaudio* 260 F.2d 333 (10th Cir. 1958).

Charging lien not created where money paid to attorney on behalf of debtor in settlement of a lawsuit against a third party remained in attorney's possession when compensable work had been completed. *In re Oiltech, Inc.*, 38 Bankr. 484 (Bankr. D. Nev. 1984).

The right to the special, particular, or charging lien rests, not on possession, but on the equity of an attorney to be paid his fees and disbursements out of the judgment obtained as a result of his service and skill. *Donaldson v. Gaudio*, 260 F.2d 333 (10th Cir.), aff'g *In re Forrest A. Heath Co.*, 159 F. Supp. 632 (D. Colo. 1958).

This section intended to confer a right to a charging lien only when a claim becomes a

"claim in suit". Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'g In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

A "charging lien" could not attach for services in matters not involved in the suit. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir.), aff'g In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo. 1958).

A charging lien under this section can be waived. Thus, attorney waived lien by virtue of assurances made by the attorney's associate to third parties to whom papers belonged that the papers would be returned to the parties. It was irrelevant whether the papers belonged to the attorney's client or to third parties. People v. Brown, 840 P.2d 1085 (Colo. 1992).

A lien cannot be created by the mere fact that an attorney is entitled to be paid for his services, for to allow such a lien would be to give this creditor a preferred position which the law does not intend. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

Federal court has no jurisdiction to adjudicate amount of fees properly owing between an attorney and his clients with respect to matters unrelated to litigation before the court. Jenkins v. Weinshienk, 670 F.2d 915 (10th Cir. 1982).

Adjudication of existence of lien separate from adjudication of amount. Adjudicating the amount of fees owing between lawyer and client is not essential to determining the existence of an attorney's retaining lien. Jenkins v. Weinshienk, 670 F.2d 915 (10th Cir. 1982).

An attorney has no legal basis for the assertion of a lien simply to secure a fee obligation. People v. Razatos, 636 P.2d 666 (Colo. 1981), appeal dismissed, 455 U.S. 930, 102 S. Ct. 1415, 71 L. Ed. 2d 639 (1982).

To allow such a lien would be to give this attorney creditor a preferred position which the law does not intend. In re Forrest A. Heath Co., 159 F. Supp. 632 (D. Colo.), aff'd sub nom. Donaldson v. Gaudio, 260 F.2d 333 (10th Cir. 1958).

In order for an attorney to assert a retaining lien, the client must owe the attorney a general balance of compensation. People v. Garnett, 725 P.2d 1149 (Colo. 1986).

Validity and extent of attorney's lien in bankruptcy is determined by state law. In re Life Imaging Corp., 31 Bankr. 101 (Bankr. D. Colo. 1983).

Lien not extinguished by bankruptcy. Under 11 U.S.C. § 101, an attorney's lien in Colorado is a "statutory" and not a "judicial" lien, which cannot be avoided by a bankruptcy debtor under 11 U.S.C. § 522(f). Ranes v. Molen, 31 Bankr. 70 (Bankr. D. Colo. 1983).

An attorney's lien which is valid under state law is not extinguished when the client files

bankruptcy. Further, there is no provision in the bankruptcy code for the voiding of a valid statutory attorney's lien. In re Life Imaging Corp., 31 Bankr. 101 (Bankr. D. Colo. 1983).

Creditor's statutory attorney's lien obtained pursuant to this section and § 12-5-120 was not merged into the judgment lien he subsequently obtained. In re Dickinson, 185 Bankr. 840 (Bankr. D. Colo. 1995).

Attorney's interest in bankruptcy debtor's files. An attorney is entitled to adequate protection of interest in a bankruptcy debtor's files if it is required to turn them over to the debtor. A form of adequate protection is to require the debtor to make cash payments to the attorney to the extent that the use of the property results in a decrease in the value of the attorney's interest in the property. The decrease in value of the attorney's interest is that portion of unpaid attorney's fees attributable to the creation of the specific documents involved. In re Life Imaging Corp., 31 Bankr. 101 (Bankr. D. Colo. 1983).

When substitute collateral is posted to replace books, records, and files which were the subject of an attorney's lien, the lien attaching to such collateral is of the same character as and is to be accorded no greater dignity than the lien on the original property. In re Oiltech, Inc., 38 Bankr. 484 (Bankr. D. Nev. 1984).

In order to determine the amount of the attorney's lien, evidentiary hearing is required to determine the value to the debtor of the books, records, and files once held by the attorney. In re Oiltech, Inc., 38 Bankr. 484 (Bankr. D. Nev. 1984).

Lien attaches to client's papers once attorney has completed compensable work. People ex rel. MacFarlane v. Harthun, 195 Colo. 38, 581 P.2d 716 (1978).

Homestead exemption statute includes attorney's liens within its ambit and the attorney's lien does not attach to the homestead. If the debtor has any net equity remaining after the sale of the property in question, the creditor's attorney's lien attaches to that net equity and his claim is unsecured for any amount over that sum. In re Dickinson, 185 Bankr. 840 (Bankr. D. Colo. 1995).

Lien continues during litigation over amount. The retaining lien exists if any fees are owed and apparently continues during litigation over the amount owing. Jenkins v. Weinshienk, 670 F.2d 915 (10th Cir. 1982).

Unconditional assurances that documents will be returned constitute an express waiver of lien. People v. Brown, 840 P.2d 1085 (Colo. 1992).

Priority of liens. Where notice of the attorney's lien was properly filed before the entry of judgment and before the state's assertion of a lien, the attorney's lien had priority. Matter of Estate of Benney, 771 P.2d 7 (Colo. App. 1988).

Enforceability of attorney’s retaining lien against third parties, unlike a charging lien, is not conditioned upon the requirement of notice. In re Oiltech, Inc., 38 Bankr. 484 (Bankr. D. Nev. 1984).

Attorney’s lien begins to accrue from the moment of commencement of services and may then be enforced against any monies or property due and owing the attorney’s client who receives judgment and is a lien on those items. In re Smith, 687 P.2d 519 (Colo. App. 1984).

Exception. In proceeding on counterclaim by attorney for recovery of attorney fees, trial court did not abuse discretion nor exceed jurisdiction by ordering production of files in attorney’s possession relating to legal work done for client, even though files were subject to retaining lien. Jenkins v. District Court, 676 P.2d 1201 (Colo. 1984).

For discussion of exceptions to retaining lien, see Jenkins v. Weinshienk, 670 F.2d 915 (10th Cir. 1982).

Misconduct in other cases not to affect assertion of lien. Misconduct in a particular case, if suspension or disbarment is not involved, should not result in the loss of an attorney’s ability to assert his lien in other cases where professional misconduct is not involved. People ex rel. MacFarlane v. Harthun, 195 Colo. 38, 581 P.2d 716 (1978).

Case involving misconduct affected. When an attorney is discharged or removed from a

particular case for professional misconduct in the handling of his client’s affairs, he has no right to assert a “retaining lien” as to that client’s papers which are in his possession and must return those papers to that client upon request. People ex rel. MacFarlane v. Harthun, 195 Colo. 38, 581 P.2d 716 (1978).

Wrongful assertion of attorney’s lien may constitute misconduct. Wrongfully asserting an attorney’s lien under this section on stock certificates in the attorney’s possession, where no “general balance of compensation” was owed, constitutes professional misconduct. People ex rel. Goldberg v. Gordon, 199 Colo. 296, 607 P.2d 995 (Colo. 1980).

Unfounded claim of lien violates professional code. The assertion of an attorney’s lien in circumstances where the attorney has no statutory or legal foundation for a lien and, in fact, has an uncertain claim to the fee being claimed through the lien violates the code of professional responsibility. People v. Razatos, 636 P.2d 666 (Colo. 1981), appeal dismissed, 455 U.S. 930, 102 S. Ct. 1415, 71 L. Ed. 2d 639 (1982); People v. Smith, 830 P.2d 1003 (Colo. 1992); People v. Brown, 840 P.2d 1085, (Colo. 1992); People v. Mills, 861 P.2d 708 (Colo. 1993) (decided under DR 1-102 (A)(5)).

Applied in Holter v. Moore & Co., 702 F.2d 854 (10th Cir.), cert. denied, 464 U.S. 937, 104 S. Ct. 347, 78 L. Ed. 2d 313 (1983).

ARTICLE 5.5

Audiologists and Hearing Aid Providers

12-5.5-101 to 12-5.5-304. (Repealed)

Editor’s note: (1) This article was added in 1995. For amendments to this article prior to its repeal in 2012, consult the 2011 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 12-5.5-207 provided for the repeal of this article, effective July 1, 2012. (See L. 2007, p. 824.)

ARTICLE 6

Automobiles

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PART 1

AUTOMOBILE DEALERS

Editor's note: This part 1 was numbered as article 11 of chapter 13, C.R.S. 1963. The provisions of this part 1 were repealed and reenacted in 1971, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 1 prior to 1971, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

12-6-101. Legislative declaration. (1) The general assembly hereby declares that:

(a) The sale and distribution of motor vehicles affects the public interest and a significant factor of inducement in making a sale of a motor vehicle is the trust and confidence of the purchaser in the retail dealer from whom the purchase is made and the expectancy that such dealer will remain in business to provide service for the motor vehicle purchased;

(b) Proper motor vehicle service is important to highway safety and the manufacturers and distributors of motor vehicles have an obligation to the public not to terminate or refuse to continue their franchise agreements with retail dealers unless the manufacturer or distributor has first established good cause for termination or noncontinuance of any such agreement, to the end that there shall be no diminution of locally available service;

(c) The licensing and supervision of motor vehicle dealers by the motor vehicle dealer board are necessary for the protection of consumers and therefore the sale of motor vehicles by unlicensed dealers or salespersons, or by licensed dealers or salespersons who have demonstrated unfitness, should be prevented; and

(d) Consumer education concerning the rules and regulations of the motor vehicle industry, the considerations when purchasing a motor vehicle, and the role, functions, and actions of the motor vehicle dealer board are necessary for the protection of the public and for maintaining the trust and confidence of the public in the motor vehicle dealer board.

Source: L. 71: R&RE, p. 240, § 1. **C.R.S. 1963:** § 13-11-1. **L. 87:** (1)(a) and (1)(b) amended and (1)(c) added, p. 608, § 18, effective July 1. **L. 92:** (1)(a) and (1)(c) amended and (1)(d) added, p. 1840, § 1, effective July 1. **L. 98:** (1)(a), (1)(c), and (1)(d) amended, p. 590, § 1, effective July 1.

ANNOTATION

Annotator's note. Since § 12-6-101 is similar to repealed § 13-11-1, CRS 53, and CSA, C.

16, § 420, relevant cases construing those provisions have been included in the annotations to

this section.

It was held that there was no constitutional inhibition against the licensing and bonding requirements of this article. GMC v. Blevins, 144 F. Supp. 381 (D. Colo. 1956).

It was also held that any misconduct of a plaintiff corporation by violating the Sherman or Clayton acts, did not deprive it of the right to attack the constitutionality of some sections in this article. GMC v. Blevins, 144 F. Supp. 381 (D. Colo. 1956).

Earlier provision held unconstitutional. Jesse M. Chase Casper Co. v. Fugate, 128 F. Supp. 244 (D. Colo. 1955).

Such provision held incomplete. GMC v. Blevins, 144 F. Supp. 381 (D. Colo. 1956).

The title of this act clearly indicates that it deals with persons, because “providing penalties for the violation thereof” could scarcely be construed to relate to penalties imposed upon the vehicles. Corder v. Pond, 117 Colo. 463, 190 P.2d 582 (1948).

Multiple licensing permitted. The automobile dealer licensing statute, this section, does not expressly permit or disallow a salesman to be licensed to more than one dealer. However, § 12-6-118(5)(g) indicates a legislative intent that multiple licensing be permitted. United Buying Serv., Inc. v. State Dept. of Rev., 37 Colo. App. 465, 548 P.2d 1286 (1976).

12-6-102. Definitions. As used in this part 1 and in part 5 of this article, unless the context or section 12-6-502 otherwise requires:

(1) (Deleted by amendment, L. 92, p. 1841, § 2, effective July 1, 1992.)

(1.5) “Advertisement” means any commercial message in any newspaper, magazine, leaflet, flyer, or catalog, on radio, television, or a public address system, in direct mail literature or other printed material, on any interior or exterior sign or display, in any window display, on a computer display, or in any point-of-transaction literature or price tag that is delivered or made available to a customer or prospective customer in any manner whatsoever; except that such term does not include materials required to be displayed by federal or state law.

(2) “Board” means the motor vehicle dealer board.

(2.4) “Business incidental thereto” means a business owned by the motor vehicle dealer or used motor vehicle dealer related to the sale of motor vehicles, including, without limitation, motor vehicle part sales, motor vehicle repair, motor vehicle recycling, motor vehicle security interest assignment, and motor vehicle towing.

(2.5) (a) (I) “Buyer agent” means any person required to be licensed pursuant to this part 1 who is retained or hired by a consumer for a fee or other thing of value to assist, represent, or act on behalf of such consumer in connection with the purchase or lease of a motor vehicle.

(II) “Consumer”, as used in this subsection (2.5), means a purchaser or lessee of a motor vehicle, which vehicle is primarily used for business, personal, family, or household purposes. “Consumer” does not include a purchaser of motor vehicles who purchases said motor vehicles primarily for resale.

(b) (I) “Buyer agent” does not include a person whose business includes the purchase of motor vehicles primarily for resale or lease; except that nothing in this subsection (2.5) shall be construed to prohibit a buyer agent from assisting a consumer regarding the disposal of a trade-in motor vehicle that is incident to the purchase or lease of a vehicle if the buyer agent does not advertise the sale of, or sell, such vehicle to the general public, directs interested dealers and wholesalers to communicate their offers directly to the consumer or to the consumer via the buyer agent, does not handle or transfer titles or funds between the consumer and the purchaser, receives no compensation from a dealer or wholesaler purchasing a consumer’s vehicle, and identifies himself or herself as a buyer agent to dealers and wholesalers interested in the consumer’s vehicle.

(II) A “buyer agent” licensed pursuant to this part 1 shall not be employed by or receive a fee from a person whose business includes the purchase of motor vehicles primarily for resale or lease, a motor vehicle manufacturer, a motor vehicle dealer, or a used motor vehicle dealer.

(3) “Coerce” means to compel or attempt to compel by threatening, retaliating, economic force, or by not performing or complying with any terms or provisions of the franchise or agreement; except that recommendation, exposition, persuasion, urging, or argument shall not be deemed to constitute coercion.

(4) "Community" means a franchisee's area of responsibility as set out in the franchise.

(4.5) (a) "Custom trailer" means any motor vehicle which is not driven or propelled by its own power and is designed to be attached to, become a part of, or be drawn by a motor vehicle and which is uniquely designed and manufactured for a specific purpose or customer.

(b) "Custom trailer" does not include manufactured housing, farm tractors, and other machines and tools used in the production, harvest, and care of farm products.

(5) "Distributor" means a person, resident or nonresident, who, in whole or in part, sells or distributes new motor vehicles to motor vehicle dealers or who maintains distributor representatives.

(6) and (7) (Deleted by amendment, L. 2003, p. 1300, § 1, effective April 22, 2003.)

(7.5) "Executive director" means the executive director of the department of revenue charged with the administration, enforcement, and issuance or denial of the licensing of buyer agents, distributors, manufacturer representatives, and manufacturers.

(8) and (9) (Deleted by amendment, L. 2003, p. 1300, § 1, effective April 22, 2003.)

(9.5) "Fire truck" means a vehicle intended for use in the extermination of fires, with features that may include, but shall not be limited to, a fire pump, a water tank, an aerial ladder, an elevated platform, or any combination thereof.

(9.7) "Franchise" means the authority to sell or service and repair motor vehicles of a designated line-make granted through a sales, service, and parts agreement with a manufacturer, distributor, or manufacturer representative.

(10) "Good faith" means the duty of each party to any franchise and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party. Recommendation, endorsement, exposition, persuasion, urging, or argument shall not be deemed to constitute a lack of good faith.

(10.5) "Line-make" means a group or series of motor vehicles that have the same brand identification or brand name, based upon the manufacturer's trademark, trade name, or logo.

(11) "Manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and unused motor vehicles; except that "manufacturer" shall not include:

(a) Any person who only manufactures utility trailers that weigh less than two thousand pounds and does not manufacture any other type of motor vehicle; and

(b) Any person, other than a manufacturer operating a dealer pursuant to section 12-6-120.5, who is a licensed dealer selling motor vehicles that such person has manufactured.

(11.5) "Manufacturer representative" means a representative employed by a person who manufactures or assembles motor vehicles for the purpose of making or promoting the sale of its motor vehicles or for supervising or contacting its dealers or prospective dealers.

(12) "Motor vehicle" means every vehicle intended primarily for use and operation on the public highways which is self-propelled and every vehicle intended primarily for operation on the public highways which is not driven or propelled by its own power but which is designed to be attached to or become a part of or to be drawn by a self-propelled vehicle, not including farm tractors and other machines and tools used in the production, harvesting, and care of farm products. "Motor vehicle" includes, without limitation, a low-power scooter, as defined in section 42-1-102, C.R.S.

(12.5) (Deleted by amendment, L. 92, p. 1841, § 2, effective July 1, 1992.)

(12.6) "Motor vehicle auctioneer" means any person, not otherwise required to be licensed pursuant to this part 1, who is engaged in the business of offering to sell, or selling, used motor vehicles owned by persons other than the auctioneer at public auction only. Any auctioning of motor vehicles by an auctioneer shall be incidental to the primary business of auctioning goods.

(13) "Motor vehicle dealer" means a person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, leases, exchanges, rents with option to purchase, offers, or attempts to negotiate a sale, lease, or exchange of an interest in new or new and used motor vehicles or who is engaged wholly or in part in the business of selling or leasing new or new and used motor vehicles, whether or not such motor

vehicles are owned by such person. The sale or lease of three or more new or new and used motor vehicles or the offering for sale or lease of more than three new or new and used motor vehicles at the same address or telephone number in any one calendar year shall be prima facie evidence that a person is engaged in the business of selling or leasing new or new and used motor vehicles. "Motor vehicle dealer" includes an owner of real property who allows more than three new or new and used motor vehicles to be offered for sale or lease on such property during one calendar year unless said property is leased to a licensed motor vehicle dealer. "Motor vehicle dealer" does not include:

(a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court;

(b) Public officers while performing their official duties;

(c) Employees of persons enumerated in the definition of "motor vehicle dealer" when engaged in the specific performance of their duties as such employees;

(d) A wholesaler, as defined in subsection (18) of this section, or anyone selling motor vehicles solely to wholesalers;

(e) Any person engaged in the selling of a fire truck;

(f) A motor vehicle auctioneer, as defined in subsection (12.6) of this section.

(14) "Motor vehicle salesperson" means a natural person who, for a salary, commission, or compensation of any kind, is employed either directly or indirectly, regularly or occasionally, by a motor vehicle dealer or used motor vehicle dealer to sell, lease, purchase, or exchange or to negotiate for the sale, lease, purchase, or exchange of motor vehicles.

(15) "Person" means any natural person, estate, trust, limited liability company, partnership, association, corporation, or other legal entity, including, without limitation, a registered limited liability partnership.

(16) "Principal place of business" means a site or location devoted exclusively to the business for which the motor vehicle dealer or used motor vehicle dealer is licensed and businesses incidental thereto, sufficiently designated to admit of definite description, with space thereon or contiguous thereto adequate to permit the display of one or more new or used motor vehicles, and on which there shall be located or erected a permanent enclosed building or structure large enough to accommodate the office of the dealer and to provide a safe place to keep the books and other records of the business of such dealer, at which site or location the principal portion of such dealer's business shall be conducted and the books and records thereof kept and maintained; except that a dealer may keep its books and records at an off-site location in Colorado after notifying the board in writing of such location at least thirty days in advance.

(16.5) "Recreational vehicle" means a camping trailer, fifth wheel trailer, motor home, recreational park trailer, travel trailer, or truck camper, all as defined in section 24-32-902, C.R.S., or multipurpose trailer, as defined in section 42-1-102, C.R.S.

(16.6) "Sales, service, and parts agreement" means an agreement between a manufacturer, distributor, or manufacturer representative and a motor vehicle or powersports dealer authorizing the dealer to sell and service a line-make of motor or powersports vehicles or operating any duty on the dealer in consideration for the right to have or competitively operate a franchise, including any amendments or additional related agreements thereto.

(16.7) "Site control provision" means an agreement that applies to real property owned or leased by the franchisee and that gives a motor vehicle or powersports vehicle manufacturer, distributor, or manufacturer representative the right to:

(a) Control the use and development of the real property;

(b) Require the franchisee to establish or maintain an exclusive dealership facility at the real property; or

(c) Restrict the franchisee from transferring, selling, leasing, developing, or changing the use of the real property.

(17) "Used motor vehicle dealer" means any person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, exchanges, leases, or offers an interest in used motor vehicles, or attempts to negotiate a sale, exchange, or lease of used and new motor vehicles or who is engaged wholly or in part in the business of selling used motor vehicles, whether or not such motor vehicles are owned by such person. The sale of three or more used motor vehicles or the offering for sale of more than three

used motor vehicles at the same address or telephone number in any one calendar year shall be prima facie evidence that a person is engaged in the business of selling used motor vehicles. "Used motor vehicle dealer" includes any owner of real property who allows more than three used motor vehicles to be offered for sale on such property during one calendar year unless said property is leased to a licensed used motor vehicle dealer. "Used motor vehicle dealer" does not include:

(a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court;

(b) Public officers while performing their official duties;

(c) Employees of persons enumerated in the definition of "used motor vehicle dealer" when engaged in the specific performance of their duties as such employees;

(d) A wholesaler, as defined in subsection (18) of this section, or anyone selling motor vehicles solely to wholesalers;

(e) Mortgagees or secured parties as to sales in any one year of not more than twelve motor vehicles constituting collateral on a mortgage or security agreement, if such mortgagees or secured parties shall not realize for their own account from such sales any moneys in excess of the outstanding balance secured by such mortgage or security agreement, plus costs of collection;

(f) Any person who only sells or exchanges no more than four motor vehicles that are collector's items under part 3 or 4 of article 12 of title 42, C.R.S.;

(g) A motor vehicle auctioneer, as defined in subsection (12.6) of this section;

(h) An operator, as defined in section 42-4-2102 (5), C.R.S., who sells a motor vehicle pursuant to section 42-4-2104, C.R.S.

(17.5) "Wholesale motor vehicle auction dealer" means any person or firm that provides auction services in wholesale transactions in which the purchasers are motor vehicle dealers licensed by this state or any other jurisdiction or in consumer transactions of government vehicles at a time and place that does not conflict with a wholesale motor vehicle auction conducted by that licensee.

(18) "Wholesaler" means a person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, exchanges, or offers or attempts to negotiate a sale, lease, or exchange of an interest in new or new and used motor vehicles solely to motor vehicle dealers or used motor vehicle dealers.

Source: L. 71: R&RE, p. 240, § 1. C.R.S. 1963: § 13-11-2. L. 73: p. 332, § 1. L. 79: (17)(f) added, p. 447, § 1, effective May 31; (2) and (14) amended, p. 444, § 1, effective July 1. L. 85: (9.5) and (13)(e) added, p. 412, §§ 1, 2, effective June 2. L. 87: IP(13) and IP(17) amended, p. 609, § 19, effective July 1. L. 88: (1.5), (12.5), (12.6), (13)(f), and (17)(g) added and IP(13) and IP(17) amended, pp. 472, 473, §§ 1-3, effective July 1. L. 89: (11) amended, p. 642, § 1, effective April 6. L. 92: (1), (2), (12.5), (12.6), (14), and (15) amended and (2.5), (7.5), and (17.5) added, p. 1841, § 2, effective July 1. L. 94: (17)(f) amended, p. 2546, § 21, effective January 1, 1995. L. 95: (4.5) added, p. 243, § 1, effective April 17; (15) amended, p. 811, § 27, effective May 24. L. 96: (2.5)(b) amended, p. 189, § 1, effective April 8; IP(17) amended, p. 1293, § 1, effective June 1; (17)(h) added, p. 1331, § 1, effective June 1. L. 98: (1.5), (12.6), and IP(17) amended, p. 591, § 2, effective July 1. L. 2000: (10.5) and (16.5) added and (11) amended, p. 1607, § 3, effective June 1; (16) amended, p. 159, § 1, effective August 2. L. 2002: (17)(h) amended, p. 484, § 3, effective July 1. L. 2003: (6) to (9) amended and (11.5) added, p. 1300, § 1, effective April 22; (17)(h) amended, p. 1989, § 25, effective May 22. L. 2004: IP(13), (14), and (18) amended, p. 183, § 4, effective August 4. L. 2005: (17)(f) amended, p. 1181, § 26, effective August 8. L. 2007: IP amended, p. 1850, § 1, effective July 1; (2.4) added and (17.5) amended, p. 1577, § 3, effective July 1. L. 2008: (16.5) amended, p. 638, § 5, effective August 5. L. 2009: (12) amended, (HB 09-1026), ch. 281, p. 1254, § 3, effective October 1. L. 2010: (9.7) added, (HB 10-1049), ch. 32, p. 115, § 1, effective March 22. L. 2011: (3) amended and (16.6) and (16.7) added, (HB 11-1188), ch. 175, p. 659, § 1, effective May 13; (17)(f) amended, (SB 11-031), ch. 86, p. 243, § 3, effective August 10.

ANNOTATION

Earlier provisions held invalid and unenforceable. GMC v. Blevins, 144 F. Supp. 381 (D. Colo. 1956) (case decided under repealed § 13-11-2, CRS 53).

This section requires all who sell trailers to be licensed as automobile dealers. State ex rel. Dept. of Rev. v. Modern Trailer Sales, Inc., 175 Colo. 296, 486 P.2d 1064 (1971).

This section defines trailers as motor vehicles. State ex rel. Dept. of Rev. v. Modern Trailer Sales, Inc., 175 Colo. 296, 486 P.2d 1064 (1971).

Mobile home not motor vehicle. Mobile homes fall within the statutory definition of "movable structure". This definition recognizes the general or common use of the product as being for residential purposes. A motor vehicle, on the other hand, is designed primarily for travel on the public highways. Shaw v. Aurora Mobile Homes & Real Estate, Inc., 36 Colo. App. 321, 539 P.2d 1366 (1975).

Movable structures cannot be considered to be "motor vehicles". Shaw v. Aurora Mobile

Homes & Real Estate, Inc., 36 Colo. App. 321, 539 P.2d 1366 (1975).

Mobile home dealers are not subject to article. Since the definition of a motor vehicle dealer specifies motor vehicles as the exclusive subject matter bringing a person within the coverage of § 12-6-111, that bond does not cover activities in the sale of mobile homes, i.e., "movable structures". Shaw v. Aurora Mobile Homes & Real Estate, Inc., 36 Colo. App. 321, 539 P.2d 1366 (1975).

"Employed" in subsection (14). The general assembly intended that the term "employed", as used in subsection (14), not be restricted to technical employer-employee relationships. Instead, by including indirect and occasional employment, the general assembly intended to embrace all persons whose services are utilized in the furtherance of the business of the dealer. United Buying Serv., Inc. v. State Dept. of Rev., 37 Colo. App. 465, 548 P.2d 1286 (1976).

12-6-103. Motor vehicle dealer board. (1) There is hereby created and established the motor vehicle dealer board, consisting of nine members who have been residents of this state for at least five years, three of whom shall be licensed motor vehicle dealers, three of whom shall be licensed used motor vehicle dealers, and three of whom shall be members from the public at large. The members representing the public at large shall not have a present or past financial interest in a motor vehicle dealership. The board shall assume its duties July 1, 1992, and all terms of the board members shall commence on that date. The terms of office of the board members shall be three years. Any vacancies shall be filled by appointment for the unexpired term.

(2) All board members shall be appointed by the governor.

(3) Each board member shall be reimbursed for actual and necessary expenses incurred while engaged in the discharge of official duties.

Source: L. 71: R&RE, p. 243, § 1. C.R.S. 1963: § 13-11-3. L. 79: (1) amended, p. 444, § 2, effective July 1. L. 92: (1) amended, p. 1842, § 3, effective July 1. L. 98: (1) amended, p. 591, § 3, effective July 1.

ANNOTATION

It was reasonable to infer that, when this article was amended in 1955 to apply also to manufacturers and distributors, the general assembly considered that the denial, suspension, and revocation of their licenses should not be

determined by a body made up exclusively of dealers. GMC v. Blevins, 144 F. Supp. 381 (D. Colo. 1956) (case decided under repealed § 13-11-4, CRS 53).

12-6-104. Board - oath - meetings - powers and duties - rules. (1) Each member of the board, before entering on the discharge of such member's duties and within thirty days after the effective date of such member's appointment, shall subscribe an oath for the faithful performance of such member's duties before any officer authorized to administer oaths in this state and shall file the same with the secretary of state.

(2) The board shall annually in the month of July elect from the membership thereof a president, a first vice-president, and a second vice-president. The board shall meet at such

times as it deems necessary. A majority of the board shall constitute a quorum at any meeting or hearing.

(3) The board is authorized and empowered:

(a) To promulgate, amend, and repeal rules reasonably necessary to implement this part 1, including the administration, enforcement, issuance, and denial of licenses to motor vehicle dealers, motor vehicle salespersons, used motor vehicle dealers, wholesale motor vehicle auction dealers, and wholesalers, and the laws of the state of Colorado;

(a.5) To delegate to the board's executive secretary, employed pursuant to section 12-6-105 (1) (b), the authority to execute all actions within the power of the board, carry out the directives of the board, and make recommendations to the board on all matters within the authority of the board;

(a.7) To issue through the department of revenue a temporary license to any person applying for any license issued by the board. The temporary license shall permit the applicant to operate for a period not to exceed one hundred twenty days while the board is completing its investigation and determination of all facts relative to the qualifications of the applicant for such license. A temporary license is terminated when the applicant's license is issued or denied.

(b) and (c) (Deleted by amendment, L. 92, p. 1842, § 4, effective July 1, 1992.)

(d) (I) To issue through the department of revenue and, for reasonable cause shown or upon satisfactory proof of the unfitness of the applicant under standards established and set forth in this part 1, to refuse to issue to any applicant any license the board is authorized to issue by this part 1;

(II) To permit the executive director, or the executive director's designee, to issue licenses pursuant to rules and regulations adopted by the board pursuant to paragraph (a) of this subsection (3);

(e) (I) After due notice and a hearing, to review the findings of an administrative law judge or a hearing officer from a hearing conducted pursuant to this part 1 to revoke and suspend or to order the executive director to issue or to reinstate, on such terms and conditions and for such period of time as to the board shall appear fair and just, any license issued under and pursuant to the terms and provisions of this part 1. The board may direct a letter of admonition for minor violations or may issue a letter of reprimand to any licensee for a violation of this part 1. A letter of admonition does not become a part of the licensee's record with the board. A letter of reprimand is a part of the licensee's record with the board for a period of two years after issuance and may be considered in aggravation of any subsequent violation by the licensee. When a letter of reprimand is sent to a licensee of the board, such licensee shall be notified in writing regarding the right to request in writing, within twenty days after receipt of such letter, that formal disciplinary proceedings be initiated against such licensee to adjudicate the propriety of the conduct upon which the letter of reprimand is based. If a request is made within such time period, the letter of reprimand is deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(II) The findings of the board pursuant to subparagraph (I) of this paragraph (e) shall be final.

(f) (I) To investigate through the executive director, on its own motion or upon the written and signed complaint of any person, any suspected or alleged violation by any motor vehicle dealer, motor vehicle salesperson, used motor vehicle dealer, wholesale motor vehicle auction dealer, or wholesaler licensee of any of the terms and provisions of this part 1 or of any rule or regulation promulgated by the board under the authority conferred upon it in this section. The board shall order an investigation of all written and signed complaints, shall have the authority to issue subpoenas and to delegate the authority to issue subpoenas to the executive director, and the executive director shall make an investigation of all such complaints transmitted by the board pursuant to section 12-6-105 (1) (d). The board has the authority to seek to resolve disputes before beginning an investigation or hearing through its own action or by direction to the executive director.

(II) After an investigation by the executive director or the executive director's designee, if the board determines that there is probable cause to believe a violation of this article has occurred, it may order that an administrative hearing be held pursuant to section 24-4-105,

C.R.S., or may designate one of the board's members as a hearing officer to conduct a hearing pursuant to section 24-4-105, C.R.S.

(f.5) To summarily issue cease-and-desist orders on such terms and conditions and for such period of time as to the board appears fair and just to any person who is licensed by the board pursuant to this part 1 if such orders are followed by notice and a hearing pursuant to section 12-6-119;

(g) To prescribe the forms to be used for applications for motor vehicle dealers', motor vehicle salespersons', used motor vehicle dealers', wholesale motor vehicle auction dealers', and wholesalers' licenses to be issued and to require of such applicants, as a condition precedent to the issuance of such licenses, such information concerning their fitness to be licensed under this part 1 as it may consider necessary. Every application for a motor vehicle dealer's license or used motor vehicle dealer's license shall contain, in addition to such information as the board may require, a statement of the following facts:

(I) The name and residence address of the applicant and the trade name, if any, under which such applicant intends to conduct such applicant's business and, if the applicant is a copartnership, the name and residence address of each member thereof, whether a limited or general partner, and the name under which the partnership business is to be conducted and, if the applicant is a corporation, the name of the corporation and the name and address of each of its principal officers and directors;

(II) A complete description, including the city, town, or village, the street and number, if any, of the principal place of business, and such other and additional places of business as shall be operated and maintained by the applicant in conjunction with the principal place of business;

(III) If the application is for a motor vehicle dealer's license, the names of the new motor vehicles that the applicant has been enfranchised to sell or exchange and the name and address of the manufacturer or distributor who has enfranchised the applicant;

(IV) The names and addresses of the persons who shall act as salespersons under the authority of the license, if issued.

(h) To adopt a seal with the words "motor vehicle dealer board" and such other devices as the board may desire engraved thereon by which it shall authenticate the acts of its office;

(i) To require that a motor vehicle dealer's or used motor vehicle dealer's principal place of business and such other sites or locations as may be operated and maintained by such dealers in conjunction with their principal place of business have erected or posted thereon such signs or devices providing information relating to the dealer's name, the location and address of such dealer's principal place of business, the type of license held by the dealer, and the number thereof, as the board shall consider necessary to enable any person doing business with such dealer to identify such dealer properly, and for this purpose to determine the size and shape of such signs or devices, the lettering thereon, and other details thereof and to prescribe rules and regulations for the location thereof;

(j) (I) To conduct or cause to be conducted written examinations as prescribed by the board testing the competency of all first-time applicants for a motor vehicle dealer's license, motor vehicle salesperson's license, used motor vehicle dealer's license, wholesale motor vehicle auction dealer's license, or wholesaler's license;

(II) and (III) (Deleted by amendment, L. 98, p. 592, § 4, effective July 1, 1998.)

(k) (I) To prescribe a form or forms to be used as a part of a contract for the sale of a motor vehicle by any motor vehicle dealer or motor vehicle salesperson, other than a retail installment sales contract subject to the provisions of the "Uniform Consumer Credit Code", articles 1 to 9 of title 5, C.R.S., which shall include the following information in addition to any other disclosures or information required by state or federal law:

(A) In twelve-point bold-faced type or a size at least three points larger than the smallest type appearing in the contract, an instruction that the form is a legal instrument and that, if the purchaser of the motor vehicle does not understand the form, such purchaser should seek legal assistance;

(B) In bold-faced type, of the size specified in sub-subparagraph (A) of this subparagraph (I), an instruction that only those terms in written form embody the contract for sale of a motor vehicle and that any conflicting oral representations made to the purchaser are void;

(C) In bold-faced type, of the size specified in sub-subparagraph (A) of this subparagraph (I), a notice that fraud or misrepresentation in the sale of a motor vehicle is punishable under the laws of this state;

(D) In bold-faced type, of the size specified in sub-subparagraph (A) of this subparagraph (I), if the contract for the sale of a motor vehicle requires a single lump sum payment of the purchase price, a clear disclosure to the purchaser of that fact or, if the contract is contingent upon the approval of credit financing for the purchaser arranged by or through the motor vehicle dealer, in bold-faced type, a statement that the purchaser shall agree to purchase the motor vehicle which is the subject of the sale from the motor vehicle dealer at not greater than a certain annual percentage rate of financing, which annual percentage rate of financing shall be agreed upon by the parties and entered in writing on the contract;

(E) Except as otherwise provided under part 1 of article 1 of title 6, C.R.S., where the purchase price of the motor vehicle is not paid to the motor vehicle dealer in full at the time of consummation of the sale and the purchaser and motor vehicle dealer elect that the motor vehicle dealer shall deliver and the purchaser shall take possession of such motor vehicle at such time, in bold-faced type, a statement that in the event financing cannot be arranged in accordance with the provisions stated in the contract, and the sale is not consummated, the purchaser shall agree to pay a daily rate and a mileage rate for use of the motor vehicle until such time as financing of the purchase price of such motor vehicle is arranged for the obligor by or through the authorized motor vehicle dealer or until the purchase price is paid to the authorized motor vehicle dealer in full by or through the obligor, which daily rate and mileage rate shall be specified and agreed upon by the parties and entered in writing on the contract;

(II) The information required by subparagraph (I) of this paragraph (k) shall be read and initialed by both parties at the time of the consummation of the sale of a motor vehicle;

(III) The use of the contract form required by subparagraph (I) of this paragraph (k) shall be mandatory for the sale of any motor vehicle;

(IV) To require a licensee to include with a consumer sales contract a written notice that provides to the consumer the contact information of the board and information about the board's authority over consumer motor vehicle sales;

(l) (Deleted by amendment, L. 98, p. 592, § 4, effective July 1, 1998.)

(m) (I) (A) If a hearing is held before an administrative law judge or a hearing officer designated by the board from within the board's membership, after due notice and a hearing by such judge or hearing officer pursuant to section 24-4-105, C.R.S., to review the findings of law and fact and the fairness of any fine imposed and to uphold such fine, to impose an administrative fine upon its own initiative, which shall not exceed ten thousand dollars for each separate offense by any licensee, or to vacate the fine imposed by the judge or hearing officer; except that, for motor vehicle dealers who sell primarily vehicles that weigh under one thousand five hundred pounds, the fine for each separate offense shall not exceed one thousand dollars. Whenever a hearing is heard by an administrative law judge, the maximum fine that may be imposed is ten thousand dollars for each separate offense by any person licensed by the board pursuant to this part 1; except that, for motor vehicle dealers who sell primarily vehicles that weigh under one thousand five hundred pounds, the fine for each separate offense may not exceed one thousand dollars. Whenever a licensing hearing is conducted by a hearing officer, the sanctions that may be recommended by the hearing officer are limited to the denial or grant of an unrestricted license or a restricted license under such terms as the hearing officer deems appropriate. Whenever a disciplinary hearing is conducted by a hearing officer, the hearing officer may only recommend a probationary period of no more than twelve months, a fine of no more than five hundred dollars, or both such probationary period and fine for each separate violation committed by a person licensed by the board.

(B) The board shall promulgate rules regarding circumstances in which a board member should not act as a hearing officer in a particular matter before the board because of business competition issues connected with the parties involved in such matter.

(II) The findings of the board pursuant to subparagraph (I) of this paragraph (m) shall be final.

(n) (Deleted by amendment, L. 2007, p. 1578, § 4, effective July 1, 2007.)

(o) (I) To impose a fine of up to one thousand dollars per day per violation for any person found, after notice and hearing pursuant to section 24-4-105, C.R.S., to have violated the provisions of section 12-6-120 (2). For the purposes of this paragraph (o), the address for the notice to be given under section 24-4-105, C.R.S., is the last-known address for the person as indicated in the state motor vehicle records; the last-known address for the owner of the real property upon which motor vehicles are displayed in violation of section 12-6-120 (2) as indicated in the records of the county assessor's office; or an address for service of process in accordance with rule 4 of the Colorado rules of civil procedure.

(II) Any person who fails to pay a fine ordered by the board for a violation of section 12-6-120 (2) under this paragraph (o) shall be subject to enforcement proceedings, by the board through the attorney general, in the county or district court pursuant to the Colorado rules of civil procedure. Any fines collected under the provisions of this paragraph (o) shall be disposed of pursuant to section 12-6-123.

(4) The board shall promulgate rules by January 1, 2008, establishing enforcement and compliance standards to ensure that administrative penalties are equitably assessed and commensurate with the seriousness of the violation.

Source: L. 71: R&RE, p. 243, § 1. C.R.S. 1963: § 13-11-4. L. 79: (3)(h) amended, p. 444, § 3, effective July 1. L. 84: (3)(l) added, p. 401, § 1, effective April 27. L. 88: (3)(d) to (3)(f), IP(3)(g), (3)(j), and IP(3)(l)(I) amended and (3)(m) added, p. 473, § 4, effective July 1. L. 92: Entire section amended, p. 1842, § 4, effective July 1. L. 98: (2), (3)(e)(I), (3)(f), (3)(j)(II), (3)(j)(III), (3)(l), and (3)(m)(I) amended and (3)(a.5), (3)(a.7), and (3)(o) added, p. 592, § 4, effective July 1. L. 2007: (3)(a), (3)(e)(I), (3)(f.5), and (3)(n) amended and (3)(k)(IV) and (4) added, pp. 1578, 1579, §§ 4, 5, effective July 1.

ANNOTATION

The validity of motor vehicle salesperson's license hinges on the validity of the dealer's license. Motor Veh. Licensing v. Denver Truck Ctr., 885 P.2d 278 (Colo. App. 1994).

Notice to motor vehicle dealer, who was also salesperson, that the dealer license was in jeopardy,

constituted notice regarding the salesperson's license. Motor Veh. Licensing v. Denver Truck Ctr., 885 P.2d 278 (Colo. App. 1994).

12-6-105. Powers and duties of executive director. (1) The executive director is hereby charged with the administration, enforcement, and issuance or denial of the licensing of buyer agents, distributors, manufacturer representatives, and motor vehicle manufacturers, and shall have the following powers and duties:

(a) To promulgate, amend, and repeal reasonable rules and regulations relating to those functions the executive director is mandated to carry out pursuant to this part 1 and the laws of the state of Colorado that the executive director deems necessary to carry out the duties of the office of the executive director pursuant to this part 1;

(b) To employ, subject to the laws of the state of Colorado and after consultation with the board, an executive secretary for the board. The executive secretary shall be accountable to the board and shall, pursuant to delegation by the board, discharge the responsibilities of the board under this part 1. The executive director may also employ such clerks, deputies, and assistants as the executive director considers necessary to discharge the duties imposed upon the executive director by this part 1 and to designate the duties of such clerks, deputies, and assistants.

(c) To issue and, for reasonable cause shown or upon satisfactory proof of the unfitness of the applicant under standards established and set forth in this part 1, to refuse to issue to any applicant any license the executive director is authorized to issue by this part 1;

(d) (I) To investigate upon the executive director's own initiative, upon the written and signed complaint of any person, or upon request by the board pursuant to section 12-6-104 (3) (f) (I), any suspected or alleged violation by any person licensed by the executive director pursuant to this part 1 of any of the terms and provisions of this part 1 or of any rule or regulation promulgated by the executive director under the authority conferred upon the executive director in this section;

(II) The investigators and their supervisors utilized by the executive director, pursuant to subparagraph (I) of this paragraph (d), while actually engaged in performing their duties, shall have the authority as delegated by the executive director to issue subpoenas in relation to performance of their duties relating to licensees who are under the jurisdiction of the executive director and the authority as delegated by the executive director to issue summonses for violations of sections 12-6-120 (2) and 42-6-142, C.R.S., to issue misdemeanor summonses for violations of section 12-6-119.5 (1) (a), and to procure criminal records during an investigation.

(e) To prescribe the forms to be used for applications for licenses to be issued by the executive director under the provisions of this part 1 and to require of such applicants, as a condition precedent to the issuance of such licenses, such information concerning the applicant's fitness to be licensed under this part 1 as the executive director considers necessary;

(f) (I) To summarily issue cease-and-desist orders on such terms and conditions and for such period of time as to the executive director appears fair and just to any person who is licensed by the executive director pursuant to this part 1 if such orders are followed by notice and a hearing pursuant to section 12-6-104 (3) (e) (I).

(II) To issue cease-and-desist orders to persons acting as motor vehicle manufacturers without the manufacturer's license required by this part 1.

(III) To impose a fine, not to exceed one thousand dollars per day, for each violation of section 12-6-120 (1) after a notice and hearing subject to section 24-4-105, C.R.S.

(g) (Deleted by amendment, L. 92, p. 1847, § 5, effective July 1, 1992.)

(2) In the event any person fails to comply with a cease-and-desist order issued pursuant to this section, the executive director may bring a suit for injunction to prevent any further and continued violation of such order. In any such suit the final proceedings of the executive director, based upon evidence in record, shall be prima facie evidence of the facts found therein.

(3) The executive director may impose a civil fine of not less than ten thousand dollars and not more than twenty-five thousand dollars on a motor vehicle manufacturer, distributor, or manufacturer representative who knowingly violates section 12-6-120.3 (5). Each day that a manufacturer, distributor, or manufacturer representative violates section 12-6-120.3 (5) by failing to offer the right of first refusal or failing to make a payment required by section 12-6-120.3 (5) is a separate offense.

Source: L. 71: R&RE, p. 245, § 1. C.R.S. 1963: § 13-11-5. L. 92: Entire section amended, p. 1847, § 5, effective July 1. L. 94: (1)(d)(II) amended, p. 2546, § 22, effective January 1, 1995. L. 98: (1)(b) and (1)(d)(I) amended, p. 595, § 5, effective July 1. L. 2002: (1)(d)(II) amended, p. 70, § 2, effective August 7. L. 2003: IP(1) and (1)(f) amended, p. 1301, § 2, effective April 22. L. 2010: (3) added, (SB 10-201), ch. 409, p. 2021, § 2, effective June 10.

12-6-106. Records as evidence. Copies of all records and papers in the office of the board or executive director, duly authenticated under the hand and seal of the board or executive director, shall be received in evidence in all cases equally and with like effect as the original thereof.

Source: L. 71: R&RE, p. 246, § 1. C.R.S. 1963: § 13-11-6. L. 92: Entire section amended, p. 1849, § 6, effective July 1.

Cross references: For the provision in the Colorado rules of evidence concerning the admission of copies of public records, see C.R.E. 1005.

12-6-107. Attorney general to advise and represent. (1) The attorney general of this state shall represent the board and executive director and shall give opinions on all questions of law relating to the interpretation of this part 1 or arising out of the adminis-

tration thereof and shall appear for and in behalf of the board and executive director in all actions brought by or against them, whether under the provisions of this part 1 or otherwise.

(2) The board may request the attorney general to make civil investigations and enforce rules and regulations of the board in cases of civil violations and to bring and defend civil suits and proceedings for any of the purposes necessary and proper for carrying out the functions of the board.

Source: L. 71: R&RE, p. 246, § 1. C.R.S. 1963: § 13-11-7. L. 92: Entire section amended, p. 1849, § 7, effective July 1. L. 98: Entire section amended, p. 595, § 6, effective July 1.

12-6-108. Classes of licenses. (1) Licenses issued under the provisions of this part 1 shall be of the following classes:

(a) Motor vehicle dealer's license shall permit the licensee to engage in the business of selling, exchanging, leasing, or offering new and used motor vehicles, and this form of license shall permit not more than two persons named therein who shall be owners or part owners of the business of the licensee to act as motor vehicle salespersons.

(b) Used motor vehicle dealer's license shall permit the licensee to engage in the business of selling, exchanging, leasing, or offering used motor vehicles only. Such license shall also permit a licensee to negotiate for a consumer the sale, exchange, or lease of used and new motor vehicles not owned by the licensee, except those vehicles defined in section 42-1-102 (55), C.R.S., as motorcycles and section 33-14.5-101 (3), C.R.S., as off-highway vehicles; however, prior to completion of such sale, exchange, or lease of a motor vehicle not owned by the licensee, the licensee shall disclose in writing to the consumer whether the licensee will receive any compensation from the consumer and whether the licensee will receive any compensation from the owner of the motor vehicle as a result of such transaction. If the licensee receives compensation from the owner of the motor vehicle as a result of the transaction, the licensee shall include in the written disclosure the name of such owner from whom the licensee will receive compensation. This form of license shall permit not more than two persons named therein who shall be owners or part owners of the business of the licensee to act as motor vehicle salespersons.

(c) Motor vehicle salesperson's license shall permit the licensee to engage in the activities of a motor vehicle salesperson.

(c.1) (Deleted by amendment, L. 92, p. 1849, § 8, effective July 1, 1992.)

(d) Manufacturer's or distributor's license shall permit the licensee to engage in the activities of a manufacturer, distributor, factory branch, or distributor branch and to sell fire trucks.

(e) Wholesaler's license shall permit the licensee to engage in the activities of a wholesaler.

(f) Manufacturer representative's license shall permit the licensee to engage in the activities of a manufacturer representative.

(g) Buyer agent's license shall permit the licensee to engage in the activities of a buyer agent.

(h) (I) Wholesale motor vehicle auction dealer's license shall permit a licensee to engage in the activities of a wholesale motor vehicle auction dealer if the licensee provides auction services solely in connection with wholesale transactions in which the purchasers are motor vehicle dealers licensed by this state or any other jurisdiction or in connection with the sale of government vehicles to consumers at a time and place that does not conflict with a wholesale motor vehicle auction conducted by that licensee. A wholesale motor vehicle auction dealer shall abide by all laws and rules of the state of Colorado.

(II) A wholesale motor vehicle auction dealer shall maintain a check and title insurance policy for the benefit of such dealer's customers or, alternatively, a wholesale motor vehicle auction dealer shall provide written guarantees of title to such dealer's purchasing customers and written guarantees of payment to such dealer's selling dealers with coverage and exclusions that are customary in check and title insurance policies available to wholesale motor vehicle auction dealers.

(2) Any license issued by the executive director pursuant to law in effect prior to July 1, 1992, shall be valid for the period for which issued.

(3) The licensing requirements of this part 1 shall not apply to banks, savings banks, savings and loan associations, building and loan associations, industrial banks, or credit unions or an affiliate or subsidiary of such entities in offering to sell, or in the sale of, a motor vehicle that was subject to a lease or that has been repossessed or foreclosed upon if the repossession or foreclosure is in connection with a loan made or originated in Colorado.

(4) The licensing requirements of this part 1 shall not apply to an insurance company selling or offering to sell a motor vehicle through a motor vehicle dealer or used motor vehicle dealer if the vehicle is obtained by the company as a result of an insurance claim.

Source: L. 71: R&RE, p. 246, § 1. C.R.S. 1963: § 13-11-8. L. 85: (1)(d) amended, p. 412, § 3, effective June 2. L. 88: (1)(c.1) added, p. 475, § 5, effective July 1. L. 92: (1)(a) to (1)(c), (1)(c.1), and (2) amended and (1)(g) and (1)(h) added, p. 1849, § 8, effective July 1. L. 96: (1)(a) and (1)(b) amended, p. 1293, § 2, effective June 1. L. 98: (1)(b) amended, p. 596, § 7, effective July 1. L. 2001: (1)(b) amended, p. 92, § 1, effective August 8. L. 2003: (1)(d) and (1)(f) amended, p. 1301, § 3, effective April 22. L. 2007: (3) added, p. 587, § 1, effective April 19; (1)(h)(1) amended and (3) and (4) added, p. 1579, §§ 6, 7, effective July 1.

ANNOTATION

The validity of motor vehicle salesperson's license hinges on the validity of the dealer's license. Motor Veh. Licensing v. Denver Truck Ctr., 885 P.2d 278 (Colo. App. 1994).

Notice to motor vehicle dealer, who was also salesperson, that the dealer license was in jeop-

ardy, constituted notice regarding the salesperson's license. Motor Veh. Licensing v. Denver Truck Ctr., 885 P.2d 278 (Colo. App. 1994).

12-6-108.5. Temporary motor vehicle dealer license. (1) If a licensed vehicle dealer has entered into a written agreement to sell a dealership to a purchaser and the purchaser has been awarded a new dealership franchise, the board may issue a temporary motor vehicle dealer's license to such purchaser or prospective purchaser. The executive director shall issue the temporary license only after the board has received the applications for both a temporary motor vehicle dealer's license and a motor vehicle dealer's license, the appropriate application fee for the motor vehicle dealer's application, evidence of a passing test score, and evidence that the franchise has been awarded to the applicant by the manufacturer. Such temporary motor vehicle dealer's license shall authorize the licensee to act as a motor vehicle dealer. Such temporary licensees shall be subject to all the provisions of this article and to all applicable rules and regulations adopted by the executive director or the board. Such temporary motor vehicle dealer's license shall be effective for up to sixty days or until the board acts on such licensee's application for a motor vehicle dealer's license, whichever is sooner.

(2) For the purpose of enabling an out-of-state dealer to sell vehicles on a temporary basis during specifically identified events, the executive director may issue, upon direction by the board, a temporary dealer's license which shall be effective for thirty days. Such temporary license shall subject the licensee to compliance with rules and regulations adopted by the executive director or the board.

Source: L. 92: Entire section added, p. 1850, § 9, effective July 1.

12-6-109. Display, form, custody, and use of licenses. The board and the executive director shall prescribe the form of the license to be issued by the executive director, and each license shall have imprinted thereon the seal of their offices. The license of each motor vehicle salesperson shall be mailed to the business address where the salesperson is licensed under this article and shall be kept by the salesperson at such salesperson's place of

employment for inspection by employers, consumers, the executive director, or the board. It is the duty of each motor vehicle dealer, manufacturer, distributor, wholesaler, manufacturer representative, wholesale motor vehicle auction dealer, or used motor vehicle dealer to display conspicuously such person's own license in such person's place of business. Each license issued pursuant to this part 1 is separate and distinct. It shall be a violation of this part 1 for a person to exercise any of the privileges granted under a license that such person does not hold, or for a licensee to knowingly allow such an exercise of privileges.

Source: L. 71: R&RE, p. 247, § 1. C.R.S. 1963: § 13-11-9. L. 79: Entire section amended, p. 445, § 4, effective July 1. L. 81: Entire section amended, p. 672, § 1, effective July 1. L. 88: Entire section amended, p. 475, § 6, effective July 1. L. 92: Entire section amended, p. 1851, § 10, effective July 1. L. 2003: Entire section amended, p. 1301, § 4, effective April 22. L. 2004: Entire section amended, p. 182, § 1, effective August 4.

12-6-110. Fees - disposition - expenses - expiration of licenses. (1) There shall be collected with each application the fee established pursuant to subsection (5) of this section for each of the following licenses:

- (a) (I) Motor vehicle dealer's or used motor vehicle dealer's license;
- (II) Motor vehicle dealer's or used motor vehicle dealer's license, for each place of business in addition to the principal place of business;
- (III) Renewal or reissue of motor vehicle dealer's or used motor vehicle dealer's license after change in location or lapse in principal place of business;
- (b) Manufacturer's license;
- (c) Distributor's license;
- (d) Wholesaler's license;
- (e) (Deleted by amendment, L. 2003, p. 1302, § 5, effective April 22, 2003.)
- (f) Manufacturer representative's license;
- (g) Motor vehicle salesperson's license including, but not limited to, reissuing a license;
- (h) (Deleted by amendment, L. 92, p. 1851, § 11, effective July 1, 1992.)
- (i) Buyer agent's license;
- (j) Wholesale motor vehicle auction dealer's license.
- (2) All such fees shall be paid to the state treasurer who shall credit the same to the auto dealers license fund.

(2.5) If an application for a buyer agent's, motor vehicle dealer's, used motor vehicle dealer's, wholesaler's, or salesperson's license is withdrawn by the applicant prior to issuance of the license, one-half of the license fee shall be refunded.

(3) (a) Such licenses, if the same have not been suspended or revoked as provided in this part 1, shall be valid until one year following the month of issuance thereof and shall then expire; except that any license issued under this part 1 shall expire upon the voluntary surrender thereof or upon the abandonment of the licensee's place of business for a period of more than thirty days.

(b) Thirty days prior to the expiration of such licenses, the executive director shall mail to any such licensee's business address of record a notice stating when such person's license is due to expire and the fee necessary to renew such license. For a salesperson or manufacturer representative, the notice shall be mailed to the address of the dealer or manufacturer where such person is licensed.

(c) Upon the expiration of such license, unless suspended or revoked, the same may be renewed upon the payment of the fees specified in this section, which shall accompany applications, and such renewal shall be made from year to year as a matter of right; except that, if a motor vehicle dealer, used motor vehicle dealer, or wholesaler voluntarily surrenders its license or abandons its place of business for a period of more than thirty days, the licensee is required to file a new application to renew its license.

(d) A transition procedure for licensees licensed prior to July 1, 1992, shall be established by the board or the executive director by rule and regulation.

(e) Notwithstanding paragraph (a) of this subsection (3), a person has a thirty-day grace period after his or her license expires, and the person may renew the license within such

thirty days pursuant to paragraph (c) of this subsection (3), so long as the person has a bond in full force and effect that complies with the applicable bonding requirements of section 12-6-111, 12-6-112, or 12-6-112.2 during such thirty-day period. A person applying during the thirty-day grace period shall pay a late fee established pursuant to subsection (5) of this section.

(4) (Deleted by amendment, L. 92, p. 1851, § 11, effective July 1, 1992.)

(5) (a) The board shall propose, as part of its annual budget request, an adjustment in the amount of each fee which the board is authorized by law to collect. The budget request and the adjusted fees for the board shall reflect direct and indirect costs.

(b) Based upon the appropriation made and subject to the approval of the executive director, the board shall adjust the fees collected by the executive director so that the revenue generated from said fees covers the direct and indirect costs of administering this article. Such fees shall remain in effect for the fiscal year for which the appropriation is made.

(c) Whenever moneys appropriated to the board for its activities for the prior fiscal year are unexpended, said moneys shall be made a part of the appropriation to the board for the next fiscal year, and such amount shall not be raised from fees collected by the board or the executive director. If a supplemental appropriation is made to the board for its activities, the fees of the board and the executive director, when adjusted for the fiscal year next following that in which the supplemental appropriation was made, shall be adjusted by an additional amount which is sufficient to compensate for such supplemental appropriation. Moneys appropriated to the board in the annual general appropriation bill shall be from the fund provided in section 12-6-123.

Source: L. 71: R&RE, p. 247, § 1. C.R.S. 1963: § 13-11-10. L. 76: (1)(a) and (1)(d) amended and (2.5) added, p. 395, § 1, effective April 30. L. 81: (1) amended and (4) and (5) added, p. 672, § 2, effective July 1. L. 88: (1)(a)(III) and (1)(h) added, pp. 475, 476, §§ 7, 8, effective July 1. L. 92: (1)(g), (1)(h), (2.5), (3), (4), (5)(b), and (5)(c) amended and (1)(i) and (1)(j) added, p. 1851, § 11, effective July 1. L. 98: (3)(a) and (3)(c) amended, p. 596, § 8, effective July 1. L. 2003: (1)(e) and (1)(f) amended, p. 1302, § 5, effective April 22. L. 2004: (1)(g) and (2.5) amended and (3)(e) added, pp. 355, 356, §§ 2, 3, effective August 4; (3)(b) amended, p. 182, § 2, effective August 4.

ANNOTATION

The license fee is required of both residents and nonresidents and makes no distinction between those engaged in interstate commerce and those engaged in intrastate com-

merce, hence, it is not discriminatory. *GMC v. Blevins*, 144 F. Supp. 381 (D. Colo. 1956) (decided under repealed § 13-11-8, CRS 53).

12-6-111. Bond of licensee. (1) Before any motor vehicle dealer's, wholesaler's, wholesale motor vehicle auction dealer's, or used motor vehicle dealer's license shall be issued by the board through the executive director to any applicant therefor, the said applicant shall procure and file with the board evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or a good and sufficient bond with corporate surety thereon duly licensed to do business within the state, approved as to form by the attorney general of the state, and conditioned that said applicant shall not practice fraud, make any fraudulent representation, or violate any of the provisions of this part 1 that are designated by the board by rule in the conduct of the business for which such applicant is licensed. A motor vehicle dealer or used motor vehicle dealer shall not be required to furnish an additional bond, savings account, deposit, or certificate of deposit under this section if such dealer furnishes a bond, savings account, deposit, or certificate of deposit under section 12-6-512.

(2) (a) The purpose of the bond procured by the applicant pursuant to subsection (1) of this section and section 12-6-112.2 (1) is to provide for the reimbursement for any loss or damage suffered by any retail consumer caused by violation of this part 1 by a motor vehicle dealer, used motor vehicle dealer, wholesale motor vehicle auction dealer, or wholesaler.

For a wholesale transaction, the bond is available to each party to the transaction; except that, if a retail consumer is involved, such consumer shall have priority to recover from the bond. The amount of the bond shall be fifty thousand dollars for a motor vehicle dealer applicant, used motor vehicle dealer applicant, wholesale motor vehicle auction dealer applicant, or wholesaler applicant except the amount of the bond shall be five thousand dollars for those dealers who sell only small utility trailers that weigh less than two thousand pounds. The aggregate liability of the surety for all transactions shall not exceed the amount of the bond, regardless of the number of claims or claimants.

(b) No corporate surety shall be required to make any payment to any person claiming under such bond until a final determination of fraud or fraudulent representation has been made by the board or by a court of competent jurisdiction.

(3) All bonds required pursuant to this section shall be renewed annually at such time as the bondholder's license is renewed. Such renewal may be done through a continuation certificate issued by the surety.

(4) Nothing in this part 1 shall interfere with the authority of the courts to administer and conduct an interpleader action for claims against a licensee's bond.

Source: L. 71: R&RE, p. 248, § 1. C.R.S. 1963: § 13-11-11. L. 79: Entire section amended, p. 421, § 5, effective July 1. L. 84: Entire section amended, p. 403, § 1, effective July 1. L. 90: Entire section amended, p. 758, § 1, effective July 1. L. 92: Entire section amended, p. 1853, § 12, effective July 1. L. 98: (1) amended, p. 596, § 9, effective July 1. L. 2007: (1) amended, p. 1885, § 5, effective July 1; (2)(a) amended, p. 1580, § 8, effective July 1.

ANNOTATION

Law reviews. For article, "One Year Review of Contracts", see 37 Dicta 1 (1960).

Annotator's note. Since § 12-6-111 is similar to repealed § 13-11-9, CRS 53, and CSA, C. 16, § 428, relevant cases construing those provisions have been included in the annotations to this section.

There is no constitutional inhibition against the licensing and bonding requirements of this article. GMC v. Blevins, 144 F. Supp. 381 (D. Colo. 1956).

The bond is to protect the public from fraud, fraudulent representation, or violations of the law. GMC v. Blevins, 144 F. Supp. 381 (D. Colo. 1956).

This bond is an indemnification obligation, not a penal bond. Edmonds v. Western Sur. Co., 962 P.2d 323 (Colo. App. 1998).

Since this bond is legally mandated, obligation is limited to actual losses suffered by the obligee. Edmonds v. W. Sur. Co., 962 P.2d 323 (Colo. App. 1998).

Actual losses included attorney fees since § 13-21-109 allows for recovery of reasonable attorney fees. Edmonds v. W. Sur. Co., 962 P.2d 323 (Colo. App. 1998).

The general assembly did not intend that the amount of funds available for reimbursement should vary depending on whether the security was in the form of a bond or cash alternative. W. Sur. Co. v. Smith, 914 P.2d 451 (Colo. App. 1995).

Since this section is general, it is broad enough to cover loss from civil as well as

criminal fraud. Kilbourn v. W. Sur. Co., 187 F.2d 567 (10th Cir. 1951).

Inapplicable to mobile home dealer. Since the definition of a dealer specifies motor vehicles as the exclusive subject matter bringing a person within the coverage of this section, that bond does not cover activities in the sale of mobile homes, i.e., "movable structures". Shaw v. Aurora Mobile Homes & Real Estate, Inc. 36 Colo. App. 321, 539 P.2d 1366 (1975).

Surety on an indemnifying bond, executed pursuant to the provisions of the motor vehicles dealers act, cannot be held liable for the payment of damages resulting from fraud, which actually took place prior to the date the bond became effective, upon the ground that, after the bond became effective, the wrongdoer made new false representations concerning the subject matter of his original transaction but upon the making of which the defrauded party did not part with value in reliance thereon. Massachusetts Bonding & Ins. Co. v. Bank of Aurora, 124 Colo. 485, 238 P.2d 872 (1951).

In an action against the surety on a used car dealer's bond executed pursuant to this section, it was held that it could not be said as a matter of law, from what was before the court on the hearing on a motion for summary judgment, that it was impossible to make out a case of fraud under this section on count one of the complaint. Kilbourn v. W. Sur. Co., 187 F.2d 567 (10th Cir. 1951).

The phrase "any person" in the pre-1992 version of this section refers only to those

consumers or purchasers, including natural persons, firms, partnerships, and corporations, to whom a motor vehicle title is transferred by a bonded dealer. Consequently, the phrase does not encompass a corporation that,

although not a consumer or purchaser of a motor vehicle, has a business relationship or contract with an automobile dealer. *Southwest Cap. Inv. v. Pioneer Gen. Ins.*, 924 P.2d 1205 (Colo. App. 1996).

12-6-112. Motor vehicle salesperson's bond. (1) Before any motor vehicle salesperson's license is issued by the board through the executive director to any applicant therefor, the applicant shall procure and file with the board evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or a good and sufficient bond in the amount of fifteen thousand dollars with corporate surety thereon duly licensed to do business within the state, approved as to form by the attorney general of the state, and conditioned that said applicant shall perform in good faith as a motor vehicle salesperson without fraud or fraudulent representation and without the violation of any of the provisions of this part 1 that are designated by the board by rule. A motor vehicle salesperson shall not be required to furnish an additional bond, savings account, deposit, or certificate of deposit under this section if such dealer furnishes a bond, savings account, deposit, or certificate of deposit under section 12-6-513.

(2) No corporate surety shall be required to make any payment to any person claiming under such bond until a final determination of fraud or fraudulent representation has been made by the board or by a court of competent jurisdiction.

(3) All bonds required pursuant to this section shall be renewed annually at such time as the bondholder's license is renewed. Such renewal may be done through a continuation certificate issued by the surety.

Source: L. 71: R&RE, p. 248, § 1. C.R.S. 1963: § 13-11-12. L. 79: Entire section amended, p. 421, § 6, effective July 1. L. 84: Entire section amended, p. 403, § 2, effective July 1. L. 88: Entire section amended, p. 476, § 9, effective July 1. L. 92: Entire section amended, p. 1854, § 13, effective July 1. L. 98: (1) and (2) amended, p. 597, § 10, effective July 1. L. 2007: (1) amended, p. 1580, § 9, effective July 1; (1) amended, p. 1885, § 6, effective July 1.

Editor's note: Amendments to subsection (1) by Senate Bill 07-221 and House Bill 07-1081 were harmonized.

12-6-112.2. Buyer agent bonds. (1) A buyer agent's license shall not be issued by the executive director to any applicant therefor until said applicant procures and files with the executive director evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or a good and sufficient bond in the amount of five thousand dollars with a corporate surety duly licensed to do business within the state and approved as to form by the attorney general. The bond shall be available to ensure that said applicant shall perform in good faith as a buyer agent without fraud or fraudulent representation and without violating any of the provisions of this part 1 that are designated by the executive director by rule.

(2) All bonds required pursuant to this section shall be renewed annually at such time as the bondholder's license is renewed. Such renewal may be done through a continuation certificate issued by the surety.

(3) No corporate surety shall be required to make any payment to any person claiming under such bond until a final determination of fraud or fraudulent representation has been made by the executive director or by a court of competent jurisdiction.

Source: L. 92: Entire section added, p. 1854, § 14, effective July 1. L. 98: (1) amended and (3) added, p. 597, § 11, effective July 1.

12-6-112.7. Notice of claims honored against bond. (1) Any corporate surety which has provided a bond to a licensee pursuant to the requirements of section 12-6-111, 12-6-112, or 12-6-112.2 shall provide notice to the board and executive director of any

claim which is honored against such bond. Such notice shall be provided to the board and executive director within thirty days after a claim is honored.

(2) A notice provided by a corporate surety pursuant to the requirement of subsection (1) of this section shall be in such form as required by the executive director subject to approval by the board and shall include, but shall not be limited to, the name of the licensee, the name and address of the claimant, the amount of the honored claim, and the nature of the claim against the licensee.

Source: **L. 90:** Entire section added, p. 758, § 2, effective July 1. **L. 92:** Entire section amended, p. 1855, § 15, effective July 1.

12-6-113. Testing licensees. Persons applying for a motor vehicle dealer's, used motor vehicle dealer's, wholesaler's, wholesale motor vehicle auction dealer's, or motor vehicle salesperson's license under this part 1 shall be examined for their knowledge of the motor vehicle laws of the state of Colorado and the rules promulgated pursuant to this part 1. If the applicant is a corporation, the managing officer shall take such examination, and, if the applicant is a partnership, all the general partners shall take such examination. No license shall be issued except upon successful passing of the examination. The board shall implement by January 1, 2008, a psychometrically valid and reliable salesperson examination that measures the minimum level of competence necessary to practice. This section shall not apply to a powersports vehicle dealer, used powersports vehicle dealer, or powersports salesperson licensed pursuant to part 5 of this article.

Source: **L. 71:** R&RE, p. 248, § 1. **C.R.S. 1963:** § 13-11-13. **L. 88:** Entire section amended, p. 476, § 10, effective July 1. **L. 92:** Entire section amended, p. 1855, § 16, effective July 1. **L. 2007:** Entire section amended, p. 1580, § 10, effective July 1; entire section amended, p. 1885, § 7, effective July 1.

Editor's note: Amendments to this section by Senate Bill 07-221 and House Bill 07-1081 were harmonized.

12-6-114. Filing of written warranties. All licensed manufacturers shall file with the executive director all written warranties and changes in written warranties that such manufacturer makes on any motor vehicle or parts thereof. All licensed manufacturers shall file with the executive director a copy of the delivery and preparation obligations of a manufacturer's dealer, and these warranties and obligations shall constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from any express or implied warranties of the manufacturer shall constitute the manufacturer's product or warranty liability, and the manufacturer shall reasonably compensate any authorized dealer who performs work to rectify said manufacturer's product or warranty defects.

Source: **L. 71:** R&RE, p. 248, § 1. **C.R.S. 1963:** § 13-11-14. **L. 92:** Entire section amended, p. 1855, § 17, effective July 1.

12-6-115. Application - prelicensing education - rules. (1) Application for a motor vehicle dealer's, motor vehicle salesperson's, used motor vehicle dealer's, wholesale motor vehicle auction dealer's, or wholesaler's license shall be made to the board.

(2) Application for distributor's, manufacturer representative's, or manufacturer's licenses shall be made to the executive director.

(3) All fees for licenses shall be paid at the time of the filing of application for license.

(4) All persons applying for a motor vehicle dealer's license shall file with the board a certified copy of a certificate of appointment as a dealer from a manufacturer.

(5) All persons applying for a manufacturer's or distributor's license shall file with the executive director a certified copy of their typical written agreement with all motor vehicle

dealers, and also evidence of the appointment of an agent for process in the state of Colorado shall be included with the application.

(6) All persons applying for a motor vehicle dealer's license, a used motor vehicle dealer's license, a wholesaler's license, a motor vehicle auctioneer's license, or a motor vehicle salesman's license shall file with the board a good and sufficient instrument in writing in which he shall appoint the secretary of the board as the true and lawful agent of said applicant upon whom all process may be served in any action which may thereafter be commenced against said applicant arising out of any claim for damages suffered by any firm, person, association, or corporation by reason of the violation of said applicant of any of the terms and provisions of this part 1 or any condition of the applicant's bond.

(7) (a) A person applying for a used motor vehicle dealer's license, a wholesale motor vehicle auction dealer's license, or a wholesaler's license shall file with the board a certification that the applicant has met the educational requirements for licensure under this subsection (7). This subsection (7) shall not apply to a person who has held a license within the last three years as a motor vehicle dealer, used motor vehicle dealer, wholesaler, wholesale motor vehicle auction dealer, powersports vehicle dealer, or used powersports vehicle dealer under this part 1 or part 5 of this article.

(b) An applicant for a used motor vehicle dealer's license, a wholesale motor vehicle auction dealer's license, or a wholesaler's license shall not be licensed unless one of the following persons has completed an eight-hour preclicensing education program:

- (I) The managing officer if the applicant is a corporation or limited liability company;
- (II) All of the general partners if the applicant is any form of partnership; or
- (III) The owner or managing officer if the applicant is a sole proprietorship.

(c) The preclicensing education program shall include, without limitation, state and federal statutes and rules governing the sale of motor vehicles.

(d) A preclicensing education program shall not fulfill the requirements of this section unless approved by the board. The board shall approve any program with a curriculum that reasonably covers the material required by this section within eight hours.

(e) The board may adopt rules establishing reasonable fees to be charged for the preclicensing education program.

(f) The board may adopt reasonable rules to implement this section, including, without limitation, rules that govern:

- (I) The content and subject matter of education;
- (II) The criteria, standards, and procedures for the approval of courses and course instructors;
- (III) The training facility requirements; and
- (IV) The methods of instruction.

(g) An approved preclicensing program provider shall issue a certificate to a person who successfully completes the approved preclicensing education program. The current certificate of completion, or a copy of the certificate, shall be posted conspicuously at the dealership's principal place of business.

(h) An approved preclicensing program provider shall submit a certificate to the executive director for each person who successfully completes the preclicensing education program. The certificate may be transmitted electronically.

Source: L. 71: R&RE, p. 248, § 1. C.R.S. 1963: § 13-11-15. L. 88: (1) and (6) amended, p. 476, § 11, effective July 1. L. 92: (1), (2), and (5) amended, p. 1856, § 18, effective July 1. L. 2003: (2) amended, p. 1302, § 6, effective April 22. L. 2008: (7) added, p. 581, § 1, effective August 5.

12-6-116. Notice of change of address or status. (1) The board, through the executive director, shall not issue a motor vehicle dealer's license or used motor vehicle dealer's license to any applicant therefor who has no principal place of business as is defined in this part 1. Should the motor vehicle dealer or used motor vehicle dealer change the site or location of such dealer's principal place of business, such dealer shall immediately upon making such change so notify the board in writing, and thereupon a new license shall be granted for the unexpired portion of the term of such license at a fee established pursuant

to section 12-6-110. Should a motor vehicle dealer or used motor vehicle dealer, for any reason whatsoever, cease to possess a principal place of business, as defined in this part 1, from and on which such dealer conducts the business for which such dealer is licensed, such dealer shall immediately so notify in writing the board and, upon demand therefor by the board, shall deliver to it such dealer's license, which shall be held and retained until it appears to the board that such licensee again possesses a principal place of business; whereupon, such dealer's license shall be reissued. Nothing in this part 1 shall be construed to prevent a motor vehicle dealer or used motor vehicle dealer from conducting the business for which such dealer is licensed at one or more sites or locations not contiguous to such dealer's principal place of business but operated and maintained in conjunction therewith.

(2) Should the motor vehicle dealer change to a new line of motor vehicles, add another franchise for the sale of new motor vehicles, or cancel or, for any cause whatever, otherwise lose a franchise for the sale of new motor vehicles, such dealer shall immediately so notify the board. In the case of a cancellation or loss of franchise, the board shall determine whether or not by reason thereof such dealer should be licensed as a used motor vehicle dealer, in which case the board shall take up and the motor vehicle dealer shall deliver to it such dealer's license, and the board shall direct the executive director to thereupon issue to such dealer a used motor vehicle dealer's license. Upon the cancellation or loss of a franchise to sell new motor vehicles and the relicensing of such dealer as a used motor vehicle dealer, such dealer may continue in the business for which a motor vehicle dealer is licensed for a time, not exceeding six months from the date of the relicensing of such dealer, to enable such dealer to dispose of the stock of new motor vehicles on hand at the time of such relicensing, but not otherwise.

(3) If a motor vehicle salesperson is discharged, leaves an employer, or changes a place of employment, the motor vehicle dealer or used motor vehicle dealer who last employed the salesperson shall confiscate and return such salesperson's license to the board. Upon being reemployed as a motor vehicle salesperson, the motor vehicle salesperson shall notify the board. Upon receiving such notification, the board shall issue a new license for the unexpired portion of such returned license after collecting a fee set pursuant to section 12-6-110 (5). It shall be unlawful for such salesperson to act as a motor vehicle salesperson until a new license is procured.

(4) Should a wholesaler, for any reason whatsoever, change such wholesaler's place of business or business address during any license year, such wholesaler shall immediately so notify the board.

(5) Any wholesale motor vehicle auction dealer who changes a place of business or business address during any license year shall notify the board immediately of such dealer's new business address.

Source: L. 71: R&RE, p. 249, § 1. C.R.S. 1963: § 13-11-16. L. 76: (3) amended, p. 395, § 2, effective April 30. L. 81: (3) amended, p. 673, § 3, effective July 1. L. 88: (1) amended, p. 477, § 12, effective July 1. L. 92: Entire section amended, p. 1856, § 19, effective July 1. L. 98: (3) amended, p. 598, § 12, effective July 1. L. 2004: (3) amended, p. 355, § 1, effective August 4.

ANNOTATION

The validity of motor vehicle salesperson's license hinges on the validity of the dealer's license. Motor Veh. Licensing v. Denver Truck Ctr., 885 P.2d 278 (Colo. App. 1994).

Notice to motor vehicle dealer, who was also salesperson, that the dealer license was in jeopardy,

constituted notice regarding the salesperson's license. Motor Veh. Licensing v. Denver Truck Ctr., 815 P.2d 278 (Colo. App. 1994).

12-6-117. Principal place of business - requirements. (1) The building or structure required to be located on a principal place of business shall have electrical service and adequate sanitary facilities.

(2) (a) In no event shall a room in a hotel, rooming house, or apartment house building

or a part of any single or multiple unit dwelling house be considered a "principal place of business" within the terms and provisions of this part 1, unless the entire ground floor of such hotel, apartment house, or rooming house building or such dwelling house is devoted principally to and occupied for commercial purposes and the office of the dealer is located on the ground floor thereof.

(b) A motor vehicle dealer who operates such motor vehicle dealer's business from his or her primary residence and who has been a resident of Colorado for the immediately preceding twelve-month period and is a motor vehicle dealer only because such dealer sells custom trailers for one or more manufacturers and maintains an inventory of fewer than four vehicles at all times shall be exempt from paragraph (a) of this subsection (2). Any motor vehicle dealer who is issued dealer plates in accordance with this paragraph (b) pursuant to section 42-3-116, C.R.S., shall only use such plates on trailers.

(3) Repealed.

(4) Nothing in this section shall be construed to exempt a motor vehicle dealer from local zoning ordinances.

Source: L. 71: R&RE, p. 250, § 1. C.R.S. 1963: § 13-11-17. L. 95: Entire section amended, p. 243, § 2, effective April 17. L. 98: (3) repealed, p. 598, § 13, effective July 1. L. 2005: (2)(b) amended, p. 1181, § 27, effective August 8.

12-6-118. Licenses - grounds for denial, suspension, or revocation. (1) A manufacturer's or distributor's license may be denied, suspended, or revoked on the following grounds:

- (a) (Deleted by amendment, L. 92, p. 1857, § 20, effective July 1, 1992.)
 - (b) Material misstatement in an application for a license;
 - (c) Willful failure to comply with this part 1, including the right of first refusal created in section 12-6-120.3 (5), or any rule or regulation promulgated by the executive director;
 - (d) Engaging, in the past or present, in any illegal business practice.
- (2) A manufacturer representative's license may be denied, suspended, or revoked on the following grounds:

- (a) (Deleted by amendment, L. 92, p. 1857, § 20, effective July 1, 1992.)
- (b) Material misstatement in an application for a license;
- (c) Willful failure to comply with any provision of this part 1 or any rule or regulation promulgated by the executive director under this part 1;
- (d) Having indulged in any unconscionable business practice pursuant to title 4, C.R.S.;
- (e) Having coerced or attempted to coerce any motor vehicle dealer to accept delivery of any motor vehicle, parts or accessories therefor, or any other commodities or services which have not been ordered by said dealer;
- (f) Having coerced or attempted to coerce any motor vehicle dealer to enter into any agreement to do any act unfair to said dealer by threatening to cause the cancellation of the franchise of said dealer;

(g) Having withheld, threatened to withhold, reduced, or delayed without just cause an order for motor vehicles, parts or accessories therefor, or any other commodities or services which have been ordered by a motor vehicle dealer;

(h) Engaging, in the past or present, in any illegal business practice.

(3) A motor vehicle dealer's, wholesale motor vehicle auction dealer's, wholesaler's, buyer agent's, or used motor vehicle dealer's license may be denied, suspended, or revoked on the following grounds:

- (a) (Deleted by amendment, L. 92, p. 1857, § 20, effective July 1, 1992.)
- (b) Material misstatement in an application for a license;
- (c) Violation of any of the terms and provisions of this part 1 or any rule or regulation promulgated by the board under this part 1;
- (d) Having been convicted of or pled nolo contendere to any felony, or any crime pursuant to article 3, 4, or 5 of title 18, C.R.S., or any like crime pursuant to federal law or the law of any other state. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be conclusive evidence of such conviction in any hearing held pursuant to this article.

- (e) Defrauding any buyer, seller, motor vehicle salesperson, or financial institution to such person's damage;
- (f) Intentional or negligent failure to perform any written agreement with any buyer or seller;
- (g) Failure or refusal to furnish and keep in force any bond required under this part 1;
- (h) Having made a fraudulent or illegal sale, transaction, or repossession;
- (i) Willful misrepresentation, circumvention, or concealment of or failure to disclose, through whatsoever subterfuge or device, any of the material particulars or the nature thereof required to be stated or furnished to the buyer;
- (j) Repealed.
- (k) To intentionally publish or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any of the products sold or furnished by a licensed dealer;
- (l) To knowingly purchase, sell, or otherwise acquire or dispose of a stolen motor vehicle;
- (m) For any licensed motor vehicle dealer or used motor vehicle dealer to engage in the business for which such dealer is licensed without at all times maintaining a principal place of business as required by this part 1 during reasonable business hours;
- (n) Engaging in such business through employment of an unlicensed motor vehicle salesperson;
- (o) To willfully violate any state or federal law respecting commerce or motor vehicles, or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or motor vehicles;
- (p) (Deleted by amendment, L. 92, p. 1857, § 20, effective July 1, 1992.)
- (q) Repealed.
- (r) Representing or selling as a new and unused motor vehicle any motor vehicle which the dealer or salesperson knows has been used and operated for demonstration purposes or which the dealer or salesperson knows is otherwise a used motor vehicle;
- (s) Violating any state or federal statute or regulation issued thereunder dealing with odometers;
- (t) (I) Selling to a retail customer a motor vehicle which is not equipped or in proper condition and adjustment as required by part 2 of article 4 of title 42, C.R.S., unless such vehicle is sold as a tow away, not to be driven;
- (II) Repealed.
- (t.1) Repealed.
- (u) Committing a fraudulent insurance act pursuant to section 10-1-128, C.R.S.;
- (v) Failure to give notice to a prospective buyer of the acceptance or rejection of a motor vehicle purchase order agreement within a reasonable time period, as determined by the board, when the licensee is working with the prospective buyer on a finance sale or a consignment sale.
- (4) A wholesaler's or wholesale motor vehicle auction dealer's license may be denied, suspended, or revoked for the selling, leasing, or offering or attempting to negotiate the sale, lease, or exchange of an interest in motor vehicles by such wholesaler or wholesale motor vehicle auction dealer to persons other than motor vehicle dealers, used motor vehicle dealers, or other wholesalers or wholesale motor vehicle auction dealers.
- (5) The license of a motor vehicle salesperson may be denied, revoked, or suspended on the following grounds:
 - (a) (Deleted by amendment, L. 92, p. 1857, § 20, effective July 1, 1992.)
 - (b) Material misstatement in an application for a license;
 - (c) Failure to comply with any provision of this part 1 or any rule or regulation promulgated by the board or executive director under this part 1;
 - (d) To engage in the business for which such licensee is licensed without having in force and effect a good and sufficient bond with corporate surety as provided in this part 1;

(e) To intentionally publish or circulate any advertising which is misleading or inaccurate in any material particular or which misrepresents any motor vehicle products sold or attempted to be sold by such salesperson;

(f) Having indulged in any fraudulent business practice;

(g) Selling, offering, or attempting to negotiate the sale, exchange, or lease of motor vehicles for any motor vehicle dealer or used motor vehicle dealer for which such salesperson is not licensed; except that negotiation with a motor vehicle dealer for the sale, exchange, or lease of new and used motor vehicles, except those vehicles defined in section 42-1-102 (55), C.R.S., as motorcycles and section 33-14.5-101 (3), C.R.S., as off-highway vehicles, by a salesperson compensated for said negotiation by the used motor vehicle dealer for which such salesperson is licensed shall not be grounds for denial, revocation, or suspension;

(h) Representing oneself as a salesperson for any motor vehicle dealer or used motor vehicle dealer when such salesperson is not so employed and licensed;

(i) (Deleted by amendment, L. 92, p. 1857, § 20, effective July 1, 1992.)

(j) Having been convicted of or pled nolo contendere to any felony, or any crime pursuant to article 3, 4, or 5 of title 18, C.R.S., or any like crime pursuant to federal law or the law of any other state. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be conclusive evidence of such conviction in any hearing held pursuant to this article.

(k) Having knowingly purchased, sold, or otherwise acquired or disposed of a stolen motor vehicle;

(l) Employing an unlicensed motor vehicle salesperson;

(m) Violating any state or federal statute or regulation issued thereunder dealing with odometers;

(n) Defrauding any retail buyer to such person's damage;

(o) Representing or selling as a new and unused motor vehicle any motor vehicle which the salesperson knows has been used and operated for demonstration purposes or which the salesperson knows is otherwise a used motor vehicle;

(p) (I) Selling to a retail customer a motor vehicle which is not equipped or in proper condition and adjustment as required by part 2 of article 4 of title 42, C.R.S., unless such vehicle is sold as a tow away, not to be driven;

(II) Repealed.

(p.1) Repealed.

(q) Willfully violating any state or federal law respecting commerce or motor vehicles, or any lawful rule or regulation respecting commerce or motor vehicles promulgated by any licensing or regulating authority pertaining to motor vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or motor vehicles;

(r) Improperly withholding, misappropriating, or converting to such salesperson's own use any money belonging to customers or other persons, received in the course of employment as a motor vehicle salesperson.

(6) Any license issued pursuant to this part 1 may be denied, revoked, or suspended if unfitness of such licensee or licensee applicant is shown in the following:

(a) The licensing character or record of the licensee or licensee applicant;

(b) The criminal character or record of the licensee or licensee applicant;

(c) The financial character or record of the licensee or licensee applicant;

(d) Violation of any lawful order of the board.

(7) (a) Any license issued or for which an application has been made pursuant to this part 1 shall be revoked or denied if the licensee or applicant has been convicted of or pleaded no contest to any of the following offenses in this state or any other jurisdiction during the previous ten years:

(I) A felony in violation of article 3, 4, or 5 of title 18, C.R.S., or any similar crime under federal law or the law of any other state; or

(II) A crime involving odometer fraud, salvage fraud, motor vehicle title fraud, or the defrauding of a retail consumer in a motor vehicle sale or lease transaction.

(b) A certified copy of a judgment of conviction by a court of competent jurisdiction of an offense under paragraph (a) of this subsection (7) is conclusive evidence of such conviction in any hearing held pursuant to this article.

Source: L. 71: R&RE, p. 250, § 1. C.R.S. 1963: § 13-11-18. L. 73: pp. 356, 516, §§ 2, 13. L. 77: (3)(j) repealed, p. 611, § 1, effective June 1. L. 79: (3)(t) and (5)(j) to (5)(p) added and (5)(f) amended, p. 445, §§ 5, 6, effective July 1. L. 81: (3)(t) and (5)(p) amended, p. 1943, § 2, effective July 1; (3)(t.1) and (5)(p.1) added, p. 1950, §§ 15, 16, effective July 1, 1984; (3)(t)(II) and (5)(p)(II) added by revision, p. 1964, §§ 34, 35. L. 84: (3)(d) and (5)(j) R&RE, (3)(e), (3)(f), (3)(h), (3)(i), (3)(o), (4), (5)(g), and (5)(h) amended, and (5)(q) and (5)(r) added, pp. 405, 406, §§ 1, 2, effective July 1; (3)(t)(II), (3)(t.1), (5)(p)(II), and (5)(p.1) repealed, p. 1080, § 1, effective July 1. L. 88: IP(3), (3)(d), (5)(j) amended, p. 477, § 13, effective July 1. L. 92: Entire section amended, p. 1857, § 20, effective July 1. L. 96: (5)(g) amended, p. 1294, § 3, effective June 1. L. 98: (3)(q) repealed and (6)(d) and (7) added, pp. 598, 599, §§ 14-16, effective July 1. L. 2002: (3)(o) and (5)(q) amended, p. 71, § 3, effective August 7. L. 2003: IP(1) and IP(2) amended, p. 1302, § 7, effective April 22; (3)(u) amended, p. 619, § 23, effective July 1. L. 2004: (3)(v) added, p. 88, § 1, effective March 9; (4) amended, p. 183, § 3, effective August 4. L. 2010: (1)(c) amended, (SB 10-201), ch. 409, p. 2021, § 1, effective June 10.

Cross references: For an alternative disciplinary action for persons licensed pursuant to this article, see § 24-34-106.

ANNOTATION

As to unconstitutionality of former subsection (3)(j), specifying indulgence in any unconscionable practice relating to the motor vehicle dealer's, wholesaler's or used motor vehicle dealer's business as a ground for denial, suspension, or revocation of license, see *Trail Ridge Ford, Inc., v. Colo. Dealer Licensing Bd.*, 190 Colo. 82, 543 P.2d 1245 (1975).

Application of section not overbroad. The application of this section with regard to the refusal to honor any written agreement with a retail buyer is not overbroad. *Michael Motors, Inc. v. Colo. Dealer Licensing Bd.*, 200 Colo. 455, 616 P.2d 110 (1980), cert. denied, 450 U.S. 995, 101 S. Ct. 1696, 68 L. Ed.2d 194 (1981).

When accorded its common meaning, phrase "material particulars" of subsection (3)(i) means those details concerning a vehicle for sale that are essential or necessary for a reasonable prospective buyer to know. Phrase is thus readily understandable and is not unconstitutionally vague. *Spedding v. Motor Vehicle Dealer Bd.*, 931 P.2d 480 (Colo. App. 1996).

Plain meaning of words used in subsection (3)(i) clearly requires a finding of "willful" failure to disclose material particulars to a buyer. Thus, board erred in suspending motor vehicle dealer's license without specifically finding conduct was "willful." *Spedding v. Motor Vehicle Dealer Bd.*, 931 P.2d 480 (Colo. App. 1996).

Term "intentionally" in subsection (3)(k) applies to all elements of conduct proscribed. This paragraph prohibits the intentional publication or circulation of advertising which the motor vehicle dealer knows to be inaccurate or

misleading. *Bedford Motors, Inc. v. Harris*, 714 P.2d 489 (Colo. 1986).

Multiple licenses permitted. The automobile dealer licensing statute, § 12-6-101, does not expressly permit or disallow a salesman to be licensed to more than one dealer. However, subsection (5)(g) of this section indicates a legislative intent that multiple licensing be permitted. *United Buying Serv., Inc. v. State Dept. of Rev.*, 37 Colo. App. 465, 548 P.2d 1286 (1976).

If the general assembly had intended salesmen to be licensed to one dealer only, the portion of subsection (5)(g) of this section reading "while licensed under only one such dealer ..." would be superfluous, a condition contrary to proper statutory construction. *United Buying Serv., Inc. v. State Dept. of Rev.*, 37 Colo. App. 465, 548 P.2d 1286 (1976).

Finding of enforceability of agreement not prerequisite to imposition of sanction. The enforceability of an agreement need not be found by the Colorado dealer licensing board before it may impose a sanction for violation of subsection (3)(f). *Michael Motors, Inc. v. Colo. Dealer Licensing Bd.*, 200 Colo. 455, 616 P.2d 110 (1980), cert. denied, 450 U.S. 995, 101 S. Ct. 1696, 68 L. Ed.2d 194 (1981).

Mistake of law is no defense to culpable actions. The question regarding the contractual nature of a written agreement is a question of law, and it is axiomatic that a mistake of law is no defense to the culpability of a person's actions. *Michael Motors, Inc. v. Colo. Dealer Licensing Bd.*, 200 Colo. 455, 616 P.2d 110 (1980), cert. denied, 450 U.S. 995, 101 S. Ct. 1696, 68 L. Ed.2d 194 (1981).

"Fraudulent business practice" is not so vague and uncertain as to be unenforceable. *Beathune v. Colo. Dealer Licensing Bd.*, 198 Colo. 483, 601 P.2d 1386 (1979).

Plain meaning of "fraudulent" and "defrauding," in subsection (5)(f) and (5)(n) respectively, demonstrate general assembly's intent to require proof of common-law fraud. *Colo. Motor Vehicle Dealer Bd. v. Butterfield*, 9 P.3d 1148 (Colo. App. 2000).

Proof of damage is not required under subsection (5)(f), which prohibits fraudulent business practices, but is required under subsection (5)(n), which prohibits defrauding of a retail buyer to such person's damage. *Colo. Motor Vehicle Dealer Bd. v. Butterfield*, 9 P.3d 1148 (Colo. App. 2000).

Subsection (5)(g) does not apply to ordinary theft. Where the licensee was found to

have violated criminal laws but not any law or regulation "respecting commerce or motor vehicles" specifically, license suspensions and fines under subsection (5)(q) were not justified. *Colo. Motor Vehicle Dealer Bd. v. Brinker*, 39 P.3d 1269 (Colo. App. 2001).

Subsection (7)(a)(I) is limited to specific felony convictions, and because such convictions may serve as a basis for delaying but not permanently denying a motor vehicle salesperson license, this section does not make a criminal conviction, without more, the basis for denying a license; therefore, there is no irreconcilable conflict between this section and § 24-5-101. *Smith v. Colo. Motor Vehicle Dealer Bd.*, 200 P.3d 1115 (Colo. App. 2008).

Applied in *Harris v. District Court*, 655 P.2d 398 (Colo. 1982).

12-6-119. Procedure for denial, suspension, or revocation of license - judicial review. (1) The denial, suspension, or revocation of licenses issued under this part 1 shall be in accordance with the provisions of sections 24-4-104 and 24-4-105, C.R.S.; except that the discovery available under rule 26 (b) (2) of the Colorado rules of civil procedure is available in any proceeding.

(2) (a) (I) The board shall appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct any hearing concerning the licensing or discipline of a motor vehicle dealer, used motor vehicle dealer, wholesaler, buyer's agent, or wholesale motor vehicle auction dealer; except that the board may, upon a unanimous vote of the members present when the vote is taken, conduct the hearing in lieu of appointing an administrative law judge.

(II) Beginning July 1, 2008, the board shall issue an annual report to the executive director detailing the number of hearings held pursuant to this paragraph (a) and the number of such hearings conducted by the board. If the board conducts greater than forty percent of the hearings, the executive director shall analyze the hearing procedures and acts and issue a report to the general assembly, which shall include any recommendations of the executive director.

(b) The board shall assign a hearing concerning the licensing or discipline of a motor vehicle salesperson to the executive director who shall appoint an officer to conduct a hearing.

(3) Hearings conducted before an administrative law judge shall be in accordance with the rules of procedure of the office of administrative courts. Hearings conducted before an officer appointed by the executive director shall be in accordance with the rules of procedure established by the executive director.

(4) The board may summarily suspend a licensee required to post a bond under this article if such licensee does not have a bond in full force and effect as required by this article. The suspension shall become effective upon the earlier of the licensee receiving notice of the suspension or within three days after the notice of suspension is mailed to a licensee's last-known address on file with the board. The notice may be effected by certified mail or personal delivery.

(5) The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the board. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

Source: **L. 71:** R&RE, p. 252, § 1. **C.R.S. 1963:** § 13-11-19. **L. 77:** Entire section amended, p. 306, § 3, effective June 10. **L. 84:** Entire section amended, p. 406, § 3, effective July 1. **L. 87:** Entire section amended, p. 943, § 26, effective March 13. **L. 92:** Entire section amended, p. 1861, § 21, effective July 1. **L. 98:** Entire section amended, p. 599, § 17, effective July 1. **L. 2005:** Entire section amended, p. 857, § 19, effective June 1. **L. 2007:** Entire section amended, p. 1581, § 11, effective July 1.

ANNOTATION

Applied in Harris v. District Court, 655 P.2d 398 (Colo. 1982).

12-6-119.5. Sales activity following license denial, suspension, or revocation - unlawful act - penalty. (1) (a) It shall be unlawful and a violation of this part 1 for any person whose motor vehicle dealer's, used motor vehicle dealer's, motor vehicle wholesaler's, or motor vehicle salesperson's license has been denied, suspended, or revoked to exercise any of the privileges of the license that was denied, suspended, or revoked.

(b) A violation of paragraph (a) of this subsection (1) shall be punishable in accordance with section 12-6-121; except that a second or subsequent violation of said paragraph (a) shall be a class 6 felony.

(c) In any trial for a violation of paragraph (a) of this subsection (1):

(I) A duly authenticated copy of the board's order of denial, suspension, or revocation shall constitute prima facie evidence of such denial, suspension, or revocation;

(II) A duly authenticated invoice, buyer's order, or other customary, written sales or purchase document or instrument proven to be signed by the defendant and indicating the defendant's role in the purchase or sale of a motor vehicle at any motor vehicle auction, wholesale motor vehicle sales location, or retail motor vehicle sales location, as applicable, shall constitute prima facie evidence of the defendant's exercise of a privilege of licensure;

(III) It shall be an affirmative defense that the defendant bought or sold a motor vehicle that was, at all relevant times, intended for the defendant's own use and not bought or sold for the purpose of profit or gain; and

(IV) The fact that the defendant has a motor vehicle dealer's, used motor vehicle dealer's, motor vehicle wholesaler's, or motor vehicle salesperson's license, or any other license to buy and sell motor vehicles, that is issued by a state or jurisdiction other than Colorado shall not constitute a defense.

(2) Upon the defendant's conviction by entry of a plea of guilty or nolo contendere or judgment or verdict of guilt in connection with a violation of paragraph (a) of subsection (1) of this section or of section 12-6-120 (2) or 42-6-142 (1), C.R.S., the court shall immediately give the executive director written notice of such conviction. In addition, the court shall forward to the executive director copies of documentation of any conviction on a lesser included offense and any amended charge, plea bargain, deferred prosecution, deferred sentence, or deferred judgment in connection with the original charge.

(3) Upon receiving notice of a conviction or other disposition pursuant to subsection (2) of this section, the executive director or his or her designee shall forward such notice to the motor vehicle dealer board, which shall immediately examine its files to determine whether in fact the defendant's license was denied, suspended, or revoked at the time of the offense to which the conviction or other disposition relates. If in fact the defendant's license was denied, suspended, or revoked at the time of such offense, the board:

(a) Shall not issue or reinstate any license to the defendant until one year after the time the defendant would otherwise have been eligible to receive a new or reinstated license; and

(b) Shall revoke or suspend any other licenses held by the defendant until at least one year after the date of the conviction or other disposition.

Source: L. 2002: Entire section added, p. 69, § 1, effective August 7.

12-6-120. Unlawful acts. (1) It is unlawful and a violation of this part 1 for any manufacturer, distributor, or manufacturer representative:

(a) To willfully fail to perform or cause to be performed any written warranties made with respect to any motor vehicle or parts thereof;

(b) To coerce or attempt to coerce any motor vehicle dealer to perform or allow to be performed any act that could be financially detrimental to the dealer or that would impair the dealer's goodwill or to enter into any agreement with a manufacturer or distributor that would be financially detrimental to the dealer or impair the dealer's goodwill, by threat-

ening to cancel or not renew any franchise between a manufacturer or distributor and said dealer;

(c) To coerce or attempt to coerce any motor vehicle dealer to accept delivery of any motor vehicle, parts or accessories therefor, or any commodities or services which have not been ordered by said dealer;

(d) (I) To cancel or cause to be canceled, directly or indirectly, without just cause, the franchise of any motor vehicle dealer, and the nonrenewal of a franchise or selling agreement without just cause is a violation of this paragraph (d) and shall constitute an unfair cancellation.

(II) As used in this paragraph (d), "just cause" shall be determined in the context of all circumstances surrounding the cancellation or nonrenewal, including but not limited to:

(A) The amount of business transacted by the motor vehicle dealer;

(B) The investments necessarily made and obligations incurred by the motor vehicle dealer, including but not limited to goodwill, in the performance of its duties under the franchise agreement, together with the duration and permanency of such investments and obligations;

(C) The potential for harm to consumers as a result of disruption of the business of the motor vehicle dealer;

(D) The motor vehicle dealer's failure to provide adequate service of facilities, equipment, parts, and qualified service personnel;

(E) The motor vehicle dealer's failure to perform warranty work on behalf of the manufacturer, subject to reimbursement by the manufacturer; and

(F) The motor vehicle dealer's failure to substantially comply, in good faith, with requirements of the franchise that are determined to be reasonable and material.

(III) The following conduct by a motor vehicle dealer shall constitute just cause for termination without consideration of other factors:

(A) Conviction of, or a plea of guilty or nolo contendere to, a felony;

(B) A continuing pattern of fraudulent conduct against the manufacturer or consumers;
or

(C) Continuing failure to operate for ten days or longer.

(e) To withhold, reduce, or delay unreasonably or without just cause delivery of motor vehicles, motor vehicle parts and accessories, commodities, or moneys due motor vehicle dealers for warranty work done by any motor vehicle dealer;

(f) To withhold, reduce, or delay unreasonably or without just cause services contracted for by motor vehicle dealers;

(g) To coerce any motor vehicle dealer to provide installment financing with a specified financial institution;

(h) To violate any duty imposed by, or fail to comply with, any provision of section 12-6-120.3, 12-6-120.5, or 12-6-120.7;

(i) (I) To fail to provide to the motor vehicle dealer, within twenty days after receipt of a notice of intent from a motor vehicle dealer, the list of documents and information necessary to approve the sale or transfer of the ownership of a dealership by sale of the business or by stock transfer or the change in executive management of the dealership;

(II) To fail to confirm within twenty days after receipt of all documents and information listed in subparagraph (I) of this paragraph (i) that such documentation and information has been received;

(III) To refuse to approve, unreasonably, the sale or transfer of the ownership of a dealership by sale of the business or by stock transfer within sixty days after the manufacturer has received all documents and information necessary to approve the sale or transfer of ownership, or to refuse to approve, unreasonably, the change in executive management of the dealership within sixty days after the manufacturer has received all information necessary to approve the change in management; except that nothing in this part 1 shall authorize the sale, transfer, or assignment of a franchise or a change of the principal operator without the approval of the manufacturer or distributor unless the manufacturer or distributor fails to send notice of the disapproval within sixty days after receiving all documents and information necessary to approve the sale or transfer of ownership; or

(IV) To condition the sale, transfer, relocation, or renewal of a franchise agreement, or to condition sales, services, parts, or finance incentives, upon site control or an agreement to renovate or make improvements to a facility; except that voluntary acceptance of such conditions by the dealer shall not constitute a violation;

(j) (I) To fail or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make except as a result of a strike or labor difficulty, lack of manufacturing capacity, shortage of materials, freight embargo, or other cause over which the manufacturer has no control; or

(II) To require a dealer to pay an unreasonable fee, purchase unreasonable advertising displays or other materials, or comply with unreasonable training or facilities requirements as a prerequisite to receiving any particular model of that same line-make. For purposes of this subparagraph (II), reasonableness shall be judged based on the circumstances of the individual dealer and the conditions of the market served by the dealer.

(III) This paragraph (j) shall not apply to manufacturers of recreational vehicles nor to manufacturers of vehicles with a passenger capacity of thirty-two or more.

(k) To require, coerce, or attempt to coerce any motor vehicle dealer to refrain from participation in the management of, investment in, or acquisition of any other line-make of new motor vehicles or related products; except that this paragraph (k) shall not apply unless the motor vehicle dealer:

(I) Maintains a reasonable line of credit for each make or line of new motor vehicle;

(II) Remains in compliance with reasonable capital standards and reasonable facilities requirements specified by the manufacturer; except that "reasonable facilities requirements" shall not include a requirement that a motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space; and

(III) Provides written notice to the manufacturer, distributor, or manufacturer's representative, no less than ninety days prior to the dealer's intent to participate in the management of, investment in, or acquisition of another line-make of new motor vehicles or related products;

(l) (I) To fail to pay to a motor vehicle dealer, within ninety days after the termination, cancellation, or nonrenewal of a franchise, all of the following:

(A) The dealer cost, plus any charges made by the manufacturer for distribution, delivery, and taxes, less all allowances paid or credited to the motor vehicle dealer by the manufacturer, of unused, undamaged, and unsold motor vehicles in the motor vehicle dealer's inventory that were acquired from the manufacturer or from another motor vehicle dealer of the same line-make in the ordinary course of business within the previous twelve months;

(B) The dealer cost, less all allowances paid or credited to the motor vehicle dealer by the manufacturer, for all unused, undamaged, and unsold supplies, parts, and accessories in original packaging and listed in the manufacturer's current parts catalog;

(C) The fair market value of each undamaged sign owned by the motor vehicle dealer and bearing a common name, trade name, or trademark of the manufacturer if acquisition of such sign was required by the manufacturer;

(D) The fair market value of all special tools and equipment that were acquired from the manufacturer or from sources approved and required by the manufacturer and that are in good and usable condition, excluding normal wear and tear; and

(E) The cost of transporting, handling, packing, and loading the motor vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings described in this paragraph (l).

(II) This paragraph (l) shall only apply to manufacturers of recreational vehicles in cases where the manufacturer terminates, cancels, or fails to renew the recreational vehicle dealer franchise; and this paragraph (l) shall not apply to manufacturers of vehicles with a passenger capacity of thirty-two or more.

(m) To require, coerce, or attempt to coerce any motor vehicle dealer to close or change the location of the motor vehicle dealer, or to make any substantial alterations to the dealer premises or facilities when doing so would be unreasonable or without written assurance of a sufficient supply of motor vehicles so as to justify such changes, in light of the current market and economic conditions;

(n) (I) To authorize or permit a person to perform warranty service repairs on motor vehicles unless the person is:

(A) A motor vehicle dealer with whom the manufacturer has entered into a franchise agreement for the sale and service of the manufacturer's motor vehicles; or

(B) A person or government entity that has purchased new motor vehicles pursuant to a manufacturer's fleet discount program and is performing the warranty service repairs only on vehicles owned by such person or entity.

(II) This paragraph (n) shall not apply to manufacturers of recreational vehicles nor to manufacturers of vehicles with a passenger capacity of thirty-two or more.

(o) To require, coerce, or attempt to coerce any motor vehicle dealer to prospectively agree to a release, assignment, novation, waiver, or estoppel that would relieve any person of a duty or liability imposed under this article except in settlement of a bona fide dispute;

(p) To discriminate between or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make based upon unreasonable sales and service standards;

(q) To fail to make practically available any incentive, rebate, bonus, or other similar benefit to a motor vehicle dealer that is offered to another motor vehicle dealer of the same line-make within this state;

(r) To fail to pay to a motor vehicle dealer:

(I) Within ninety days after the termination, cancellation, or nonrenewal of a franchise for the failure of a dealer to meet performance sales and service obligations or after the termination, elimination, or cessation of a line-make, the cost of the lease for the facilities used for the franchise or line-make for the unexpired term of the lease, not to exceed one year; except that:

(A) If the motor vehicle dealer owns the facilities, the value of renting such facilities for one year, prorated for each line-make based upon total sales volume for the previous twelve months before the involuntary termination;

(B) If the dealer sells recreational vehicles and a subsequent manufacturer or distributor that manufactures or distributes recreational vehicles replaces any portion of the vacated facilities, the lease or rental value shall be prorated on a monthly basis unless the dealer sells motor vehicles that are not recreational vehicles;

(C) Nothing in this subparagraph (I) shall be construed to limit the application of paragraph (d) of this subsection (1);

(II) Within ninety days after the termination, elimination, or cessation of a line-make or the termination of a franchise due to the insolvency of the manufacturer or distributor, the fair market value of the motor vehicle dealer's goodwill for the line-make as of the date the manufacturer or distributor announces the action that results in the termination, elimination, or cessation, not including any amounts paid under sub-subparagraphs (A) to (E) of subparagraph (I) of paragraph (I) of this subsection (1);

(s) To condition a franchise agreement on improvements to a facility unless reasonably required by the technology of a motor vehicle being sold at the facility;

(t) To sell or offer for sale a low-speed electric vehicle, as defined by section 42-1-102, C.R.S., for use on a roadway unless the vehicle complies with part 2 of article 4 of title 42, C.R.S.;

(u) To charge back, deny motor vehicle allocation, withhold payments, or take other actions against a motor vehicle dealer if a motor vehicle sold by the motor vehicle dealer is exported from Colorado unless the manufacturer, distributor, or manufacturer representative proves that the motor vehicle dealer knew or reasonably should have known a motor vehicle was intended to be exported, which shall operate as a rebuttable presumption that the motor vehicle dealer did not have such knowledge;

(v) Within ninety days after the termination, elimination, or cessation of a line-make or the termination, cancellation, or nonrenewal of a franchise by the manufacturer, distributor, or manufacturer representative, for any reason other than that the motor vehicle dealer commits fraud, makes a misrepresentation, or commits any other crime within the scope of the franchise agreement or in the operation of the dealership, to fail to reimburse a motor vehicle dealer for the cost depreciated by five percent per year of any upgrades or alterations

to the motor vehicle dealer's facilities required by the manufacturer, distributor, or manufacturer representative within the previous five years;

(w) To fail to notify a motor vehicle dealer at least ninety days before the following and to provide the specific reasons for the following:

(I) Directly or indirectly terminating, cancelling, or not renewing a franchise agreement; or

(II) Modifying, replacing, or attempting to modify or replace the franchise or selling agreement of a motor vehicle dealer, including a change in the dealer's geographic area upon which sales or service performance is measured, if the modification would substantially and adversely alter the rights or obligations of the dealer under the current franchise or selling agreement or would substantially impair the sales or service obligations or the dealer's investment; and

(x) To require, coerce, or attempt to coerce a motor vehicle dealer to substantially alter a facility or premises if:

(I) The facility or premises has been altered within the last seven years at a cost of more than two hundred fifty thousand dollars and the alteration was required and approved by the manufacturer, distributor, or manufacturer representative unless the motor vehicle dealer sells only motorcycles or motorcycles and powersports vehicles; except that this paragraph (x) does not apply to improvements made to comply with health or safety laws or to accommodate the technology requirements necessary to sell or service a line-make; or

(II) The motor vehicle dealer sells only motorcycles or motorcycles and powersports vehicles, the facility or premises has been altered within the last seven years at a cost of more than twenty-five thousand dollars, and the alteration was required and approved by the manufacturer, distributor, or manufacturer representative; except that this paragraph (x) does not apply to improvements made to comply with health or safety laws or to accommodate the technology requirements necessary to sell or service a line-make.

(2) It is unlawful for any person to act as a motor vehicle dealer, manufacturer, distributor, wholesaler, manufacturer representative, used motor vehicle dealer, buyer agent, wholesale motor vehicle auction dealer, or motor vehicle salesperson unless such person has been duly licensed under the provisions of this part 1, except for persons exempt from licensure as a manufacturer pursuant to section 12-6-102 (11); however, such persons shall comply with all other applicable requirements for manufacturers, including, but not limited to, those pertaining to vehicle identification numbers and manufacturers' statements of origin.

(3) It is unlawful and a violation of this part 1 for a buyer's agent to engage in the following:

(a) To make a material misstatement in an application for a license;

(b) To willfully fail to perform or cause to be performed any written agreement with respect to any motor vehicle or parts thereof;

(c) To defraud any buyer, seller, motor vehicle salesperson, or financial institution;

(d) To intentionally enter into a financial agreement with a seller of a motor vehicle for the buyer agent's own benefit;

(e) To coerce any motor vehicle dealer into providing installment financing with a specified financial institution.

Source: L. 71: R&RE, p. 253, § 1. C.R.S. 1963: § 13-11-20. L. 88: (2) amended, p. 477, § 14, effective July 1. L. 89: (2) amended, p. 642, § 2, effective April 6. L. 92: (2) amended and (3) added, p. 1861, § 22, effective July 1. L. 2000: (1)(d) and (1)(h) amended and (1)(j) to (1)(o) added, p. 1600, § 1, effective June 1. L. 2003: IP(1), (1)(b), (1)(i), (2), and IP(3) amended, p. 1302, § 8, effective April 22. L. 2009: (1)(i), (1)(k), and (1)(l)(I)(A) amended and (1)(p), (1)(q), (1)(r), and (1)(s) added, (SB 09-091), ch. 80, p. 289, §§ 2, 1, effective July 1; (1)(t) added, (SB 09-075), ch. 418, p. 2319, § 1, effective August 5. L. 2010: (1)(r)(II) and (1)(s) amended and (1)(u) and (1)(v) added, (HB 10-1049), ch. 32, p. 115, § 2, effective March 22. L. 2011: IP(1) amended and (1)(w) and (1)(x) added, (HB 11-1188), ch. 175, p. 660, § 2, effective May 13.

ANNOTATION

Annotator's note. Since § 12-6-120 is similar to repealed § 13-11-14, CRS 53, as amended, a relevant case construing that provision has been included in the annotations to this section.

Subsection (1)(h) is unconstitutionally vague because persons of common intelligence must guess at the meaning of the term prohibiting the addition of a franchise if it "would be inequitable to the existing dealer". *Mike Naughton Ford, Inc. v. Ford Motor Co.*, 862 F. Supp. 264 (D. Colo. 1994).

Former provisions violated the commerce clause of the United States constitution. *GMC v. Blevins*, 144 F. Supp. 381 (D. Colo. 1956).

While it may be conceded that, under its police power, a state may protect its people against coercion, inducement is another thing. *GMC v. Blevins*, 144 F. Supp. 381 (D. Colo. 1956).

There is nothing evil or wrong about inducing; it is simply the process of salesmanship. *GMC v. Blevins*, 144 F. Supp. 381 (D. Colo. 1956).

According to Webster's New International Dictionary, "induce" means "to lead on, to influence, to prevail on to move by persuasion or influence". *GMC v. Blevins*, 144 F. Supp. 381 (D. Colo. 1956).

"Induce" is to persuade by legitimate argument or demonstration, and is distinguished from "coerce", which is to compel by threat or other wrongful action. *GMC v. Blevins*, 144 F. Supp. 381 (D. Colo. 1956).

Salesmanship is part of the American way of life, and the selling of new products re-

quires inducement. *GMC v. Blevins*, 144 F. Supp. 381 (D. Colo. 1956).

For failure to provide an ascertainable standard of guilt, see *GMC v. Blevins*, 144 F. Supp. 381 (D. Colo. 1956).

The appointment of a replacement dealership for a previously established distribution point does not fall within the definition of "additional franchise" under subsection (1)(h). The appointment would simply maintain the same number of dealerships authorized in the area prior to the dispute. *Mike Naughton Ford, Inc. v. Ford Motor Co.*, 862 F. Supp. 264 (D. Colo. 1994).

Use of the phrase "including, but not limited to" in subsection (1)(d)(II) is not restrictive. Where dealer contract, by its terms, could be renewed only "upon joint agreement" of the dealer and manufacturer, manufacturer had "just cause" and did not violate subsection (1)(d) when it failed to renew dealer contract. *Maehal Enters., Inc. v. Thunder Mtn. Custom Cycles, Inc.*, __ P.3d __ (Colo. App. 2011).

For purposes of the manufacturer's obligation to repurchase unsold motor vehicles as required in subsection (1)(I)(I)(A), "acquired" means the point at which the dealer takes possession of the motor vehicles, regardless of when the dealer obtains the certificates of title for the motor vehicles. *Maehal Enters., Inc. v. Thunder Mtn. Custom Cycles, Inc.*, __ P.3d __ (Colo. App. 2011).

Applied in *Gage v. General Motors Corp.*, 796 F.2d 345 (10th Cir. 1986).

12-6-120.3. New, reopened, or relocated dealer - notice required - grounds for refusal of dealer license - definitions - rules. (1) No manufacturer or distributor shall establish an additional new motor vehicle dealer, reopen a previously existing motor vehicle dealer, or relocate an existing motor vehicle dealer without first providing at least sixty days' notice to all of its franchised dealers and former dealers whose franchises were terminated, cancelled, or not renewed by a manufacturer, distributor, or manufacturer representative in the previous five years due to the insolvency of the manufacturer or distributor within whose relevant market area the new, reopened, or relocated dealer would be located. The notice shall state:

(a) The specific location at which the additional, reopened, or relocated motor vehicle dealer will be established;

(b) The date on or after which the manufacturer intends to be engaged in business with the additional, reopened, or relocated motor vehicle dealer at the proposed location;

(c) The identity of all motor vehicle dealers who are franchised to sell the same line-make of vehicles with licensed locations in the relevant market area where the additional, reopened, or relocated motor vehicle dealer is proposed to be located; and

(d) The names and addresses of the dealer-operator and principal investors in the proposed additional, reopened, or relocated motor vehicle dealer.

(1.5) A manufacturer shall reasonably approve or disapprove of a motor vehicle dealer facility initial site location or relocation request within sixty days after the request or after sending the notice required by subsection (1) of this section to all of its franchised dealers

and former dealers whose franchises were terminated, cancelled, or not renewed in the previous five years due to the insolvency of the manufacturer or distributor, whichever is later, but not to exceed one hundred days.

(2) Subsection (1) of this section shall not apply to:

(a) The relocation of an existing dealer within two miles of its current location; or

(b) The establishment of a replacement dealer, within two years, either at the former location or within two miles of the former location.

(3) As used in this section:

(a) "Manufacturer" means a motor vehicle manufacturer, distributor, or manufacturer representative.

(b) "Relevant market area" means the greater of the following:

(I) The geographic area of responsibility defined in the franchise agreement of an existing dealer; or

(II) The geographic area within a radius of five miles of any existing dealer of the same line-make of vehicle that is located in a county with a population of more than one hundred fifty thousand or within a radius of ten miles of an existing dealer of the same line-make of vehicles that is located in a county with a population of one hundred fifty thousand or less.

(c) "Right of first refusal area" means a five-mile radius extending from the location of where a motor vehicle dealer had a franchise terminated, cancelled, or not renewed if the franchise was in a county with a population of more than one hundred fifty thousand or a ten-mile radius if the franchise was in a county with a population of one hundred fifty thousand or less.

(4) (a) If a licensee or former licensee whose franchise was terminated, cancelled, or not renewed by the manufacturer, distributor, or manufacturer representative in the previous five years due to the insolvency of the manufacturer or distributor brings an action or proceeding before the executive director or a court pursuant to this part 1, the manufacturer shall have the burden of proof on the following issues:

(I) The size and permanency of investment and obligations incurred by the existing motor vehicle dealers of the same line-make located in the relevant market area;

(II) Growth or decline in population and new motor vehicle registrations in the relevant market area;

(III) The effect on the consuming public in the relevant market area and whether the opening of the proposed additional, reopened, or relocated dealer is injurious or beneficial to the public welfare; and

(IV) Whether the motor vehicle dealers of the same line-make in the relevant market area are providing adequate and convenient customer care for motor vehicles of the same line-make in the relevant market area, including but not limited to the adequacy of sales and service facilities, equipment, parts, and qualified service personnel.

(b) (I) In addition to the powers specified in section 12-6-105, the executive director has jurisdiction to resolve actions or proceedings brought before the executive director pursuant to this part 1 that allege a violation of this part 1 or rules promulgated pursuant to this part 1. The executive director may promulgate rules to facilitate the administration of such actions or proceedings, including provisions specifying procedures for the executive director or the executive director's designee to:

(A) Conduct an investigation pursuant to section 12-6-105 (1) (d) of an alleged violation of this part 1 or rules promulgated pursuant to this part 1, including issuance of a notice of violation;

(B) Hold a hearing regarding the alleged violation to be held pursuant to section 24-4-105, C.R.S.;

(C) Issue an order, including a cease-and-desist order issued pursuant to section 12-6-105 (1) (f), to resolve the notice of violation; and

(D) Impose a fine pursuant to section 12-6-105 (1) (f) (III).

(II) The court of appeals has initial jurisdiction to review all final actions and orders that are subject to judicial review of the executive director made pursuant to this subsection (4). Such proceedings shall be conducted in accordance with section 24-4-106, C.R.S.

(5) (a) No manufacturer, distributor, or manufacturer representative shall offer or award a person a franchise or permit the relocation of an existing franchise to the right of

first refusal area unless the manufacturer, distributor, or manufacturer representative has complied with paragraph (b) of this subsection (5) or unless paragraph (b) of this subsection (5) does not apply.

(b) If a manufacturer, distributor, or manufacturer representative, or the predecessor thereof, has terminated, cancelled, or not renewed a motor vehicle dealer's franchise for a line-make within the right of first refusal area due to the insolvency of the manufacturer or distributor that was held by the motor vehicle dealer immediately prior to the franchise being terminated, cancelled, or not renewed within the amount of time the right of first refusal is granted under paragraph (c) of this subsection (5), the manufacturer, distributor, or manufacturer representative, or the successor thereof, shall offer the former motor vehicle dealer whose franchise was terminated, cancelled, or not renewed a franchise within the first refusal area prior to making the offer to any other person for the same line-make unless the former motor vehicle dealer elects to receive the payments required by section 12-6-120 (1) (l) and (1) (r) in lieu of the right of first refusal or the motor vehicle dealer has accepted compensation from the manufacturer, distributor, or manufacturer representative for the termination, cancellation, or nonrenewal of the franchise agreement.

(c) The duration of the right of first refusal granted in paragraph (b) of this subsection (5) is equal to five years after the franchise is terminated, cancelled, or not renewed.

(d) If a manufacturer, distributor, or manufacturer representative, or the predecessor thereof, has made any payment to the motor vehicle dealer in consideration for the termination, cancellation, or nonrenewal of a franchise agreement and the motor vehicle dealer obtains a new franchise agreement through this subsection (5), the motor vehicle dealer shall reimburse the manufacturer, distributor, or manufacturer representative for such payments. The motor vehicle dealer may reimburse the manufacturer, distributor, or manufacturer representative with a commercially reasonable repayment installment plan.

(e) The right of first refusal survives a court voiding the payments required by section 12-6-120 (1) (l) and (1) (r).

(f) (I) The right of first refusal survives a manufacturer, distributor, or manufacturer representative, or predecessor thereof, awarding a franchise within the same right of first refusal for the same line-make to a person or entity other than the former motor vehicle dealer whose franchise was terminated, cancelled, or not renewed.

(II) If a manufacturer, distributor, or manufacturer representative, or predecessor thereof, has awarded the franchise to another motor vehicle dealer in the same right of first refusal area without granting the right of first refusal under this section, the former motor vehicle dealer may elect to either receive a franchise agreement in the same area or the payments required by section 12-6-120 (1) (l) and (1) (r) from the manufacturer, distributor, or manufacturer representative unless the manufacturer, distributor, or manufacturer representative, or predecessor thereof, has paid compensation in consideration of the initial termination, cancellation, or nonrenewal of the franchise agreement.

Source: L. 2000: Entire section added, p. 1603, § 2, effective June 1. L. 2003: (3)(a) amended, p. 1303, § 9, effective April 22. L. 2006: (4) amended, p. 1061, § 1, effective May 25. L. 2009: (1.5) added, (SB 09-091), ch. 80, p. 291, § 3, effective July 1. L. 2010: IP(1), (1.5), and IP(4)(a) amended and (3)(c) and (5) added, (HB 10-1049), ch. 32, p. 116, §§ 4, 3, effective March 22.

12-6-120.5. Independent control of dealer - definitions. (1) Except as otherwise provided in this section, no manufacturer shall own, operate, or control any motor vehicle dealer or used motor vehicle dealer in Colorado.

(2) Notwithstanding subsection (1) of this section, the following activities are not prohibited:

(a) (I) Except as provided in subparagraph (II) of this paragraph (a), operation of a dealer for a temporary period, not to exceed twelve months, during the transition from one owner or operator to another independent owner or operator; except that the executive director may extend the period, not to exceed twenty-four months, upon showing by the manufacturer or distributor of the need to operate the dealership for such time to achieve a transition from an owner or operator to another independent third-party owner or operator;

(II) Operation of a dealer that sells recreational vehicles for not more than eighteen months during the transition from one owner or operator to another independent owner or operator;

(b) Ownership or control of a dealer while the dealer is being sold under a bona fide contract or purchase option to the operator of the dealer;

(c) Participation in the ownership of the dealer solely for the purpose of providing financing or a capital loan that will enable the dealer to become the majority owner of the dealer in less than seven years;

(d) Operation of a motor vehicle dealer if the manufacturer has no other dealers of the same line-make in this state;

(e) Ownership, operation, or control of a used motor vehicle dealer if the manufacturer owned, operated, or controlled the used motor vehicle dealer on January 1, 2009, and has continuously operated or controlled the used motor vehicle facilities after January 1, 2009; and

(f) Operation of a motor vehicle dealer if the manufacturer was operating the dealer on January 1, 2009, so long as the dealer is in continuous operation after January 1, 2009.

(3) As used in this section:

(a) "Control" means to possess, directly, the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise; except that "control" does not include the relationship between a manufacturer and a motor vehicle dealer under a franchise agreement.

(b) "Manufacturer" means a motor vehicle manufacturer, distributor, or manufacturer representative.

(c) "Operate" means to directly or indirectly manage a motor vehicle dealer.

(d) "Own" means to hold any beneficial ownership interest of one percent or more of any class of equity interest in a dealer, whether as a shareholder, partner, limited liability company member, or otherwise. To "hold" an ownership interest means to have possession of, title to, or control of the ownership interest, either directly or through a fiduciary or agent.

(4) This section shall not apply to manufacturers of vehicles with a passenger capacity of thirty-two or more.

Source: **L. 2000:** Entire section added, p. 1603, § 2, effective June 1. **L. 2003:** (3)(b) amended, p. 1303, § 10, effective April 22. **L. 2009:** (1) and (2)(a) amended and (2)(e) added, (SB 09-091), ch. 80, p. 292, § 4, effective July 1; (2)(a)(II) amended, (SB 09-292), ch. 369, p. 1946, § 20, effective August 5. **L. 2010:** (2)(d) amended and (2)(f) added, (HB 10-1049), ch. 32, p. 118, § 5, effective March 22.

ANNOTATION

Subsection (1) does not prohibit a motor vehicle manufacturer from owning, operating, or controlling a used motor vehicle dealer. Int'l Truck & Engine Corp. v. Colo. Dept. of Rev., 155 P.3d 640 (Colo. App. 2007).

Use of the word "any" before the term motor vehicle dealer does not expand the definition of that term to include a "used motor vehicle dealer". Int'l Truck & Engine Corp. v. Colo. Dept. of Rev., 155 P.3d 640 (Colo. App. 2007).

12-6-120.7. Successor under existing franchise agreement - duties of manufacturer. (1) If a licensed motor vehicle dealer under franchise by a manufacturer dies or becomes incapacitated, the manufacturer shall act in good faith to allow a successor, which may include a family member, designated by the deceased or incapacitated motor vehicle dealer to succeed to ownership and operation of the dealer under the existing franchise agreement if:

(a) Within ninety days after the motor vehicle dealer's death or incapacity, the designated successor gives the manufacturer written notice of an intent to succeed to the rights of the deceased or incapacitated motor vehicle dealer in the franchise agreement;

(b) The designated successor agrees to be bound by all of the terms and conditions of the existing franchise agreement; and

(c) The designated successor meets the criteria generally applied by the manufacturer in qualifying motor vehicle dealers.

(2) A manufacturer may refuse to honor the existing franchise agreement with the designated successor only for good cause. The manufacturer may request in writing from a designated successor the personal and financial data that is reasonably necessary to determine whether the existing franchise agreement should be honored, and the designated successor shall supply such data promptly upon request.

(3) (a) If a manufacturer believes that good cause exists for refusing to honor the requested succession, the manufacturer shall send the designated successor, by certified or overnight mail, notice of its refusal to approve the succession within sixty days after the later of:

(I) Receipt of the notice of the designated successor's intent to succeed the motor vehicle dealer in the ownership and operation of the dealer; or

(II) The receipt of the requested personal and financial data.

(b) Failure to serve the notice pursuant to paragraph (a) of this subsection (3) shall be considered approval of the designated successor, and the franchise agreement is considered amended to reflect the approval of the succession the day following the last day of the notice period specified in said paragraph (a).

(c) If the manufacturer gives notice of refusal to approve the succession, such notice shall state the specific grounds for the refusal and shall state that the franchise agreement shall be discontinued not less than ninety days after the date the notice of refusal is served unless the proposed successor files an action in the district court to enjoin such action.

(4) This section shall not be construed to prohibit a motor vehicle dealer from designating a person as the successor in advance, by written instrument filed with the manufacturer. If the motor vehicle dealer files such an instrument, that instrument governs the succession rights to the management and operation of the dealer subject to the designated successor satisfying the manufacturer's qualification requirements as described in this section.

(5) This section shall not apply to manufacturers of vehicles with a passenger capacity of thirty-two or more.

Source: L. 2000: Entire section added, p. 1603, § 2, effective June 1.

12-6-121. Penalty. Any person who willfully violates any of the provisions of this part 1 or who willfully commits any offense in this part 1 declared to be unlawful commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.; except that any person who violates the provisions of section 12-6-120 (2) commits a class 3 misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars or more than one thousand dollars for each separate offense; except that, if the violator is a corporation, the fine shall be not less than five hundred dollars or more than two thousand five hundred dollars for each separate offense. A second conviction shall be punished by a fine of two thousand five hundred dollars.

Source: L. 71: R&RE, p. 254, § 1. C.R.S. 1963: § 13-11-21. L. 87: Entire section amended, p. 609, § 20, effective July 1. L. 88: Entire section amended, p. 478, § 15, effective July 1. L. 92: Entire section amended, p. 1862, § 23, effective July 1. L. 2002: Entire section amended, p. 1472, § 47, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-6-121.5. Fines - disposition - unlicensed sales. Any fine collected for a violation of section 12-6-120 (2) shall be awarded to the law enforcement agency which investigated and issued the citation for said violation.

Source: L. 88: Entire section added, p. 479, § 18, effective July 1.

12-6-121.6. Drafts not honored for payment - penalties. (1) If a motor vehicle dealer, wholesaler, or used motor vehicle dealer issues a draft or check to a motor vehicle dealer, wholesaler, used motor vehicle dealer, motor vehicle auction house, or consignor and fails to honor such draft or check, then the license of such licensee shall be subject to suspension pursuant to section 12-6-104 (3) (e) (I). The license suspension shall be effective upon the date of any final decision against such licensee based upon the unpaid draft or check. A licensee whose license has been suspended pursuant to the provisions of this subsection (1) shall not be eligible for reinstatement of such license and shall not be eligible to apply for any other license issued under this part 1 unless it is demonstrated to the board that the unpaid draft or check has been paid in full and that any fine imposed on the licensee pursuant to subsection (2) of this section has been paid in full.

(2) Any motor vehicle dealer, wholesaler, or used motor vehicle dealer which issues a draft or check to a motor vehicle dealer, wholesaler, used motor vehicle dealer, motor vehicle auction house, or consignor and who fails to honor such draft or check, causing loss to a third party, commits a misdemeanor and shall be punished by a fine of two thousand five hundred dollars. Any fine collected for a violation of this subsection (2) shall be awarded to the law enforcement agency which investigated and issued the citation for said violation.

Source: L. 90: Entire section added, p. 759, § 3, effective July 1. L. 92: (1) amended, p. 1862, § 24, effective July 1.

12-6-122. Right of action for loss. (1) If any person suffers loss or damage by reason of any fraud practiced on such person or fraudulent representation made to such person by a licensed dealer or one of the dealer's salespersons acting for the dealer on such dealer's behalf or within the scope of the employment of the salesperson or suffers any loss or damage by reason of the violation by such dealer or salesperson of any of the provisions of this part 1 that are designated by the board by rule, whether or not such violation is the basis for denial, suspension, or revocation of a license, such person shall have a right of action against the dealer, such dealer's motor vehicle salespersons, and the sureties upon their respective bonds. The right of a person to recover for loss or damage as provided in this subsection (1) against the dealer or salesperson shall not be limited to the amount of their respective bonds.

(2) If any person suffers any loss or damage by reason of any unlawful act as provided in section 12-6-120 (1) (a), such person shall have a right of action against the manufacturer, distributor, or manufacturer representative. In any court action wherein a manufacturer, distributor, or manufacturer representative has been found liable in damages to any person under this part 1, the amount of damages so determined shall be trebled and shall be recoverable by the person so damaged. Any person so damaged shall also be entitled to recover reasonable attorney fees as part of his or her damages.

(3) If any licensee suffers any loss or damage because of a violation of section 12-6-120 (1) or 12-6-120.3 (5), the licensee shall have a right of action against the manufacturer, distributor, or manufacturer representative. In any court action wherein a manufacturer, distributor, or manufacturer representative has been found liable in damages to any licensee under this part 1, any licensee so damaged shall also be entitled to recover reasonable attorney fees and costs as part of his or her damages.

Source: L. 71: R&RE, p. 254, § 1. C.R.S. 1963: § 13-11-22. L. 88: (1) amended, p. 478, § 16, effective July 1. L. 92: (1) amended, p. 1862, § 25, effective July 1. L. 98: (1) amended, p. 599, § 18, effective July 1. L. 2003: (2) and (3) amended, p. 1303, § 11, effective April 22. L. 2010: (3) amended, (SB 10-201), ch. 409, p. 2022, § 3, effective June 10.

ANNOTATION

Annotator's note. Since § 12-6-122 is similar to repealed § 13-11-11, C.R.S. 1963, and § 13-11-11, CRS 53, relevant cases construing those provisions have been included in the annotations to this section.

Any person who suffers loss or damage by reason of a violation by any automobile dealer of any of the laws of this state respecting commerce in motor vehicles shall have a right of action not only against the automobile dealer but also against the surety on the dealer's bond. *Nat'l Motors, Inc. v. Newman*, 29 Colo. App. 380, 484 P.2d 125 (1971).

Where plaintiff elects to bring an original action against both the principal and the surety, he is bound by whatever takes place in said proceeding. *Massachusetts Bonding & Ins. Co. v. Ginsberg*, 131 Colo. 1, 278 P.2d 1018 (1955).

When the trial court in that suit enters a final judgment of dismissal, it becomes a final determination as to the nonliability of the bonding company. *Massachusetts Bonding & Ins. Co. v. Ginsberg*, 131 Colo. 1, 278 P.2d 1018 (1955).

An essential element of fraud is that the misrepresentation relied on must be of an

existing or past material fact. *United Fire & Cas. Co. v. Nissan Motor Corp.* in U.S.A., 164 Colo. 42, 433 P.2d 769 (1967).

The trial court's findings that there was constructive fraud was erroneous because no showing was made that the automobile distributor had a right to rely on what the dealer said prior to the creation of the distributorship. *United Fire & Cas. Co. v. Nissan Motor Corp.* in U.S.A., 164 Colo. 42, 433 P.2d 769 (1967).

No fiduciary relationship existed, and the dealer was not the distributor's agent in a legal sense because he purchased the automobiles and parts from the former and sold them as he desired, apparently without any control, and no prior business agency nor professional or confidential relationship and no family ties were shown which might have impelled or induced the distributor to relax the care and vigilance it would and should have ordinarily exercised in dealing with a stranger. *United Fire & Cas. Co. v. Nissan Motor Corp.* in U.S.A., 164 Colo. 42, 433 P.2d 769 (1967).

Dealer may recover its loss or damage under subsection (3) where manufacturer violates independent control of dealer provision. *Maehal Enters., Inc. v. Thunder Mtn. Custom Cycles, Inc.*, __ P.3d __ (Colo. App. 2011).

12-6-122.5. Contract disputes - venue - choice of law. (1) In the event of a dispute between a motor vehicle dealer and a manufacturer under a franchise agreement, notwithstanding any provision of the agreement to the contrary:

(a) At the option of the motor vehicle dealer, venue shall be proper in the county or judicial district where the dealer resides or has its principal place of business; and

(b) Colorado law shall govern, both substantively and procedurally.

Source: L. 2000: Entire section added, p. 1603, § 2, effective June 1.

12-6-123. Disposition of fees - auto dealers license fund. (1) All moneys received under this part 1, except fines awarded pursuant to section 12-6-121.5, shall be deposited with the state treasurer by the department of revenue, subject to the provisions of section 24-35-101, C.R.S., together with a detailed statement of such receipts, and such funds deposited with the state treasurer shall constitute a fund to be known as the auto dealers license fund, which fund is hereby created and which shall be used under the direction of the board in the following manner:

(a) Repealed.

(b) (I) For the payment of the expenses of the administration of the board as the general assembly deems necessary by making an appropriation therefor on an annual fiscal-year basis commencing July 1, 1971, and thereafter.

(II) Any money remaining in said fund on December 31, 1971, and at the close of each calendar year thereafter, after costs of administration of the law as provided in this part 1 shall remain in the auto dealers license fund to be used for educational and enforcement purposes as appropriated by the general assembly.

(c) To pay the department of revenue for the administration of actions or proceedings brought before the executive director pursuant to section 12-6-120.

(2) (a) Notwithstanding any provision of subsection (1) of this section to the contrary, on March 27, 2002, the state treasurer shall deduct one million one hundred thousand

dollars from the auto dealers license fund and transfer such sum to the general fund; except that, if the balance of moneys in the auto dealers license fund on March 27, 2002, is less than one million one hundred thousand dollars, the state treasurer shall transfer the balance of moneys in the fund to the general fund.

(b) Notwithstanding any provision of subsection (1) of this section to the contrary and in addition to any amount transferred pursuant to paragraph (a) of this subsection (2):

(I) On May 28, 2002, the state treasurer shall transfer an amount equal to the balance of the auto dealers license fund as of April 30, 2002, to the general fund.

(II) Except as otherwise provided in this subparagraph (II), for each succeeding calendar month of the 2001-02 fiscal year, through June 30, 2002, the state treasurer shall transfer the amount of moneys credited to the auto dealers license fund during such calendar month to the general fund no later than the last day of the month in which such moneys were credited to the auto dealers license fund. However, the aggregate amount of moneys transferred from the auto dealers license fund to the general fund pursuant to paragraph (a) of this subsection (2), subparagraph (I) of this paragraph (b), and this subparagraph (II) shall not exceed one million one hundred thousand dollars.

Source: L. 71: R&RE, p. 254, § 1. C.R.S. 1963: § 13-11-23. L. 79: IP(1) amended, p. 1632, § 6, effective July 19. L. 81: (1)(a) repealed, p. 674, § 5, effective July 1. L. 88: IP(1) amended, p. 478, § 17, effective July 1. L. 2002: (2) added, p. 151, § 4, effective March 27; (2) amended, p. 672, § 5, effective May 28. L. 2006: (1)(d) added, p. 1062, § 2, effective May 25. L. 2007: (1) amended, p. 2021, § 16, effective June 1.

12-6-124. Repeal of article. This article is repealed, effective July 1, 2017. Prior to such repeal, the motor vehicle dealer board and the functions of the executive director, including licensing, shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 79: Entire section added, p. 1610, § 2, effective June 7. L. 83: (1) amended, p. 518, § 1, effective March 15. L. 88: (1) and (2) amended, p. 928, § 2, effective April 28. L. 90: (1) amended, p. 332, § 12, effective April 3. L. 91: Entire section amended, p. 679, § 10, April 20. L. 92: Entire section amended, p. 1863, § 26, effective July 1. L. 98: Entire section amended, p. 417, § 1, effective July 1; entire section amended, p. 600, § 19, effective July 1. L. 2003: Entire section amended, p. 1304, § 12, effective April 22. L. 2004: Entire section amended, p. 348, § 8, effective July 1. L. 2007: Entire section amended, p. 1582, § 12, effective July 1.

Editor's note: This section was amended in House Bill 98-1128. Those amendments were superseded by the amendment to this section in House Bill 98-1123.

12-6-125. Advertisement - inclusion of dealer name. No motor vehicle dealer or used motor vehicle dealer or any agent of either of said dealers shall advertise any offer for the sale, lease, or purchase of a motor vehicle or a used motor vehicle which creates the false impression that the vehicle is being offered by a private party or by a motor vehicle agent or which does not contain the name of the dealer or the word "dealer" or, if the name is contained in the offer and does not clearly reflect that the business is a dealer, both the name of the dealer and the word "dealer".

Source: L. 88: Entire section added, p. 479, § 18, effective July 1.

Editor's note: This section was numbered as § 12-6-126 by House Bill 88-1363, Session Laws of Colorado 1988, chapter 79, section 18, but was renumbered on revision for ease of location.

12-6-126. Audit reimbursement limitations - dealer claims. (1) (a) A manufacturer, distributor, or manufacturer representative shall have the right to audit warranty, sales, or incentive claims of a motor vehicle dealer for nine months after the date the claim was submitted.

(b) A manufacturer, distributor, or manufacturer representative shall not require documentation for warranty, sales, or incentive claims or audit warranty, sales, or incentive claims of a motor vehicle dealer more than fifteen months after the date the claim was submitted, nor shall the manufacturer require a charge back, reimbursement, or credit against a future transaction arising out of an audit or request for documentation arising more than nine months after the date the claim was submitted.

(2) The motor vehicle dealer shall have nine months after making a sale or providing service to submit warranty, sales, or incentive claims to the manufacturer, distributor, or manufacturer representative.

(3) Subsection (1) of this section shall not limit any action for fraud instituted in a court of competent jurisdiction.

(4) A motor vehicle dealer may request a determination from the executive director, within thirty days, that a charge back, reimbursement, or credit required violates subsection (1) of this section. If a determination is requested within the thirty-day period, then the charge back, reimbursement, or credit shall be stayed pending the decision of the executive director. If the executive director determines after a hearing that the charge back, reimbursement, or credit violates subsection (1) of this section, the charge back, reimbursement, or credit shall be void.

Source: L. 2009: Entire section added, (SB 09-091), ch. 80, p. 292, § 5, effective July 1. **L. 2010:** (1) and (2) amended, (HB 10-1049), ch. 32, p. 118, § 6, effective March 22.

12-6-127. Reimbursement for right of first refusal. A manufacturer or distributor shall pay reasonable attorney fees, not to exceed the usual and customary fees charged for the transfer of a franchise, and reasonable expenses that are incurred by the proposed owner or transferee before the manufacturer or distributor exercised its right of first refusal in negotiating and implementing the contract for the proposed change of ownership or the transfer of assets. Payment of attorney fees and expenses is not required if the claimant has failed to submit an accounting of attorney fees and expenses within twenty days after the receipt of the manufacturer's or dealer's written request for an accounting. An expense accounting may be requested by the manufacturer or distributor before exercising its right of first refusal.

Source: L. 2009: Entire section added, (SB 09-091), ch. 80, p. 293, § 5, effective July 1.

12-6-128. Payout exemption to execution. A motor vehicle dealer's right to receive payments from a manufacturer or distributor required by section 12-6-120 (1) (l) and (1) (r) is not liable to attachment or execution and may not otherwise be seized, taken, appropriated, or applied in a legal or equitable process or by operation of law to pay the debts or liabilities of the manufacturer or distributor. This section shall not prohibit a secured creditor from exercising rights accrued pursuant to a security agreement if the right arose as a result of the manufacturer or distributor voluntarily creating a security interest before paying existing debts or liabilities of the manufacturer or distributor. This section shall not prohibit a manufacturer or distributor from withholding a portion of such payments necessary to cover an amount of money owed to the manufacturer or distributor as an offset to such payments if the manufacturer or distributor provides the motor vehicle dealer written notice thereof.

Source: L. 2010: Entire section added, (HB 10-1049), ch. 32, p. 119, § 7, effective March 22.

12-6-129. Site control extinguishes. If a manufacturer, distributor, or manufacturer representative has terminated, eliminated, or not renewed a franchise agreement containing a site control provision, the motor vehicle dealer may void a site control provision of a franchise agreement by returning any money the dealer has accepted in exchange for site

control prorated by the time remaining before the agreement expires over the time period between the agreement being signed and the agreement expiring. This section does not apply if the termination, elimination, or nonrenewal is for just cause in accordance with section 12-6-120 (1) (d).

Source: L. 2011: Entire section added, (HB 11-1188), ch. 175, p. 661, § 3, effective May 13.

12-6-130. Modification voidable. If a manufacturer, distributor, or manufacturer representative fails to comply with section 12-6-120 (1) (w) (II), the motor vehicle dealer may void the modification or replacement of the franchise agreement.

Source: L. 2011: Entire section added, (HB 11-1188), ch. 175, p. 661, § 3, effective May 13.

12-6-131. Termination appeal. A motor vehicle dealer who has reason to believe that a manufacturer, distributor, or manufacturer representative has violated section 12-6-120 (1) (d) or (1) (w) may appeal to the board by filing a complaint with the executive director. Upon receiving the complaint and upon a showing of specific facts that a violation has occurred, the executive director shall summarily issue a cease-and-desist order under section 12-6-105 (1) (f) staying the termination, elimination, modification, or nonrenewal of the franchise agreement. The cease-and-desist order remains in effect until the hearing required by section 12-6-105 (1) (f) is held. If a determination is made at the hearing required by section 12-6-105 (1) (f) that a violation occurred, the executive director shall make the cease-and-desist order permanent and take any actions authorized by section 12-6-104 (3). A motor vehicle dealer who appeals to the executive director maintains all rights under the franchise agreement until the later of the executive director issuing a decision or ninety days after the manufacturer, distributor, or manufacturer's representative provides the notice of termination unless the executive director finds that the termination, cancellation, or nonrenewal was for fraud, a misrepresentation, or committing a crime within the scope of the franchise agreement or in the operation of the dealership, in which case the franchise rights terminate immediately.

Source: L. 2011: Entire section added, (HB 11-1188), ch. 175, p. 661, § 3, effective May 13.

PART 2

ANTIMONOPOLY FINANCING LAW

12-6-201. Definitions. As used in this part 2, unless the context otherwise requires:

- (1) "Person" means any individual, firm, corporation, partnership, association, trustee, receiver, or assignee for the benefit of creditors.
- (2) "Sell", "sold", "buy", and "purchase" include exchange, barter, gift, and offer or contract to sell or buy.

Source: L. 37: p. 322, § 13. **CSA:** C. 16, § 419. **CRS 53:** § 13-15-13. **C.R.S. 1963:** § 13-15-13.

12-6-202. Exclusive finance agreements void - when. It is unlawful for any person who is engaged, either directly or indirectly, in the manufacture or distribution of motor vehicles, to sell or enter into contract to sell motor vehicles, whether patented or unpatented, to any person who is engaged or intends to engage in the business of selling such motor vehicles at retail in this state, on the condition or with an agreement or understanding, either express or implied, that such person so engaged in selling motor vehicles at retail in any manner shall finance the purchase or sale of any one or number of motor vehicles only with

or through a designated person or class of persons or shall sell and assign the conditional sales contracts, chattel mortgages, or leases arising from the sale of motor vehicles or any one or number thereof only to a designated person or class of persons, when the effect of the condition, agreement, or understanding so entered into may be to lessen or eliminate competition, or create or tend to create a monopoly in the person or class of persons who are designated, by virtue of such condition, agreement, or understanding to finance the purchase or sale of motor vehicles or to purchase such conditional sales contracts, chattel mortgages, or leases. Any such condition, agreement, or understanding is declared to be void and against the public policy of this state.

Source: L. 37: p. 317, § 2. CSA: C. 16, § 408. CRS 53: § 13-15-1. C.R.S. 1963: § 13-15-1.

12-6-203. Threat prima facie evidence of violation. Any threat, expressed or implied, made directly or indirectly to any person engaged in the business of selling motor vehicles at retail in this state by any person engaged, either directly or indirectly, in the manufacture or distribution of motor vehicles, that such person will discontinue or cease to sell, or refuse to enter into a contract to sell, or will terminate a contract to sell motor vehicles, whether patented or unpatented, to such person who is so engaged in the business of selling motor vehicles at retail, unless such person finances the purchase or sale of any one or number of motor vehicles only with or through a designated person or class of persons or sells and assigns the conditional sales contracts, chattel mortgages, or leases arising from his retail sales of motor vehicles or any one or number thereof only to a designated person or class of persons shall be prima facie evidence of the fact that such person so engaged in the manufacture or distribution of motor vehicles has sold or intends to sell the same on the condition or with the agreement or understanding prohibited in section 12-6-202.

Source: L. 37: p. 317, § 2. CSA: C. 16, § 408. CRS 53: § 13-15-2. C.R.S. 1963: § 13-15-2.

12-6-204. Threat by agent as evidence of violation. Any threat, expressed or implied, made directly or indirectly to any person engaged in the business of selling motor vehicles at retail in this state by any person, or any agent of any such person, who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages, or leases on motor vehicles in this state and is affiliated with or controlled by any person engaged, directly or indirectly, in the manufacture or distribution of motor vehicles, that such person so engaged in such manufacture or distribution shall terminate his contract with or cease to sell motor vehicles to such person engaged in the sale of motor vehicles at retail in this state unless such person finances the purchase or sale of any one or number of motor vehicles only or through a designated person or class of persons or sells and assigns the conditional sales contracts, chattel mortgages, or leases arising from his retail sale of motor vehicles or any one or any number thereof only to such person so engaged in financing the purchase or sale of motor vehicles or in buying conditional sales contracts, chattel mortgages, or leases on motor vehicles, shall be presumed to be made at the direction of and with the authority of such person so engaged in such manufacture or distribution of motor vehicles, and shall be prima facie evidence of the fact that such person so engaged in the manufacture or distribution of motor vehicles has sold or intends to sell the same on the condition or with the agreement or understanding prohibited in section 12-6-202.

Source: L. 37: p. 318, § 3. CSA: C. 16, § 409. CRS 53: § 13-15-3. C.R.S. 1963: § 13-15-3.

12-6-205. Offering consideration to eliminate competition. It is unlawful for any person who is engaged, directly or indirectly, in the manufacture or wholesale distribution only of motor vehicles, whether patented or unpatented, to pay or give, or contract to pay

or give, any thing or service of value to any person who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages, or leases on motor vehicles sold at retail within this state if the effect of any such payment or the giving of any such thing or service of value may be to lessen or eliminate competition, or tend to create or create a monopoly in the person or class of persons who receive or accept such thing or service of value.

Source: L. 37: p. 318, § 4. CSA: C. 16, § 410. CRS 53: § 13-15-4. C.R.S. 1963: § 13-15-4.

12-6-206. Accepting consideration to eliminate competition. It is unlawful for any person who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages, or leases on motor vehicles sold at retail within this state to accept or receive, or contract or agree to accept or receive, either directly or indirectly, any payment, thing, or service of value from any person who is engaged, either directly or indirectly, in the manufacture of or wholesale distribution only of motor vehicles, whether patented or unpatented, if the effect of the acceptance or receipt of any such payment, thing, or service of value may be to lessen or eliminate competition, or to create or tend to create a monopoly in the person who accepts or receives such payment, thing, or service of value or contracts or agrees to accept or receive the same.

Source: L. 37: p. 319, § 5. CSA: C. 16, § 411. CRS 53: § 13-15-5. C.R.S. 1963: § 13-15-5.

12-6-207. Recipient of consideration shall not buy mortgages. It is unlawful for any person who hereafter so accepts or receives, either directly or indirectly, any payment, thing, or service of value, as set forth in section 12-6-206, or contracts, either directly or indirectly, to receive any such payment, or thing, or service of value to thereafter finance or attempt to finance the purchase or sale of any motor vehicle or buy or attempt to buy any conditional sales contracts, chattel mortgages, or leases on motor vehicles sold at retail in this state.

Source: L. 37: p. 319, § 6. CSA: C. 16, § 412. CRS 53: § 13-15-6. C.R.S. 1963: § 13-15-6.

12-6-208. Quo warranto action. For a violation of any of the provisions of this part 2 by any corporation or association mentioned in this part 2, it is the duty of the attorney general or the district attorney of the proper county to institute proper suits or an action in the nature of quo warranto in any court of competent jurisdiction for the forfeiture of its charter rights, franchises, or privileges and powers exercised by such corporation or association, and for the dissolution of the same under the general statutes of the state.

Source: L. 37: p. 320, § 7. CSA: C. 16, § 413. CRS 53: § 13-15-7. C.R.S. 1963: § 13-15-7.

12-6-209. Violation by foreign corporation - penalty. Every foreign corporation and every foreign association exercising any of the powers, franchises, or functions of a corporation in this state violating any of the provisions of this part 2 is denied the right and prohibited from doing any business in this state, and it is the duty of the attorney general to enforce this provision by bringing proper proceedings by injunction or otherwise. The secretary of state is authorized to revoke the license of any such corporation or association heretofore authorized by him to do business in this state.

Source: L. 37: p. 320, § 8. CSA: C. 16, § 414. CRS 53: § 13-15-8. C.R.S. 1963: § 13-15-8.

12-6-210. Penalty. Any person who violates any of the provisions of this part 2, any person who is a party to any agreement or understanding, or to any contract prescribing any condition, prohibited by this part 2, and any employee, agent, or officer of any such person who participates, in any manner, in making, executing, enforcing, or performing, or in urging, aiding, or abetting in the performance of, any such contract, condition, agreement, or understanding and any person who pays or gives or contracts to pay or give any thing or service of value prohibited by this part 2, and any person who receives or accepts or contracts to receive or accept any thing or service of value prohibited by this part 2 commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S. Each day's violation of this provision shall constitute a separate offense.

Source: L. 37: p. 320, § 9. CSA: C. 16, § 415. CRS 53: § 13-15-9. C.R.S. 1963: § 13-15-9. L. 77: Entire section amended, p. 872, § 29, effective July 1, 1979. L. 89: Entire section amended, p. 823, § 16, effective July 1. L. 2002: Entire section amended, p. 1473, § 48, effective October 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See *People v. McKenna*, 199 Colo. 452, 611 P.2d 54 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-6-211. Contract void. Any contract or agreement in violation of the provisions of this part 2 shall be absolutely void and shall not be enforceable either in law or equity.

Source: L. 37: p. 321, § 10. CSA: C. 16, § 416. CRS 53: § 13-15-10. C.R.S. 1963: § 13-15-10.

12-6-212. Provisions cumulative. The provisions of this part 2 shall be held cumulative of each other and of all other laws in any way affecting them now in force in this state.

Source: L. 37: p. 321, § 11. CSA: C. 16, § 417. CRS 53: § 13-15-11. C.R.S. 1963: § 13-15-11.

12-6-213. Damages. In addition to the criminal and civil penalties provided in this part 2, any person who is injured in his business or property by any other person or corporation or association or partnership, by reason of any thing forbidden or declared to be unlawful by this part 2, may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount of controversy, and to recover twofold the damages sustained by him, and the costs of suit. When it appears to the court before which any proceedings under this part 2 are pending that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending or not.

Source: L. 37: p. 321, § 12. CSA: C. 16, § 418. CRS 53: § 13-15-12. C.R.S. 1963: § 13-15-12.

PART 3

SUNDAY CLOSING LAW

12-6-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Motor vehicle" means every self-propelled vehicle intended primarily for use and operation on the public highways and every vehicle intended primarily for operation on the

public highways which is not driven or propelled by its own power, but which is designed either to be attached to or become a part of a self-propelled vehicle; it does not include farm tractors and other machines and tools used in the production, harvesting, and care of farm products.

Source: L. 55: p. 214, § 1. CRS 53: § 13-20-1. C.R.S. 1963: § 13-20-1.

12-6-302. Sunday closing. No person, firm, or corporation, whether owner, proprietor, agent, or employee, shall keep open, operate, or assist in keeping open or operating any place or premises or residences, whether open or closed, for the purpose of selling, bartering, or exchanging or offering for sale, barter, or exchange any motor vehicle, whether new, used, or secondhand, on the first day of the week commonly called Sunday. This part 3 shall not apply to the opening of an establishment or place of business on the said first day of the week for other purposes, such as the sale of petroleum products, tires, or automobile accessories, or for the purpose of operating and conducting a motor vehicle repair shop, or for the purpose of supplying such services as towing or wrecking. The provisions of this part 3 shall not apply to the opening of an establishment or place of business on the said first day of the week for the purpose of selling, bartering, or exchanging or offering for sale, barter, or exchange any boat, boat trailer, snowmobile, or snowmobile trailer.

Source: L. 55: p. 214, § 2. CRS 53: § 13-20-2. C.R.S. 1963: § 13-20-2. L. 88: Entire section amended, p. 479, § 19, effective July 1.

ANNOTATION

Law reviews. For comment on *Mosko v. Dunbar*, appearing below, see 34 Dicta 182 (1957). For article, "One Year Review of Constitutional and Administrative Law", see 35 Dicta 7 (1958).

The Sunday closing law did not violate the due process or equal protection clause of the fourteenth amendment of the United States constitution. *Mosko v. Dunbar*, 135 Colo. 172, 309 P.2d 581 (1957).

The Sunday closing law does not violate § 25 of art. V, Colo. Const., which prohibits special legislation. *Mosko v. Dunbar*, 135 Colo. 172, 309 P.2d 581 (1957).

The fact that the sale of motor vehicles is singled out for legislative treatment is no ground for complaint if there is any reasonable basis for such action. *Mosko v. Dunbar*, 135 Colo. 172, 309 P.2d 581 (1957).

12-6-303. Penalties. Any person, firm, partnership, or corporation who violates any of the provisions of this part 3 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than seventy-five dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or the court, in its discretion, may suspend or revoke the Colorado motor vehicle dealer's license issued under the provisions of part 1 of this article, or by such fine and imprisonment and suspension or revocation.

Source: L. 55: p. 215, § 3. CRS 53: § 13-20-3. C.R.S. 1963: § 13-20-3.

PART 4

EVENT DATA RECORDERS

12-6-401. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Event data" means records of one or more of the following categories of information concerning a motor vehicle, which records are captured by an event data recorder:

- (a) Whether the vehicle's air bag deployed;
- (b) Vehicle speed;
- (c) Vehicle direction;

- (d) Vehicle location;
- (e) Vehicle steering performance or use;
- (f) Vehicle brake performance or use; or
- (g) Vehicle seatbelt status or use.
- (2) "Event data recorder" means a device or feature that is installed by the manufacturer of a motor vehicle for the purpose of capturing or transmitting retrievable event data.
- (3) "Owner" means:
 - (a) A person having all the incidents of ownership of a motor vehicle, including legal title to the motor vehicle, regardless of whether the person lends, rents, or creates a security interest in the vehicle;
 - (b) A person entitled to possession of a motor vehicle as the purchaser under a security agreement; or
 - (c) A person entitled to possession of a vehicle as lessee under a written lease agreement if the lease agreement is intended to last for more than three months at its inception.
- (4) "Owner's agent" means a natural person authorized by the owner within the last thirty days or the owner's representative as defined by section 13-20-702 (3), C.R.S.

Source: L. 2006: Entire part added, p. 1633, § 1, effective June 2.

12-6-402. Event data recorders. (1) A manufacturer of a motor vehicle that is sold or leased in Colorado with an event data recorder shall in bold-faced type disclose, in the owner's manual, that the vehicle is so equipped and, if so, the type of data recorded. A disclosure made by means of an insert into the owner's manual shall be deemed a disclosure in the owner's manual.

(2) Event data that is recorded on an event data recorder is the personal information of the motor vehicle's owner, and therefore, such information shall not be retrieved by a person who is not the owner of the motor vehicle, except in the following circumstances:

- (a) The owner of the motor vehicle or the owner's agent has consented to the retrieval of the data within the last thirty days;
- (b) The data is retrieved by a motor vehicle dealer or by an automotive technician to diagnose, service, or repair the motor vehicle at the request of the owner or the owner's agent;
- (c) The data is subject to discovery pursuant to the rules of civil procedure in a claim arising out of a motor vehicle accident;
- (d) A court or administrative agency having jurisdiction orders the data to be retrieved;
- (e) The event data recorder is installed after the manufacturer or motor vehicle dealer sells the motor vehicle; or
- (f) A peace officer retrieves the data pursuant to a court order as part of an investigation of a suspected violation of a law that has caused, or contributed to the cause of, an accident resulting in damage of property or injury to a person.

(3) (a) No person shall release event data unless authorized by paragraph (b) of this subsection (3).

(b) A person authorized to download or retrieve data from an event data recorder may release such data in the following circumstances:

- (I) The owner of the motor vehicle or the owner's agent has consented to the release of the data within the last thirty days;
- (II) The data is subject to discovery pursuant to the rules of civil procedure in a claim arising out of a motor vehicle accident;
- (III) The data is released pursuant to a court order as part of an investigation of a suspected violation of a law that has caused, or contributed to the cause of, an accident resulting in appreciable damage of property or injury to a person;
- (IV) If the identity of the owner or driver is not disclosed, the data is released to a motor vehicle safety and medical research entity in order to advance motor vehicle safety, security, or traffic management; or
- (V) The data is released to a data processor solely for the purposes permitted by this section if the identity of the owner or driver is not disclosed.

(4) (a) If a motor vehicle is equipped with an event data recorder that is capable of recording or transmitting event data that is part of a subscription service, the fact that the data may be recorded or transmitted and instructions for discontinuing the subscription service or for disabling the event data recorder by a trained service technician shall be prominently disclosed in the subscription service agreement. A disclosure made by means of an insert into the service agreement shall be deemed a disclosure in the service agreement.

(b) Subsections (2) and (3) of this section shall not apply to subscription services meeting the requirements of paragraph (a) of this subsection (4).

(5) A person who violates subsection (2) or (3) of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 2006: Entire part added, p. 1634, § 1, effective June 2.

12-6-403. Applicability. This part 4 shall apply to motor vehicles manufactured on or after May 1, 2007.

Source: L. 2006: Entire part added, p. 1635, § 1, effective June 2.

PART 5

POWERSPORTS VEHICLES

12-6-501. Legislative declaration. (1) The general assembly hereby declares that:

(a) The sale and distribution of powersports vehicles affects the public interest, and a significant factor of inducement in making a sale of a powersports vehicle is the trust and confidence of the purchaser in the dealer from whom the purchase is made and the expectancy that the dealer will remain in business to provide service for the vehicle;

(b) The proper sale and service of a powersports vehicle are important to consumer safety, and the manufacturers and distributors of powersports vehicles have an obligation to the public not to terminate or refuse to continue their franchise agreements with retail powersports vehicle dealers unless the powersports vehicle manufacturer or distributor has first established good cause for termination of any such agreement, to the end that there shall be no diminution of locally available service;

(c) The licensing and supervision of powersports vehicle dealers by the motor vehicle dealer board are necessary for the protection of consumers, and, therefore, the sale of powersports vehicles by unlicensed dealers or salespersons, or by licensed dealers or salespersons who have demonstrated unfitness, should be prevented; and

(d) Consumer education concerning the rules and regulations of the powersports vehicle industry, the considerations when purchasing a powersports vehicle, and the role, functions, and actions of the motor vehicle dealer board are necessary for the protection of the public and for maintaining the trust and confidence of the public in the motor vehicle dealer board.

Source: L. 2007: Entire part added, p. 1851, § 4, effective July 1.

12-6-502. Definitions. As used in this part 5, unless the context otherwise requires:

(1) “ANSI/SVIA-1-2001” means the American national standards institute’s, or its successor organization’s, provisions for four-wheel all-terrain vehicles, equipment configuration, and performance requirements, developed by the specialty vehicle institute of America, or its successor organization.

(2) “Board” means the motor vehicle dealer board.

(3) “Consumer” means a purchaser, renter, or lessee of a powersports vehicle that is primarily used for business, personal, family, or household purposes. “Consumer” does not include a purchaser of powersports vehicles primarily for resale.

(4) "Custom trailer" means a vehicle that is not driven or propelled by its own power and is designed to be attached to, become a part of, or be drawn by a motor vehicle and that is uniquely designed and manufactured for a specific purpose or customer. "Custom trailer" does not include manufactured housing, farm tractors, and other machines and tools used in the production, harvest, and care of farm products.

(5) "Executive director" means the executive director of the department of revenue.

(5.5) "Franchise" means the authority to sell or service and repair powersports vehicles of a designated line-make granted through a sales, service, and parts agreement with a manufacturer, distributor, or manufacturer representative.

(6) "Line-make" means a group or series of powersports vehicles that have the same brand identification or brand name, based upon the powersports vehicle manufacturer's trademark, trade name, or logo.

(7) "New powersports vehicle" mean a powersports vehicle that has been transferred on a manufacturer's statement of origin and for which an ownership registration card has been submitted by the original owner to the powersports vehicle manufacturer.

(8) "Off-highway vehicle" means any self-propelled vehicle that is designed to travel on wheels or tracks in contact with the ground, designed primarily for use off of the public highways, and generally and commonly used to transport persons for recreational purposes. "Off-highway vehicle" does not include the following:

- (a) Military vehicles;
- (b) Golf carts;
- (c) Vehicles designed and used to carry persons with disabilities; and
- (d) Vehicles designed and used specifically for agricultural, logging, or mining purposes.

(9) "Personal watercraft" means a motorboat that is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel, and that is designed primarily for use off of the public highways, and that uses either of the following as the primary source of motive power:

- (a) An inboard motor powering a water jet pump; or
- (b) An outboard motor-driven propeller.

(10) "Powersports vehicle" means any of the following:

- (a) An off-highway vehicle;
- (b) A personal watercraft; or
- (c) A snowmobile.

(11) "Powersports vehicle dealer" means a person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, leases, exchanges, rents with option to purchase, offers, or attempts to negotiate a sale, lease, or exchange of an interest in new or new and used powersports vehicles or who is engaged wholly or in part in the business of selling or leasing new or new and used powersports vehicles, whether or not the powersports vehicles are owned by such person. The sale or lease of ten or more new or new and used powersports vehicles or the offering for sale or lease of more than ten new or new and used powersports vehicles at the same address or telephone number in any one calendar year shall be prima facie evidence that a person is engaged in the business of selling or leasing new or new and used powersports vehicles. "Powersports vehicle dealer" includes an owner of real property who allows more than ten new or new and used powersports vehicles to be offered for sale or lease on such property during one calendar year unless said property is leased to a licensed powersports vehicle dealer. "Powersports vehicle dealer" does not include:

- (a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court;
- (b) Public officers while performing their official duties;
- (c) Employees of persons enumerated in the definition of "powersports vehicle dealer" when engaged in the specific performance of their duties as such employees;
- (d) A wholesaler or anyone selling powersports vehicles solely to wholesalers; or
- (e) A wholesale motor vehicle auctioneer.

(12) “Powersports vehicle distributor” means a person, resident or nonresident, who, in whole or in part, sells or distributes new powersports vehicles to powersports vehicle dealers or who maintains powersports vehicle distributor representatives.

(13) “Powersports vehicle manufacturer” means any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new powersports vehicles.

(14) “Powersports vehicle manufacturer representative” means a representative employed by a person who manufactures or assembles powersports vehicles for the purpose of making or promoting the sale of the person’s powersports vehicles or for supervising or contacting its dealers or prospective dealers.

(15) “Powersports vehicle salesperson” means a natural person who, for a salary, commission, or compensation of any kind, is employed either directly or indirectly, regularly or occasionally, by a powersports vehicle dealer to sell, lease, purchase, or exchange or to negotiate for the sale, lease, purchase, or exchange of powersports vehicles.

(16) “Principal place of business” means a site or location for which the powersports vehicle dealer is licensed, sufficiently designated to admit of definite description, with space thereon or contiguous thereto adequate to permit the display of one or more new or used powersports vehicles, and including a permanent enclosed building or structure to accommodate the office of the dealer and to provide a safe place to keep the books and other records of the business of such dealer, at which site or location the principal portion of such dealer’s business shall be conducted and the books and records thereof kept and maintained; except that a dealer may keep its books and records at an off-site location in Colorado after notifying the board in writing of such location at least thirty days in advance. Motor vehicle and used motor vehicle dealers shall be authorized to offer both motor vehicles and powersports vehicles from the same principal place of business. In the case of motor vehicle dealers, such principal place of business shall be at the address set forth in the dealer’s sales agreement.

(17) “Snowmobile” means a self-propelled vehicle primarily designed or altered for travel on snow or ice when supported in part by skis, belts, or cleats and designed primarily for use off of the public highways. “Snowmobile” shall not include machinery used strictly for the grooming of snowmobile trails or ski slopes.

(18) “Used powersports vehicle” means a powersports vehicle that is not a new powersports vehicle.

(19) “Used powersports vehicle dealer” means any person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, exchanges, leases, or offers an interest in used powersports vehicles, or attempts to negotiate a sale or lease of new and used powersports vehicles or who is engaged wholly or in part in the business of selling used powersports vehicles, whether or not such used powersports vehicles are owned by such person. The sale of ten or more used powersports vehicles or the offering for sale of more than ten used powersports vehicles at the same address or telephone number in any one calendar year shall be prima facie evidence that a person is engaged in the business of selling used powersports vehicles. “Used powersports vehicle dealer” includes an owner of real property who allows more than ten used powersports vehicles to be offered for sale on such property during one calendar year unless the property is leased to a licensed used powersports vehicle dealer. “Used powersports vehicle dealer” does not include:

(a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court;

(b) Public officers while performing their official duties;

(c) Employees of used powersports vehicle dealers when engaged in the specific performance of their duties;

(d) Anyone selling powersports vehicles solely to wholesalers;

(e) Mortgagees or secured parties as to powersports vehicles constituting collateral on a mortgage or security agreement, if such mortgagees or secured parties shall not realize for their own account from such sales any moneys in excess of the outstanding balance secured by such mortgage or security agreement, plus costs of collection; or

(f) A motor vehicle auctioneer.

(20) “Wholesaler” means a person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, exchanges, or offers or attempts to negotiate a sale, lease, or exchange of an interest in a new or new and used powersports vehicle solely to powersports vehicle dealers or used powersports vehicle dealers.

Source: L. 2007: Entire part added, p. 1852, § 4, effective July 1. L. 2009: (20) added, (HB 09-1026), ch. 281, p. 1254, § 4, effective October 1. L. 2010: (5.5) added, (HB 10-1049), ch. 32, p. 119, § 8, effective March 22.

Editor’s note: Subsection (5.5) was numbered as subsection (9.7) in House Bill 10-1049 but was renumbered on revision in 2011 to place defined terms in alphabetical order.

12-6-503. Motor vehicle dealer board. Powersports vehicle dealers, used powersports vehicle dealers, powersports manufacturers, distributors, representatives, and powersports vehicle salespersons shall be subject to the jurisdiction of the motor vehicle dealer board.

Source: L. 2007: Entire part added, p. 1855, § 4, effective July 1.

12-6-504. Board - oath - meetings - powers and duties - rules. (1) In addition to the duties and powers of the board under section 12-6-104, the board may:

(a) Promulgate, amend, and repeal rules reasonably necessary to implement this part 5, including, without limitation, the administration, enforcement, issuance, and denial of licenses to wholesalers, powersports vehicle dealers, powersports vehicle salespersons, and used powersports vehicle dealers;

(b) Delegate to the board’s executive secretary, employed pursuant to section 12-6-105 (1) (b), the authority to execute all actions within the power of the board, carry out the directives of the board, and make recommendations to the board on all matters within the authority of the board;

(c) Issue through the department of revenue a temporary license to an applicant seeking a license issued by the board, which temporary license shall permit the applicant to operate for not more than one hundred twenty days, during which time the board may complete its investigation and determination of all facts relative to the qualifications of the applicant for such license;

(d) (I) Issue through the department of revenue and, for reasonable cause shown or upon satisfactory proof of the unfitness of the applicant under this part 5, to refuse to issue to any applicant any license the board is authorized to issue by this part 5;

(II) Permit the executive director to issue licenses pursuant to rules adopted by the board under paragraph (a) of this subsection (1);

(e) (I) After due notice and a hearing:

(A) Review the findings of an administrative law judge or hearing officer from a hearing conducted pursuant to this part 5; or

(B) Revoke and suspend or order the executive director to issue or to reinstate, on such terms and conditions and for such period of time as the board deems fair and just, any license issued pursuant to this part 5;

(II) Issue a letter of admonition for a minor violation of this part 5 that does not become a part of the licensee’s record with the board;

(III) Issue a letter of reprimand and a notice of the right to request formal disciplinary proceedings, in writing within twenty days, to a licensee for a violation of this part 5, which letter is a part of the licensee’s record with the board for a period of two years after issuance and may be considered in aggravation of any subsequent violation by the licensee; except that the letter shall be vacated and a formal disciplinary proceeding shall be instituted upon a written request within twenty days after the letter is issued;

(f) (I) Investigate, with the assistance of the executive director, on its own motion or upon a written and signed complaint from any person, a suspected or alleged violation by a wholesaler, powersports vehicle dealer, used powersports vehicle dealer, or powersports vehicle salesperson of this part 5 or a rule promulgated by the board;

(II) Issue subpoenas or delegate the authority to issue subpoenas to the executive director;

(III) Require the executive director to investigate complaints transmitted by the board pursuant to section 12-6-505 (1) (e) and (1) (f);

(IV) Seek to resolve disputes before beginning an investigation or hearing through its own action or by direction of the executive director;

(V) If the board determines that there is probable cause to believe a violation of this article has occurred after an investigation by the executive director, order an administrative hearing be held pursuant to section 24-4-105, C.R.S., or designate one of the board's members as a hearing officer to conduct a hearing pursuant to section 24-4-105, C.R.S.;

(g) Summarily issue to any person who is licensed by the board pursuant to this part 5 cease-and-desist orders on such terms and conditions and for such time as the board deems fair and just, if such orders are followed by notice and a hearing pursuant to this section;

(h) (I) Prescribe the forms to be used for applications for persons licensed under this part 5;

(II) Require of an applicant, as a requisite to the issuance of a license, information concerning the applicant's fitness to be licensed under this part 5 as the board considers necessary;

(i) Adopt a seal with the words "motor vehicle dealer board" and such other devices as the board may desire engraved thereon by which it shall authenticate the acts of its office;

(j) Require that a powersports vehicle dealer's or used powersports vehicle dealer's principal place of business and such other sites or locations operated by the dealer have signs or devices giving notice of the dealer's name, the location and address of the dealer's principal place of business, and the type and number of license held by the dealer, as the board considers necessary to notify any person doing business with the dealer to identify such dealer, and for this purpose to promulgate rules determining the size, shape, lettering, and location of such signs or devices;

(k) Cause to be conducted written examinations, as prescribed by the board, to test the competency of all first-time applicants for a wholesaler's license, powersports vehicle dealer's license, used powersports vehicle dealer's license, or powersports vehicle salesperson's license;

(l) Promulgate rules requiring off-highway vehicles sold by persons licensed under this part 5 to comply with ANSI/SVIA-1-2001 or a successor standard promulgated by the American national standards institute or its successor organization if such rules do not conflict with the ANSI standards or set standards more stringent than those set by ANSI;

(m) (I) Prescribe forms to be used as a part of a contract for the sale of a powersports vehicle by a powersports vehicle dealer or powersports vehicle salesperson, other than a retail installment sales contract subject to the provisions of the "Uniform Consumer Credit Code", articles 1 to 9 of title 5, C.R.S., that shall include the following information in addition to any other disclosures or information required by state or federal law:

(A) In twelve-point, bold-faced type, or at least three points larger than the smallest type appearing in the contract, an instruction that the form is a legal instrument and that, if the purchaser of the powersports vehicle does not understand the form, such purchaser should seek legal assistance;

(B) In the type and size specified in sub-subparagraph (A) of this subparagraph (I), an instruction that only those terms in written form embody the contract for sale of a powersports vehicle and that any conflicting oral representations made to the purchaser are void;

(C) In the type and size specified in sub-subparagraph (A) of this subparagraph (I), a notice that fraud or misrepresentation in the sale of a powersports vehicle is punishable under the laws of this state;

(D) In the type and size specified in sub-subparagraph (A) of this subparagraph (I), if the contract for the sale of a powersports vehicle requires a single, lump sum payment of the purchase price, a clear disclosure to the purchaser of this fact or, if the contract is contingent upon the approval of credit financing for the purchaser arranged by or through the powersports vehicle dealer, a statement that the purchaser shall agree to purchase the powersports vehicle that is the subject of the sale from the powersports vehicle dealer at not

greater than a certain annual percentage rate of financing that shall be agreed upon by the parties and entered in writing on the contract;

(E) Except as otherwise provided under this part 5, if the purchase price of the powersports vehicle is not paid to the powersports vehicle dealer in full at the time of consummation of the sale and the vehicle dealer delivers and the purchaser takes possession of the vehicle at such time, a statement in bold-faced type that, if financing cannot be arranged in accordance with the contract and the sale is not consummated, the purchaser shall agree to pay a daily rate for use of the vehicle until financing of the purchase price of the vehicle is arranged for the obligor by or through the authorized powersports vehicle dealer or until the purchase price is paid in full by or through the obligor, which daily rate shall be agreed upon in writing on the contract.

(II) The information required by subparagraph (I) of this paragraph (m) shall be read and initialed by both parties at the time of the consummation of the sale of a powersports vehicle.

(III) The use of the contract form required by subparagraph (I) of this paragraph (m) shall be mandatory for the sale of a powersports vehicle.

(n) After final action is taken on a hearing held before an administrative law judge or a hearing officer designated by the board from within the board's membership, review the findings of law and fact and the fairness of any fine imposed and to uphold such fine, impose an administrative fine upon its own initiative that shall not exceed ten thousand dollars for each separate offense by any licensee, or vacate the fine imposed by the judge or hearing officer; except that, for powersports vehicle dealers who sell primarily vehicles that weigh under one thousand five hundred pounds, the fine for each separate offense shall not exceed one thousand dollars; and

(o) Impose a fine of up to one thousand dollars per day per violation for any person found, after notice and hearing pursuant to section 24-4-105, C.R.S., to have violated the provisions of section 12-6-523 (2).

(2) The board shall:

(a) Order an investigation of all written and signed complaints;

(b) Require an application for a powersports vehicle dealer's license or used powersports vehicle dealer's license to contain, in addition to such information as the board may require, a statement of the following facts:

(I) The name and residence address of the applicant and any trade name under which the applicant intends to conduct business;

(II) If the applicant is a partnership, the name and residence address of each member, whether a limited or general partner, and the name under which the partnership business is to be conducted;

(III) If the applicant is a corporation, the name of the corporation and the name and address of each of its principal officers and directors;

(IV) A complete description, including the municipality, street, and number, if any, of the principal place of business, and any other additional places of business as shall be operated and maintained by the applicant;

(V) If the application is for a powersports vehicle dealer's license, the names of the new powersports vehicles that the applicant has been enfranchised to sell or exchange and the name and address of the powersports manufacturer or distributor who has enfranchised the applicant; and

(VI) The name and address of any person who will act as a salesperson under the authority of the license, if issued.

(3) The findings of the board under subsection (1) of this section shall be final.

(4) (a) For the purposes of paragraphs (e) and (g) of subsection (1) of this section, the address for the notice to be given under section 24-4-105, C.R.S., is the last-known address for the person as indicated in the state motor vehicle records; the last-known address for the owner of the real property upon which powersports vehicles are displayed in violation of section 12-6-523 (2), as indicated in the records of the county assessor's office; or any address for service of process in accordance with rule 4 of the Colorado rules of civil procedure.

(b) A person who fails to pay a fine ordered by the board for a violation of section 12-6-523 (2) under paragraph (o) of subsection (1) of this section shall be subject to enforcement proceedings, by the board through the attorney general, in the county or district court pursuant to the Colorado rules of civil procedure. Fines collected under this subsection (4) shall be disposed of pursuant to section 12-6-528.

(5) (a) If a hearing is conducted by an administrative law judge, the maximum fine that may be imposed is ten thousand dollars for each separate offense by any person licensed by the board pursuant to this part 5; except that, for a powersports vehicle dealer who sells primarily vehicles that weigh under one thousand five hundred pounds, the fine for each separate offense may not exceed one thousand dollars.

(b) (I) If a licensing hearing is conducted by a hearing officer, the sanctions that may be recommended by the hearing officer are limited to the denial or grant of an unrestricted license or a restricted license under such terms as the hearing officer deems appropriate.

(II) If a disciplinary hearing is conducted by a hearing officer, the hearing officer may only recommend a probationary period of no more than twelve months, a fine of no more than five hundred dollars, or both such probationary period and fine for each separate violation committed by a person licensed by the board.

Source: L. 2007: Entire part added, p. 1855, § 4, effective July 1. L. 2009: (1)(a), (1)(f)(I), and (1)(k) amended, (HB 09-1026), ch. 281, p. 1254, § 5, effective October 1.

12-6-505. Powers and duties of executive director. (1) The executive director is hereby charged with the administration, enforcement, and issuance or denial of the licensing of powersports vehicle distributors, powersports vehicle manufacturer representatives, and powersports vehicle manufacturers, and shall have the following powers and duties:

(a) To promulgate, amend, and repeal rules reasonably necessary to undertake the functions the executive director is mandated to carry out pursuant to this part 5 and to administer the laws of this state that the executive director deems necessary to carry out the duties of the office of the executive director pursuant to this part 5;

(b) To employ, subject to the laws of this state and after consultation with the board, an executive secretary for the board, who shall be accountable to the board and shall, pursuant to delegation by the board, discharge the responsibilities of the board under this part 5;

(c) To employ and assign duties to clerks, deputies, and assistants, which duties the executive director considers necessary to discharge the duties imposed upon the executive director by this part 5;

(d) To issue and, for reasonable cause shown or upon satisfactory proof of the unfitness of the applicant under this part 5, to refuse to issue to an applicant any license the executive director is authorized to issue by this part 5;

(e) To investigate, upon the executive director's own initiative, upon the written and signed complaint of any person, or upon request by the board pursuant to section 12-6-504 (1) (f) (I), any suspected or alleged violation of this part 5, or of any rule promulgated by the executive director under this section, by any person licensed by the executive director pursuant to this part 5;

(f) To delegate authority to persons for the purpose of investigating alleged or suspected violations of this part 5. The investigators and their supervisors utilized by the executive director, while actually engaged in performing their duties, shall have the authority as delegated by the executive director:

(I) To issue subpoenas, in accordance with the performance of their duties, to licensees who are under the jurisdiction of the executive director;

(II) To issue summonses for violations of section 12-6-523 (2);

(III) To issue misdemeanor summonses for violations of section 12-6-522 (1) (a); and

(IV) To procure criminal records during an investigation;

(g) To prescribe the forms to be used for applications for licenses to be issued by the executive director under this part 5 and to require of applicants, as a condition precedent to the issuance of a license, such information concerning the applicant's fitness to be licensed under this part 5 as the executive director considers necessary;

(h) (I) To summarily issue cease-and-desist orders on such terms and conditions, and for such period of time as the executive director deems fair and just, to any person who is licensed by the executive director pursuant to this part 5 if such orders are followed by notice and a hearing pursuant to section 12-6-504 (4) (a);

(II) To issue cease-and-desist orders to persons acting as powersports vehicle manufacturers without the powersports vehicle manufacturer's license required by this part 5; and

(III) To impose a fine, not to exceed one thousand dollars per day, for each violation of section 12-6-523 (1), after a notice and hearing subject to section 24-4-105, C.R.S.

(2) If a person fails to comply with a cease-and-desist order issued pursuant to this section, the executive director may bring a suit for injunction to prevent any further violation of such order. In any such suit, the final proceedings of the executive director, based upon evidence in record, shall be prima facie evidence of the facts found therein.

Source: L. 2007: Entire part added, p. 1860, § 4, effective July 1.

12-6-506. Records as evidence. Copies of all records and papers in the office of the board or the executive director, duly authenticated under the hand and seal of the board or executive director, shall be received in evidence in all cases equally and with like effect as the original.

Source: L. 2007: Entire part added, p. 1862, § 4, effective July 1.

12-6-507. Attorney general to advise and represent. (1) The attorney general shall represent the board and executive director and shall give opinions on questions of law relating to the interpretation of this part 5 or arising out of the administration thereof and shall appear for and on behalf of the board and executive director in all actions brought by or against them, whether under the provisions of this part 5 or otherwise.

(2) The board may request the attorney general to make civil investigations and enforce rules and regulations of the board in cases of civil violations and to bring and defend civil suits and proceedings for any of the purposes necessary and proper for carrying out the functions of the board.

Source: L. 2007: Entire part added, p. 1862, § 4, effective July 1.

12-6-508. Classes of licenses. (1) Licenses issued under this part 5 shall be of the following classes:

(a) A powersports vehicle dealer's license shall permit the licensee to engage in the business of selling, exchanging, leasing, or offering new and used powersports vehicles, which license shall not permit more than two persons named therein as owners of the business of the licensee to act as powersports vehicle salespersons.

(b) A used powersports vehicle dealer's license shall permit the licensee to engage in the business of selling, exchanging, leasing, or offering used powersports vehicles only. Such license shall also permit a licensee to negotiate for a consumer the sale, exchange, or lease of used and new powersports vehicles not owned by the licensee. Prior to completion of a sale, exchange, or lease of a powersports vehicle not owned by the licensee, the licensee shall disclose in writing to the consumer whether the licensee will receive compensation from the consumer or the owner of the powersports vehicle as a result of such transaction. If the licensee receives compensation from the owner of the powersports vehicle as a result of the transaction, the licensee shall include in the written disclosure the name of such owner from whom the licensee will receive compensation. This license shall not permit more than two persons named therein who shall be owners of the business of the licensee to act as powersports vehicle salespersons.

(c) A powersports vehicle salesperson's license shall permit the licensee to engage in the activities of a powersports vehicle salesperson.

(d) A powersports vehicle manufacturer's or distributor's license shall permit the licensee to engage in the activities of a powersports manufacturer or distributor.

(e) A powersports vehicle manufacturer representative's license shall permit the licensee to engage in the activities of a powersports vehicle manufacturer representative.

(f) A wholesaler's license shall permit the licensee to engage in the activities of a wholesaler.

(2) (a) A person who is licensed as a motor vehicle salesperson pursuant to part 1 of this article shall be deemed to be licensed as a powersports vehicle salesperson under this part 5.

(b) A person who is licensed as a motor vehicle manufacturer or distributor pursuant to part 1 of this article shall be deemed to be licensed as a powersports vehicle manufacturer or distributor under this part 5.

(c) A person who is licensed as a motor vehicle manufacturer pursuant to part 1 of this article shall be deemed to be licensed as a powersports vehicle manufacturer under this part 5.

Source: L. 2007: Entire part added, p. 1862, § 4, effective July 1. L. 2009: IP(1) amended and (1)(f) added, (HB 09-1026), ch. 281, p. 1255, § 6, effective October 1.

12-6-509. Temporary powersports vehicle dealer license. (1) If a licensed powersports vehicle dealer has entered into a written agreement to sell a dealership to a purchaser and the purchaser has been awarded a new franchise, the board may issue a temporary powersports vehicle dealer's license to such purchaser or prospective purchaser. The executive director shall issue the temporary license only after the board has received the applications for both a temporary powersports vehicle dealer's license and a powersports vehicle dealer's license, the appropriate application fee for the powersports vehicle dealer's application, evidence of a passing score of the written examination described in section 12-6-515, and evidence that the franchise has been awarded to the applicant by the powersports vehicle manufacturer. A temporary powersports vehicle dealer's license shall authorize the licensee to act as a powersports vehicle dealer and subject the licensee to this article and to all rules adopted by the executive director or the board. A temporary powersports vehicle dealer's license shall be effective for up to sixty days or until the board acts on such licensee's application for a powersports vehicle dealer's license, whichever is sooner.

(2) For the purpose of enabling an out-of-state dealer to sell powersports vehicles on a temporary basis during specifically identified events, the executive director may issue, upon direction by the board, a temporary powersports vehicle dealer's license that shall be effective for thirty days. The temporary license shall subject the licensee to compliance with rules adopted by the executive director or the board.

Source: L. 2007: Entire part added, p. 1863, § 4, effective July 1.

12-6-510. Display, form, custody, and use of licenses. The board and the executive director shall prescribe the form of the license to be issued by the executive director, and each license shall have imprinted thereon the seal of their offices. The license of each powersports vehicle salesperson shall be mailed to the business address where the salesperson is licensed and shall be kept by the salesperson at such salesperson's place of employment for inspection by employers, consumers, the executive director, or the board. A powersports vehicle dealer or wholesaler shall display conspicuously the person's license in the person's place of business. Each license issued pursuant to this part 5 is separate and distinct. It shall be a violation of this part 5 for a person to exercise any of the privileges granted under a license that such person does not hold, or for a licensee to knowingly allow such an exercise of privileges.

Source: L. 2007: Entire part added, p. 1863, § 4, effective July 1. L. 2009: Entire section amended, (HB 09-1026), ch. 281, p. 1255, § 7, effective October 1.

12-6-511. Fees - disposition - expenses - expiration of licenses. (1) The fee established pursuant to subsection (5) of this section shall be collected with each application for each of the following:

(a) (I) Powersports vehicle dealer's license or used powersports vehicle dealer's license;

(II) Powersports vehicle dealer's or used powersports vehicle dealer's license for each place of business in addition to the principal place of business;

(III) Renewal or reissue of powersports vehicle dealer's license or used dealer's license after change in location or lapse in principal place of business;

(b) Powersports vehicle manufacturer's license;

(c) Powersports vehicle distributor's license;

(d) Powersports vehicle manufacturer representative's license;

(e) Powersports vehicle salesperson's license including, without limitation, reissuing a license;

(f) Wholesaler's license.

(2) Fees shall be paid to the state treasurer who shall credit the same to the auto dealers license fund created in section 12-6-123.

(3) If an application for a wholesaler's license, powersports vehicle dealer's, used powersports vehicle dealer's, or powersports salesperson's license is withdrawn by the applicant prior to issuance of the license, one-half of the license fee shall be refunded.

(4) (a) Licenses issued under this part 5, if not suspended or revoked, shall be valid until one year following the month of issuance thereof and shall then expire; except that any license issued under this part 5 shall expire upon the voluntary surrender thereof or upon the abandonment of the licensee's place of business for a period of more than thirty days.

(b) Thirty days prior to the expiration of a license, the executive director shall mail to the licensee's business address of record a notice stating when the person's license is due to expire and the fee necessary to renew such license. For a powersports vehicle salesperson or powersports vehicle manufacturer representative, the notice shall be mailed to the address of the powersports vehicle dealer, used powersports vehicle dealer, or powersports vehicle manufacturer where the person is licensed.

(c) Upon the expiration of a license, unless suspended or revoked, it may be renewed upon the payment of the application fees specified in this section and renewal shall be made from year to year as a matter of right; except that, if a wholesaler or powersports vehicle dealer voluntarily surrenders its license or abandons its place of business for a period of more than thirty days, the licensee is required to file a new application to renew its license.

(d) Notwithstanding paragraph (a) of this subsection (4), a person has a thirty-day grace period after the license expires in which the license may be renewed pursuant to paragraph (c) of this subsection (4), so long as the person has a bond in full force and effect that complies with the applicable bonding requirements of section 12-6-512 or 12-6-513 during the thirty-day period. A person applying during the thirty-day grace period shall pay a late fee established pursuant to subsection (5) of this section.

(5) (a) The board shall propose, as part of its annual budget request, an adjustment in the amount of each fee that the board is authorized by law to collect. The budget request and the adjusted fees for the board shall reflect direct and indirect costs.

(b) Based upon any appropriation made and subject to the approval of the executive director, the board shall adjust the fees collected by the executive director so that the revenue generated from fees covers the direct and indirect costs of administering this part 5. Such fees shall remain in effect for the fiscal year for which the appropriation is made.

(c) In any year, if moneys appropriated by the general assembly to the board for its activities for the prior fiscal year are unexpended, the moneys shall be made a part of the appropriation to the board for the next fiscal year, and the amount shall not be raised from fees collected by the board or the executive director. If a supplemental appropriation is made by the general assembly to the board for its activities, the fees of the board and the executive director, when adjusted for the fiscal year next following that in which the supplemental appropriation was made, shall be adjusted by an additional amount that is sufficient to compensate for such supplemental appropriation. Moneys appropriated to the board in the annual general appropriation bill shall be from the fund provided in section 12-6-123.

Source: L. 2007: Entire part added, p. 1864, § 4, effective July 1. **L. 2009:** (1)(b), (1)(c), (1)(d), and (2) amended, (SB 09-292), ch. 369, p. 1946, § 21, effective August 5; (1)(f) added and (3) and (4)(c) amended, (HB 09-1026), ch. 281, p. 1255, §§ 8, 9, effective October 1.

12-6-512. Bond of licensee. (1) A wholesaler's license, powersports vehicle dealer's license, or used powersports vehicle dealer's license shall not be issued to any applicant unless the applicant procures and files with the board evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or a good and sufficient bond with corporate surety thereon duly licensed to do business within the state, approved as to form by the attorney general, and conditioned that the applicant shall not make any fraudulent representation or violate any of the provisions of this part 5 or any rule promulgated by the board under this part 5. A powersports vehicle dealer or used powersports vehicle dealer shall not be required to furnish an additional bond, savings account, deposit, or certificate of deposit under this section if such dealer furnishes a bond, savings account, deposit, or certificate of deposit under section 12-6-111.

(2) (a) The purpose of the bond procured by the applicant pursuant to subsection (1) of this section and section 12-6-513 is to provide for the reimbursement for any loss or damage suffered by any retail consumer caused by violation of this part 5 by a wholesaler, powersports vehicle dealer, or used powersports vehicle dealer. For a wholesale transaction, the bond is available to each party to the transaction; except that, if a retail consumer is involved, such consumer shall have priority to recover from the bond. The amount of the bond shall be fifty thousand dollars for each wholesaler applicant, powersports vehicle dealer applicant, and used powersports vehicle dealer applicant. The aggregate liability of the surety for all transactions shall not exceed the amount of the bond, regardless of the number of claims or claimants.

(b) No corporate surety shall be required to make a payment to any person making a claim under such bond until a final determination of fraud or fraudulent representation has been made by the board or by a court of competent jurisdiction.

(3) Bonds required pursuant to this section shall be renewed annually when the bondholder's license is renewed. Bonds may be renewed through a continuation certificate issued by the surety.

(4) Nothing in this part 5 shall interfere with the authority of the courts to administer and conduct an interpleader action for claims against a licensee's bond.

Source: L. 2007: Entire part added, p. 1865, § 4, effective July 1. **L. 2009:** (1) and (2)(a) amended, (HB 09-1026), ch. 281, p. 1255, § 10, effective October 1.

12-6-513. Powersports vehicle salesperson's bond. (1) A powersports vehicle salesperson's license shall not be issued unless the applicant has procured and filed with the board evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or a good and sufficient bond in the amount of fifteen thousand dollars with corporate surety thereon duly licensed to do business within the state, approved as to form by the attorney general, and conditioned that the applicant shall perform in good faith as a powersports vehicle salesperson without fraud or fraudulent representation and without violating this part 5 or any rule promulgated by the board under this part 5. The board shall implement by January 1, 2008, a psychometrically valid and reliable salesperson exam that measures the minimum level of competence necessary to practice. A powersports vehicle salesperson shall not be required to furnish an additional bond, savings account, deposit, or certificate of deposit under this section if such salesperson furnishes a bond, savings account, deposit, or certificate of deposit under section 12-6-112.

(2) No corporate surety shall be required to make a payment to any person claiming under such bond until a final determination of fraud or fraudulent representation has been made by the board or by a court of competent jurisdiction.

(3) Bonds required under this section shall be renewed annually when the bondholder's license is renewed. Bonds may be renewed through a continuation certificate issued by the surety.

Source: L. 2007: Entire part added, p. 1866, § 4, effective July 1.

12-6-514. Notice of claims honored against bond. (1) A corporate surety that has provided a bond to a licensee pursuant to section 12-6-512 or 12-6-513 shall provide notice to the board and executive director of any claim that is honored against the bond. The notice shall be provided to the board and executive director within thirty days after a claim is honored.

(2) A notice provided by a corporate surety pursuant to subsection (1) of this section shall be in the form required by the executive director, subject to approval by the board, and shall include, without limitation, the name of the licensee, the name and address of the claimant, the amount of the honored claim, and the nature of the claim against the licensee.

Source: L. 2007: Entire part added, p. 1867, § 4, effective July 1.

12-6-515. Testing licensees. All persons applying for a wholesaler's, powersports vehicle dealer's, used powersports vehicle dealer's, or powersports vehicle salesperson's license under this part 5 shall be examined for their knowledge of the powersports vehicle laws of the state of Colorado and the rules promulgated pursuant to this part 5. If the applicant is a corporation, the managing officer shall take the examination, and, if the applicant is a partnership, all the general partners shall take such examination. No license shall be issued except upon successful passing of the examination. This section shall not apply to a motor vehicle dealer, used motor vehicle dealer, or motor vehicle salesperson licensed pursuant to part 1 of this article.

Source: L. 2007: Entire part added, p. 1867, § 4, effective July 1. **L. 2009:** Entire section amended, (HB 09-1026), ch. 281, p. 1256, § 11, effective October 1.

12-6-516. Filing of written warranties. A licensed powersports vehicle manufacturer shall file with the executive director all written warranties and changes in written warranties the manufacturer makes on powersports vehicle or parts thereof. A licensed powersports vehicle manufacturer shall file with the executive director a copy of the delivery and preparation obligations of a powersports vehicle manufacturer's dealer, and these warranties and obligations shall constitute the powersports vehicle dealer's only responsibility for product liability as between the powersports vehicle dealer and the powersports vehicle manufacturer. Any mechanical, body, or parts defects arising from express or implied warranties of the powersports vehicle manufacturer shall constitute the powersports vehicle manufacturer's product or warranty liability, and the powersports vehicle manufacturer shall reasonably compensate any authorized powersports vehicle dealer who performs work to rectify a powersports vehicle manufacturer's product or warranty defects.

Source: L. 2007: Entire part added, p. 1867, § 4, effective July 1.

12-6-517. Application - rules. (1) An application for a wholesaler's license, powersports vehicle dealer's license, used powersports vehicle dealer's license, or powersports vehicle salesperson's license shall be submitted to the board.

(2) An application for a powersports vehicle distributor, powersports vehicle manufacturer representative, or powersports vehicle manufacturer license shall be submitted to the executive director.

(3) Fees for licenses shall be paid at the time of the filing of application for license.

(4) Persons applying for a powersports vehicle dealer's license shall file with the board a certified copy of a certificate of appointment as a powersports vehicle dealer from a powersports vehicle manufacturer.

(5) A person applying for a powersports vehicle manufacturer's or distributor's license shall file with the executive director a certified copy of a typical written agreement with all powersports vehicle dealers, and also evidence of the appointment of an agent for process in the state of Colorado shall be included with the application.

(6) Persons applying for a wholesaler's, powersports vehicle dealer's, used powersports vehicle dealer's, or a powersports vehicle salesperson's license shall file with the board a written instrument in which the applicant shall appoint the secretary of the board as the agent of the applicant upon whom all process may be served in any action against the applicant arising out of a claim for damages suffered by a violation of this part 5, rules promulgated under this part 5, or any condition of the applicant's bond.

(7) (a) A person applying for a wholesaler's license or used powersports vehicle dealer's license shall file with the board a certification that the applicant has met the educational requirements for licensure under this subsection (7), unless the applicant is licensed as a motor vehicle dealer or a used motor vehicle dealer. This subsection (7) shall not apply to a person who has held a license, within the last three years, as a motor vehicle dealer, used motor vehicle dealer, wholesaler, wholesale motor vehicle auction dealer, powersports vehicle dealer, or used powersports vehicle dealer under this part 5 or part 1 of this article.

(b) An applicant for a wholesaler's license or used powersports vehicle dealer's license shall not be licensed unless one of the following persons has completed an eight-hour prelicensing education program:

- (I) The managing officer if the applicant is a corporation or limited liability company;
- (II) All of the general partners if the applicant is any form of partnership; or
- (III) The owner or managing officer if the applicant is a sole proprietorship.

(c) The prelicensing education program shall include, without limitation, state and federal statutes and rules governing the sale of powersports vehicles.

(d) A prelicensing education program shall not fulfill the requirements of this section unless approved by the board. The board shall approve any program with a curriculum that reasonably covers the material required by this section within eight hours.

(e) The board may adopt rules establishing reasonable fees to be charged for the prelicensing education program.

(f) The board may adopt reasonable rules to implement this section, including, without limitation, rules that govern:

- (I) The content and subject matter of education;
- (II) The criteria, standards, and procedures for the approval of courses and course instructors;
- (III) The training facility requirements; and
- (IV) The methods of instruction.

(g) An approved prelicensing program provider shall issue a certificate to a person who successfully completes the approved prelicensing education program. The current certificate of completion, or a copy of the certificate, shall be posted conspicuously at the dealership's principal place of business.

(h) An approved prelicensing program provider shall submit a certificate to the executive director for each person who successfully completes the prelicensing education program. The certificate may be transmitted electronically.

Source: **L. 2007:** Entire part added, p. 1868, § 4, effective July 1. **L. 2008:** (7) added, p. 582, § 2, effective August 5. **L. 2009:** (1) amended, (SB 09-292), ch. 369, p. 1946, § 22, effective August 5; (1), (6), (7)(a), and IP(7)(b) amended, (HB 09-1026), ch. 281, p. 1256, § 12, effective October 1.

Editor's note: Amendments to subsection (1) by Senate Bill 09-292 and House Bill 09-1026 were harmonized.

12-6-518. Notice of change of address or status. (1) The board, through the executive director, shall not issue a powersports vehicle dealer's license or used powersports vehicle dealer's license to an applicant who has no principal place of business.

If a powersports vehicle dealer or used powersports vehicle dealer changes the site or location of the dealer's principal place of business, the dealer shall immediately notify the board in writing, and thereupon, a new license shall be granted for the unexpired portion of the term of the existing license at a fee established pursuant to section 12-6-511. If a powersports vehicle dealer or used powersports vehicle dealer ceases to possess a principal place of business where the dealer conducts the business for which the dealer is licensed, the dealer shall immediately notify the board in writing and, upon demand by the board, shall deliver the dealer's license, which shall be held and retained until it appears to the board that the licensee possesses a principal place of business; whereupon, the dealer's license shall be reissued. Nothing in this part 5 shall be construed to prevent a powersports vehicle dealer or used powersports vehicle dealer from conducting the business for which the dealer is licensed at one or more sites or locations not contiguous to the dealer's principal place of business but operated and maintained in conjunction therewith.

(2) Should the powersports vehicle dealer change to a new line of powersports vehicles, add another franchise for the sale of new powersports vehicles, or cancel or otherwise lose a franchise for the sale of new powersports vehicles, the dealer shall immediately notify the board. If a franchise is canceled or lost, the board shall determine whether the dealer should be licensed as a used powersports vehicle dealer. If so, the board shall cancel and the powersports vehicle dealer shall deliver to it the dealer's license, and the board shall direct the executive director to issue to the dealer a used powersports vehicle dealer's license. Upon the cancellation or loss of a franchise to sell new powersports vehicles and the relicensing of the dealer as a used powersports vehicle dealer, the dealer may continue in the business for which a powersports vehicle dealer is licensed for a time, not exceeding six months after the relicensing of the dealer, to enable the dealer to dispose of the stock of new powersports vehicles on hand at the time of the relicensing, but not otherwise.

(3) If a powersports vehicle salesperson is discharged, leaves an employer, or changes a place of employment, the powersports vehicle dealer who last employed the salesperson shall confiscate and return the salesperson's license to the board. Upon being reemployed as a powersports vehicle salesperson, the powersports vehicle salesperson shall notify the board. Upon receiving the notification, the board shall issue a new license for the unexpired portion of the returned license after collecting a fee set pursuant to section 12-6-511 (5). It shall be unlawful for the salesperson to act as a powersports vehicle salesperson until a new license is procured.

(4) Upon a change of place of business or business address, a wholesaler shall immediately notify the board of the change.

Source: L. 2007: Entire part added, p. 1868, § 4, effective July 1. **L. 2009:** (4) added, (HB 09-1026), ch. 281, p. 1257, § 13, effective October 1.

12-6-519. Principal place of business - requirements. (1) The building or structure required to be located on a principal place of business shall have electrical service and adequate sanitary facilities.

(2) A room in a hotel, rooming house, or apartment house building or a part of any single or multiple unit dwelling house shall not be used as a principal place of business unless the entire ground floor of the hotel, apartment house, or rooming house building or the dwelling house is devoted principally to and occupied for commercial purposes and the office of the dealer is located on the ground floor thereof.

(3) Nothing in this section shall be construed to exempt a powersports vehicle dealer or used powersports vehicle dealer from local zoning ordinances.

Source: L. 2007: Entire part added, p. 1869, § 4, effective July 1.

12-6-520. Licenses - grounds for denial, suspension, or revocation. (1) A powersports vehicle manufacturer's or distributor's license may be denied, suspended, or revoked on the following grounds:

(a) Material misstatement in an application for a license;

(b) Willful failure to comply with this part 5 or any rule promulgated by the executive director under this part 5;

(c) Engaging, in the past or present, in any illegal business practice.

(2) A powersports vehicle manufacturer representative's license may be denied, suspended, or revoked on the following grounds:

(a) Material misstatement in an application for a license;

(b) Willful failure to comply with this part 5 or any rules promulgated by the executive director under this part 5;

(c) Committing any unconscionable business practice under title 4, C.R.S.;

(d) Having coerced or attempted to coerce a powersports vehicle dealer to accept delivery of any powersports vehicle, parts or accessories therefore, or any other commodities or services that have not been ordered by the dealer;

(e) Having coerced or attempted to coerce a powersports vehicle dealer to enter into any agreement to do an act unfair to the dealer by threatening to cause the cancellation of the dealer's franchise;

(f) Having withheld, threatened to withhold, reduced, or delayed without just cause an order for powersports vehicles, parts or accessories therefore, or any other commodities or services that have been ordered by a powersports vehicle dealer; or

(g) Engaging, in the past or present, in any illegal business practice.

(3) A wholesaler's license, powersports vehicle dealer's license, or a used powersports vehicle dealer's license may be denied, suspended, or revoked on the following grounds:

(a) Material misstatement in an application for a license;

(b) Willful failure to comply with this part 5 or any rule promulgated by the executive director under this part 5;

(c) Having been convicted of or pled nolo contendere to any felony or crime pursuant to article 3, 4, or 5 of title 18, C.R.S., or any like crime pursuant to federal law or the law of another state. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be conclusive evidence of the conviction in a hearing held pursuant to this article.

(d) Defrauding any buyer, seller, powersports vehicle salesperson, or financial institution to the person's damage;

(e) Intentionally or negligently failing to perform any written agreement with any buyer or seller;

(f) Failing or refusing to furnish and keep in force a bond required under this part 5;

(g) Making a fraudulent or illegal sale, transaction, or repossession;

(h) Willfully misrepresenting, circumventing, concealing, or failing to disclose, through subterfuge or device, any of the material particulars or the nature thereof required to be stated or furnished to the buyer;

(i) Intentionally publishing or circulating advertising that is misleading or inaccurate in any material particular or that misrepresents a product sold or furnished by a licensed dealer;

(j) Knowingly purchasing, selling, or otherwise acquiring or disposing of a stolen powersports vehicle;

(k) Engaging in the business for which the dealer is licensed without at all times maintaining a principal place of business as required by this part 5 during reasonable business hours;

(l) Engaging in the business through employment of an unlicensed powersports vehicle salesperson;

(m) Willfully violating any state or federal law respecting commerce or powersports vehicles, or any lawful rule respecting commerce or powersports vehicles promulgated by any licensing or regulating authority pertaining to powersports vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or powersports vehicles;

(n) Representing or selling as a new and unused powersports vehicle any powersports vehicle that the dealer or salesperson knows is otherwise a used powersports vehicle;

(o) Committing a fraudulent insurance act pursuant to section 10-1-128, C.R.S.;

(p) Failing to give notice to a prospective buyer of the acceptance or rejection of a powersports vehicle purchase order agreement within a reasonable time period, as determined by the board, when the licensee is working with the prospective buyer on a finance sale or a consignment sale.

(3.5) A wholesaler's license may be denied, suspended, or revoked for the selling, leasing, or offering or attempting to negotiate the sale, lease, or exchange of an interest in motor vehicles to persons other than powersports vehicle dealers, used powersports vehicle dealers, or other wholesalers.

(4) The license of a powersports vehicle salesperson may be denied, revoked, or suspended on the following grounds:

- (a) Material misstatement in an application for a license;
- (b) Failure to comply with any provision of this part 5 or any rule promulgated by the board or executive director under this part 5;
- (c) Engaging in the business for which the licensee is licensed without having in force and effect a good and sufficient bond with corporate surety as provided in this part 5;
- (d) Intentionally publishing or circulating an advertisement that is misleading or inaccurate in any material particular or that misrepresents a powersports vehicle product sold or attempted to be sold by the salesperson;
- (e) Having indulged in any fraudulent business practice;
- (f) Selling, offering, or attempting to negotiate the sale, exchange, or lease of powersports vehicles for a powersports vehicle dealer or used powersports vehicle dealer for which the salesperson is not licensed; except that negotiation with a powersports vehicle dealer or used powersports vehicle dealer for the sale, exchange, or lease of new and used powersports vehicles, by a salesperson compensated for the negotiation by a powersports vehicle dealer or used powersports vehicle dealer for which the salesperson is licensed shall not be grounds for denial, revocation, or suspension;
- (g) Representing oneself as a salesperson for a powersports vehicle dealer when the salesperson is not so employed and licensed;
- (h) Having been convicted of or pled nolo contendere to any felony or any crime pursuant to article 3, 4, or 5 of title 18, C.R.S., or any like crime pursuant to federal law or the law of another state. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be conclusive evidence of the conviction in a hearing held pursuant to this article.
- (i) Having knowingly purchased, sold, or otherwise acquired or disposed of a stolen powersports vehicle;
- (j) Employing an unlicensed powersports vehicle salesperson;
- (k) Defrauding any retail buyer to the person's damage;
- (l) Representing or selling as a new and unused powersports vehicle a powersports vehicle that the salesperson knows is otherwise a used powersports vehicle;
- (m) Willfully violating any state or federal law respecting commerce or powersports vehicles, or any lawful rule respecting commerce or powersports vehicles promulgated by any licensing or regulating authority pertaining to powersports vehicles, under circumstances in which the act constituting the violation directly and necessarily involves commerce or powersports vehicles;

(n) Improperly withholding, misappropriating, or converting to the salesperson's own use any money belonging to customers or other persons received in the course of employment as a powersports vehicle salesperson.

(5) A license issued pursuant to this part 5 may be denied, revoked, or suspended if unfitness of the licensee or licensee applicant is shown in the following:

- (a) The licensing character or record of the licensee or licensee applicant;
 - (b) The criminal character or record of the licensee or licensee applicant;
 - (c) The financial character or record of the licensee or licensee applicant;
 - (d) A violation of any lawful order of the board.
- (6) (a) A license issued or applied for pursuant to this part 5 shall be revoked or denied if the licensee or applicant has been convicted of or pleaded no contest to any of the following offenses in this state or another jurisdiction during the previous ten years:

(I) A felony in violation of article 3, 4, or 5 of title 18, C.R.S., or any similar crime under federal law or the law of another state; or

(II) A crime involving salvage fraud or the defrauding of a retail consumer in a powersports vehicle sale or lease transaction.

(b) A certified copy of a judgment of conviction by a court of competent jurisdiction of an offense under subparagraph (I) of paragraph (a) of this subsection (6) is conclusive evidence of the conviction in any hearing held pursuant to this article.

Source: L. 2007: Entire part added, p. 1869, § 4, effective July 1. L. 2009: IP(3) amended and (3.5) added, (HB 09-1026), ch. 281, p. 1257, § 14, effective October 1.

12-6-521. Procedure for denial, suspension, or revocation of license - judicial review. (1) The denial, suspension, or revocation of licenses issued under this part 5 shall be in accordance with the provisions of sections 24-4-104 and 24-4-105, C.R.S.; except that the discovery available under rule 26 (b) (2) of the Colorado rules of civil procedure is available in any proceeding.

(2) The board shall appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct any hearing concerning the licensing or discipline of a wholesaler, powersports vehicle dealer, used powersports vehicle dealer, powersports vehicle manufacturer, powersports vehicle manufacturer representative, or powersports vehicle distributor; except that the board may, upon a unanimous vote of the members present when the vote is taken, conduct the hearing in lieu of appointing an administrative law judge.

(3) (a) The board shall assign a hearing concerning the licensing or discipline of a powersports vehicle salesperson to the executive director, who shall appoint an officer to conduct a hearing.

(b) Hearings conducted before an administrative law judge shall be in accordance with the rules of procedure of the office of administrative courts. Hearings conducted before an officer appointed by the executive director shall be in accordance with the rules of procedure established by the executive director.

(4) The board may summarily suspend a licensee required to post a bond under this article if such licensee does not have a bond in full force and effect as required by this article. The suspension shall become effective upon the earlier of the licensee receiving notice of the suspension or within three days after the notice of suspension is mailed to a licensee's last-known address on file with the board. The notice may be effected by certified mail or personal delivery.

(5) The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the board. The proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

Source: L. 2007: Entire part added, p. 1873, § 4, effective July 1. L. 2009: (2) amended, (HB 09-1026), ch. 281, p. 1257, § 15, effective October 1.

12-6-522. Sales activity following license denial, suspension, or revocation - unlawful act - penalty. (1) (a) It shall be unlawful and a violation of this part 5 for any person whose wholesaler's, powersports vehicle dealer's, used powersports vehicle dealer's, or powersports vehicle salesperson's license has been denied, suspended, or revoked to exercise the privileges of the license that was denied, suspended, or revoked.

(b) A violation of paragraph (a) of this subsection (1) shall be punishable in accordance with section 12-6-527; except that a second or subsequent violation of said paragraph (a) shall be a class 6 felony.

(c) In any trial for a violation of paragraph (a) of this subsection (1):

(I) A duly authenticated copy of the board's order of denial, suspension, or revocation shall constitute prima facie evidence of the denial, suspension, or revocation;

(II) A duly authenticated invoice, buyer's order, or other customary, written sales or purchase document or instrument proven to be signed by the defendant and indicating the

defendant's role in the purchase or sale of a powersports vehicle at a retail or wholesale powersports vehicle sales location shall constitute prima facie evidence of the defendant's exercise of a privilege of licensure;

(III) It shall be an affirmative defense that the defendant bought or sold a powersports vehicle that was, at all relevant times, intended for the defendant's own use and not bought or sold for the purpose of profit or gain; and

(IV) The fact that the defendant has a powersports vehicle dealer's, used powersports vehicle dealer's, or powersports vehicle salesperson's license, or another license to buy and sell powersports vehicles, that is issued by a state or jurisdiction other than Colorado, shall not constitute a defense.

(2) Upon the defendant's conviction by entry of a plea of guilty or nolo contendere or judgment or verdict of guilt in connection with a violation of paragraph (a) of subsection (1) of this section or of section 12-6-523 (2) or 42-6-142 (1), C.R.S., the court shall immediately give the executive director written notice of the conviction. In addition, the court shall forward to the executive director copies of documentation of any conviction on a lesser included offense and any amended charge, plea bargain, deferred prosecution, deferred sentence, or deferred judgment in connection with the original charge.

(3) Upon receiving notice of a conviction or other disposition pursuant to subsection (2) of this section, the executive director or his or her designee shall forward the notice to the motor vehicle dealer board, which shall immediately examine its files to determine whether the defendant's license was denied, suspended, or revoked at the time of the offense. If in fact the defendant's license was denied, suspended, or revoked at the time of the offense, the board shall:

(a) Not issue or reinstate any license to the defendant until one year after the time the defendant would otherwise have been eligible to receive a new or reinstated license; and

(b) Revoke or suspend any other licenses held by the defendant until at least one year after the date of the conviction or other disposition.

Source: L. 2007: Entire part added, p. 1874, § 4, effective July 1. L. 2009: (1)(a) and (1)(c)(II) amended, (HB 09-1026), ch. 281, p. 1257, § 16, effective October 1.

12-6-523. Unlawful acts. (1) It is unlawful and a violation of this part 5 for any powersports vehicle manufacturer, distributor, or manufacturer representative:

(a) To willfully fail to cause to not be performed any written warranties made with respect to a powersports vehicle or parts thereof;

(b) To coerce or attempt to coerce any powersports vehicle dealer to perform or allow to be performed an act that could be financially detrimental to the dealer or that would impair the dealer's goodwill or to enter into an agreement with a powersports vehicle manufacturer or distributor that would be financially detrimental to the dealer or impair the dealer's goodwill, by threatening to cancel or not renew a franchise between a powersports vehicle manufacturer or distributor and the dealer;

(c) To coerce or attempt to coerce any powersports vehicle dealer to accept delivery of a powersports vehicle, parts or accessories thereof, or any commodities or services that have not been ordered by the dealer;

(d) (I) To cancel or cause to be canceled, directly or indirectly, without just cause, the franchise of a powersports vehicle dealer, and the nonrenewal of a franchise or selling agreement without just cause is a violation of this paragraph (d) and shall constitute an unfair cancellation.

(II) As used in this paragraph (d), "just cause" shall be determined in the context of all circumstances surrounding the cancellation or nonrenewal, including but not limited to:

(A) The amount of business transacted by the powersports vehicle dealer;

(B) The investments necessarily made and obligations incurred by the powersports vehicle dealer, including but not limited to goodwill, in the performance of its duties under the franchise agreement, together with the duration and permanency of the investments and obligations;

(C) The potential for harm to consumers as a result of disruption of the business of the powersports vehicle dealer;

(D) The powersports vehicle dealer's failure to provide adequate service of facilities, equipment, parts, and qualified service personnel;

(E) The powersports vehicle dealer's failure to perform warranty work on behalf of the powersports vehicle manufacturer, subject to reimbursement by the powersports vehicle manufacturer; and

(F) The powersports vehicle dealer's failure to substantially comply, in good faith, with requirements of the franchise that are determined to be reasonable and material.

(III) The following conduct by a powersports vehicle dealer shall constitute just cause for termination without consideration of other factors:

(A) Conviction of, or a plea of guilty or nolo contendere to, a felony;

(B) A continuing pattern of fraudulent conduct against the powersports vehicle manufacturer or consumers; or

(C) Continuing failure to operate for ten days or longer.

(e) To withhold, reduce, or delay unreasonably or without just cause delivery of powersports vehicles, powersports vehicle parts and accessories, commodities, or moneys due powersports vehicle dealers for warranty work done by any powersports vehicle dealer;

(f) To withhold, reduce, or delay unreasonably or without just cause services contracted for by powersports vehicle dealers;

(g) To coerce any powersports vehicle dealer to provide installment financing with a specified financial institution;

(h) To violate any duty imposed by, or fail to comply with, any provision of section 12-6-524, 12-6-525, or 12-6-526;

(i) (I) To fail to provide to the powersports vehicle dealer, within twenty days after receipt of a notice of intent from a powersports vehicle dealer, the list of documents and information necessary to approve the sale or transfer of the ownership of a dealership by sale of the business or by stock transfer or the change in executive management of the dealership;

(II) To fail to confirm within twenty days after receipt of all documents and information listed in subparagraph (I) of this paragraph (i) that such documentation and information has been received;

(III) To refuse to approve, unreasonably, the sale or transfer of the ownership of a dealership by sale of the business or by stock transfer within sixty days after the manufacturer has received all documents and information necessary to approve the sale or transfer of ownership, or to refuse to approve, unreasonably, the change in executive management of the dealership within sixty days after the manufacturer has received all information necessary to approve the change in management; except that nothing in this part 5 shall authorize the sale, transfer, or assignment of a franchise or a change of the principal operator without the approval of the powersports vehicle manufacturer or distributor unless the manufacturer or distributor fails to send notice of the disapproval within sixty days after receiving all documents and information necessary to approve the sale or transfer of ownership; or

(IV) To condition the sale, transfer, relocation, or renewal of a franchise agreement or to condition sales, services, parts, or finance incentives upon site control or an agreement to renovate or make improvements to a facility; except that voluntary acceptance of such conditions by the dealer shall not constitute a violation;

(j) (I) To fail or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make except as a result of a strike or labor difficulty, lack of manufacturing capacity, shortage of materials, freight embargo, or other cause over which the powersports vehicle manufacturer has no control; or

(II) To require a dealer to pay an unreasonable fee, purchase unreasonable advertising displays or other materials, or comply with unreasonable training or facilities requirements as a prerequisite to receiving any particular model of that same line-make, which shall be judged based on the circumstances of the individual dealer and the conditions of the market served by the dealer;

(k) To require, coerce, or attempt to coerce any powersports vehicle dealer to refrain from participation in the management of, investment in, or acquisition of another line-make

of new powersports vehicles or related products; except that this paragraph (k) shall not apply unless the powersports vehicle dealer:

(I) Maintains a reasonable line of credit for each make or line of new powersports vehicle;

(II) Remains in compliance with reasonable capital standards and reasonable facilities requirements specified by the powersports vehicle manufacturer; but "reasonable facilities requirements" shall not include a requirement that a powersports vehicle dealer establish or maintain exclusive facilities, personnel, or display space; and

(III) Provides written notice to the manufacturer, distributor, or manufacturer's representative, no less than ninety days prior to the dealer's intent to participate in the management of, investment in, or acquisition of another line-make of new powersports vehicles or related products;

(l) To fail to pay to a powersports vehicle dealer, within ninety days after the termination, cancellation, or nonrenewal of a franchise, all of the following:

(I) The dealer cost, plus any charges made by the powersports vehicle manufacturer for distribution, delivery, and taxes, less all allowances paid or credited to the powersports vehicle dealer by the powersports vehicle manufacturer, of unused, undamaged, and unsold powersports vehicles in the powersports vehicle dealer's inventory that were acquired from the powersports vehicle manufacturer or from another powersports vehicle dealer of the same line-make in the ordinary course of business within the previous twelve months;

(II) The dealer cost, less all allowances paid or credited to the powersports vehicle dealer by the powersports vehicle manufacturer, for all unused, undamaged, and unsold supplies, parts, and accessories in original packaging and listed in the powersports vehicle manufacturer's current parts catalog;

(III) The fair market value of each undamaged sign owned by the powersports vehicle dealer and bearing a common name, trade name, or trademark of the powersports vehicle manufacturer if acquisition of the sign was required by the powersports vehicle manufacturer;

(IV) The fair market value of all special tools and equipment that were acquired from the powersports vehicle manufacturer or from sources approved and required by the powersports vehicle manufacturer and that are in good and usable condition, excluding normal wear and tear; and

(V) The cost of transporting, handling, packing, and loading the powersports vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings described in this paragraph (l).

(m) To require, coerce, or attempt to coerce a powersports vehicle dealer to close or change the location of the powersports vehicle dealer, or to make any substantial alterations to the dealer premises or facilities when doing so would be unreasonable or without written assurance of a sufficient supply of powersports vehicles so as to justify the changes, in light of the current market and economic conditions;

(n) To authorize or permit a person to perform warranty service repairs on powersports vehicles unless the person is:

(I) A powersports vehicle dealer with whom the powersports vehicle manufacturer has entered into a franchise agreement for the sale and service of the manufacturer's powersports vehicles; or

(II) A person or government entity that has purchased new powersports vehicles pursuant to a powersports vehicle manufacturer's fleet discount program and is performing the warranty service repairs only on vehicles owned by the person or entity;

(o) To require, coerce, or attempt to coerce a powersports vehicle dealer to prospectively agree to a release, assignment, novation, waiver, or estoppel that would relieve any person of a duty or liability imposed under this article except in settlement of a bona fide dispute;

(p) To discriminate between or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make based upon unreasonable sales and service standards;

(q) To fail to make practically available an incentive, rebate, bonus, or other similar benefit to a powersports vehicle dealer that is offered to another powersports vehicle dealer of the same line-make within this state;

(r) To fail to pay to a powersports vehicle dealer:

(I) Within ninety days after the termination, cancellation, or nonrenewal of a franchise for the failure of a dealer to meet performance sales and service obligations or after the termination, elimination, or cessation of a line-make, the cost of the lease for the facilities used for the franchise or line-make for the unexpired term of the lease, not to exceed one year; except that:

(A) If the powersports vehicle dealer owns the facilities, the value of renting such facilities for one year, prorated for each line-make based upon total sales volume for the previous twelve months before the involuntary termination;

(B) Nothing in this subparagraph (I) shall be construed to limit the application of paragraph (d) of this subsection (1);

(II) Within ninety days after the termination, elimination, or cessation of a line-make or the termination of a franchise due to the insolvency of the manufacturer or distributor, the fair market value of the powersports vehicle dealer's goodwill for the line-make as of the date the manufacturer or distributor announces the action that results in the termination, elimination, or cessation, not including any amounts paid under subparagraphs (I) to (V) of paragraph (I) of this subsection (1);

(s) To condition a franchise agreement on improvements to a facility unless reasonably required by the technology of a powersports vehicle being sold at the facility;

(t) To charge back, deny powersports vehicle allocation, withhold payments, or take other actions against a powersports vehicle dealer if a powersports vehicle sold by the powersports vehicle dealer is exported from Colorado unless the manufacturer, distributor, or manufacturer representative proves that the powersports vehicle dealer knew or reasonably should have known a powersports vehicle was intended to be exported, which shall operate as a rebuttable presumption that the powersports vehicle dealer did not have such knowledge;

(u) Within ninety days after the termination, elimination, or cessation of a line-make or the termination, cancellation, or nonrenewal of a franchise by the manufacturer, distributor, or manufacturer representative, for any reason other than that the powersports vehicle dealer commits fraud, makes a misrepresentation, or commits any other crime within the scope of the franchise agreement or in the operation of the dealership, to fail to reimburse a powersports vehicle dealer for the cost depreciated by five percent per year of any upgrades or alterations to the powersports vehicle dealer's facilities required by the manufacturer, distributor, or manufacturer representative within the previous five years;

(v) To fail to notify a powersports vehicle dealer at least ninety days before the following and to provide the specific reasons for the following:

(I) Directly or indirectly terminating, cancelling, or not renewing a franchise agreement; or

(II) Modifying, replacing, or attempting to modify or replace the franchise or selling agreement of a powersports dealer, including a change in the dealer's geographic area upon which sales or service performance is measured, if the modification would substantially and adversely alter the rights or obligations of the dealer under the current franchise or selling agreement or would substantially impair the sales or service obligations or the dealer's investment; and

(w) To require, coerce, or attempt to coerce a powersports dealer to substantially alter a facility or premises if the facility or premises has been altered within the last seven years at a cost of more than twenty-five thousand dollars, and the alteration was required and approved by the manufacturer, distributor, or manufacturer representative; except that this paragraph (w) does not apply to improvements made to comply with health or safety laws or to accommodate the technology requirements necessary to sell or service a line-make.

(2) It is unlawful for a person to act as a wholesaler, powersports vehicle dealer, used powersports vehicle dealer, powersports vehicle manufacturer, powersports vehicle distributor, powersports vehicle manufacturer representative, or powersports vehicle salesperson unless the person has been duly licensed under the provisions of this part 5.

Source: L. 2007: Entire part added, p. 1875, § 4, effective July 1. **L. 2009:** (1)(i), (1)(k), and (1)(l)(I) amended and (1)(p), (1)(q), (1)(r), and (1)(s) added, (SB 09-091), ch. 80, p. 293, §§ 7, 6, effective July 1; (2) amended, (HB 09-1026), ch. 281, p. 1258, § 17, effective October 1. **L. 2010:** (1)(r)(II) amended and (1)(t) and (1)(u) added, (HB 10-1049), ch. 32, p. 119, § 9, effective March 22. **L. 2011:** IP(1) amended and (1)(v) and (1)(w) added, (HB 11-1188), ch. 175, p. 661, § 4, effective May 13.

12-6-524. New, reopened, or relocated dealer - notice required - grounds for refusal of dealer license - definitions - rules. (1) No powersports vehicle manufacturer or distributor shall establish an additional new powersports vehicle dealer, reopen a previously existing powersports vehicle dealer, or relocate an existing powersports vehicle dealer without first providing at least sixty days' notice to all of its franchised dealers and former dealers whose franchises were terminated, cancelled, or not renewed by a manufacturer, distributor, or manufacturer representative in the previous five years due to the insolvency of the manufacturer or distributor within whose relevant market area the new, reopened, or relocated dealer would be located. The notice shall state:

(a) The specific location at which the additional, reopened, or relocated powersports vehicle dealer will be established;

(b) The date on or after which the powersports vehicle manufacturer intends to be engaged in business with the additional, reopened, or relocated powersports vehicle dealer at the proposed location;

(c) The identity of all powersports vehicle dealers who are franchised to sell the same line-make of vehicles with licensed locations in the relevant market area where the additional, reopened, or relocated powersports vehicle dealer is proposed to be located; and

(d) The names and addresses of the dealer and principal investors in the proposed additional, reopened, or relocated powersports vehicle dealer.

(1.5) A powersports vehicle manufacturer shall reasonably approve or disapprove of a powersports vehicle dealer facility initial site location or relocation request within sixty days after the request or after sending the notice required by subsection (1) of this section to all of its franchised powersports vehicle dealers and former dealers whose franchises were terminated, cancelled, or not renewed in the previous five years due to the insolvency of the manufacturer or distributor, whichever is later, but not to exceed one hundred days.

(2) Subsection (1) of this section shall not apply to:

(a) The relocation of an existing dealer within two miles of its current location; or

(b) The establishment of a replacement dealer, within two years, either at the former location or within two miles of the former location.

(3) As used in this section:

(a) "Powersports manufacturer" means a powersports vehicle manufacturer, distributor, or manufacturer representative.

(b) "Relevant market area" means the greater of the following:

(I) The geographic area of responsibility defined in the franchise agreement of an existing dealer; or

(II) The geographic area within a radius of five miles of any existing dealer of the same line-make of powersports vehicle that is located in a county with a population of more than one hundred fifty thousand or within a radius of ten miles of an existing dealer of the same line-make of vehicles that is located in a county with a population of one hundred fifty thousand or less.

(c) "Right of first refusal area" means a five-mile radius extending from the location of where a powersports vehicle dealer had a franchise terminated, cancelled, or not renewed if the franchise was in a county with a population of more than one hundred fifty thousand or a ten-mile radius if the franchise was in a county with a population of one hundred fifty thousand or less.

(4) (a) If a licensee or former licensee whose franchise was terminated, cancelled, or not renewed by the manufacturer, distributor, or manufacturer representative in the previous five years due to the insolvency of the manufacturer or distributor brings an action or proceeding before the executive director or a court pursuant to this part 5, the powersports vehicle manufacturer shall have the burden of proof on the following issues:

(I) The size and permanency of investment and obligations incurred by the existing powersports vehicle dealers of the same line-make located in the relevant market area;

(II) Growth or decline in population in the relevant market area;

(III) The effect on the consuming public in the relevant market area and whether the opening of the proposed additional, reopened, or relocated dealer is injurious or beneficial to the public welfare; and

(IV) Whether the powersports vehicle dealers of the same line-make in the relevant market area are providing adequate and convenient customer care for powersports vehicles of the same line-make in the relevant market area, including but not limited to the adequacy of sales and service facilities, equipment, parts, and qualified service personnel.

(b) (I) In addition to the powers specified in section 12-6-505, the executive director has jurisdiction to resolve actions or proceedings brought before the executive director pursuant to this part 5 that allege a violation of this part 5 or rules promulgated pursuant to this part 5. The executive director may promulgate rules to facilitate the administration of the actions or proceedings, including provisions specifying procedures for the executive director or the executive director's designee to:

(A) Conduct an investigation pursuant to section 12-6-505 (1) (e) and (1) (f) of an alleged violation of this part 5 or rules promulgated pursuant to this part 5, including issuance of a notice of violation;

(B) Hold a hearing regarding the alleged violation to be held pursuant to section 24-4-105, C.R.S.;

(C) Issue an order, including a cease-and-desist order issued pursuant to section 12-6-505 (1) (h), to resolve the notice of violation; and

(D) Impose a fine pursuant to section 12-6-505 (1) (h) (III).

(II) The court of appeals has initial jurisdiction to review all final actions and orders that are subject to judicial review of the executive director made pursuant to this subsection (4). The proceedings shall be conducted in accordance with section 24-4-106, C.R.S.

(5) (a) No manufacturer, distributor, or manufacturer representative shall offer or award a person a franchise or permit the relocation of an existing franchise to the relevant right of first refusal area unless the manufacturer, distributor, or manufacturer representative has complied with paragraph (b) of this subsection (5) or unless paragraph (b) of this subsection (5) does not apply.

(b) If a manufacturer, distributor, or manufacturer representative, or the predecessor thereof, has terminated, cancelled, or not renewed a powersports vehicle dealer's franchise for a line-make within the relevant right of first refusal area on account of the insolvency of the manufacturer or distributor that was held by the powersports vehicle dealer immediately prior to the franchise being terminated, cancelled, or not renewed within the amount of time the right of first refusal is granted under paragraph (c) of this subsection (5), the manufacturer, distributor, or manufacturer representative, or the successor thereof, shall offer the former powersports vehicle dealer whose franchise was terminated, cancelled, or not renewed a franchise within the same first refusal area prior to making the offer to any other person for the same line-make unless the former powersports vehicle dealer elects to receive the payments required by section 12-6-523 (1) (l) and (1) (r) in lieu of the right of first refusal or the powersports vehicle dealer has accepted compensation from the manufacturer, distributor, or manufacturer representative for the termination, cancellation, or nonrenewal of the franchise agreement.

(c) The duration of the right of first refusal granted in paragraph (b) of this subsection (5) is equal to five years after the franchise is terminated, cancelled, or not renewed.

(d) If a manufacturer, distributor, or manufacturer representative, or the predecessor thereof, has made any payment to the powersports vehicle dealer in consideration for the termination, cancellation, or nonrenewal of a franchise agreement and the powersports vehicle dealer obtains a new franchise agreement through this subsection (5), the powersports vehicle dealer shall reimburse the manufacturer, distributor, or manufacturer representative for such payments. The powersports vehicle dealer may reimburse the manufacturer, distributor, or manufacturer representative with a commercially reasonable repayment installment plan.

(e) The right of first refusal survives a court voiding the payments required by section 12-6-523 (1) (l) and (1) (r).

(f) (I) The right of first refusal survives a manufacturer, distributor, or manufacturer representative, or predecessor thereof, awarding a franchise within the same right of first refusal area for the same line-make to a person or entity other than the former powersports vehicle dealer whose franchise was terminated, cancelled, or not renewed.

(II) If a manufacturer, distributor, or manufacturer representative, or predecessor thereof, has awarded the franchise to another powersports vehicle dealer in the same right of first refusal area without granting the right of first refusal under this section, the former powersports vehicle dealer may elect to either receive a franchise agreement in the same area or the payments required by section 12-6-523 (1) (l) and (1) (r) from the manufacturer, distributor, or manufacturer representative unless the manufacturer, distributor, or manufacturer representative, or predecessor thereof, has paid compensation in consideration of the initial termination, cancellation, or nonrenewal of the franchise agreement.

Source: L. 2007: Entire part added, p. 1879, § 4, effective July 1. **L. 2009:** (1.5) added, (SB 09-091), ch. 80, p. 295, § 8, effective July 1. **L. 2010:** IP(1), (1.5), and IP(4)(a) amended and (3)(c) and (5) added, (HB 10-1049), ch. 32, p. 120, §§ 11, 10, effective March 22.

12-6-525. Independent control of dealer - definitions. (1) Except as otherwise provided in this section, no powersports vehicle manufacturer shall own, operate, or control any powersports vehicle dealer or used powersports vehicle dealer in Colorado.

(2) Notwithstanding subsection (1) of this section, the following activities are not prohibited:

(a) Operation of a powersports vehicle dealer for a temporary period, not to exceed twelve months, during the transition from one owner or operator to another independent owner or operator; except that the executive director may extend the period, not to exceed twenty-four months, upon a showing by the manufacturer or distributor of the need to operate the dealership for such time to achieve a transition from an owner or operator to another independent third-party owner or operator;

(b) Ownership or control of a powersports vehicle dealer while the dealer is being sold under a bona fide contract or purchase option to the operator of the dealer;

(c) Participation in the ownership of the powersports vehicle dealer solely for the purpose of providing financing or a capital loan that will enable the dealer to become the majority owner of the dealer in less than seven years; and

(d) Operation of a powersports vehicle dealer if the powersports vehicle manufacturer has no other franchised dealers of the same line-make in this state.

(3) As used in this section:

(a) "Control" means to possess, directly, the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise; except that "control" does not include the relationship between a powersports vehicle manufacturer and a powersports vehicle dealer under a franchise agreement.

(b) "Operate" means to directly or indirectly manage a powersports vehicle dealer.

(c) "Own" means to hold any beneficial ownership interest of one percent or more class of equity interest in a powersports vehicle dealer, whether as a shareholder, partner, limited liability company member, or otherwise. To "hold" an ownership interest means to have possession of, title to, or control of the ownership interest, either directly or through a fiduciary or agent.

(d) "Powersports vehicle manufacturer" means a powersports vehicle manufacturer, distributor, or manufacturer representative.

Source: L. 2007: Entire part added, p. 1880, § 4, effective July 1. **L. 2009:** (1) and (2)(a) amended, (SB 09-091), ch. 80, p. 295, § 9, effective July 1.

12-6-526. Successor under existing franchise agreement - duties of powersports vehicle manufacturer. (1) If a licensed powersports vehicle dealer under franchise by a powersports vehicle manufacturer dies or becomes incapacitated, the powersports vehicle manufacturer shall act in good faith to allow a successor, which may include a family member, designated by the deceased or incapacitated powersports vehicle dealer to succeed to ownership and operation of the dealer under the existing franchise agreement if:

(a) Within ninety days after the powersports vehicle dealer's death or incapacity, the designated successor gives the powersports vehicle manufacturer written notice of an intent to succeed to the rights of the deceased or incapacitated powersports vehicle dealer in the franchise agreement;

(b) The designated successor agrees to be bound by all of the terms and conditions of the existing franchise agreement; and

(c) The designated successor meets the criteria generally applied by the powersports vehicle manufacturer in qualifying powersports vehicle dealers.

(2) A powersports vehicle manufacturer may refuse to honor the existing franchise agreement with the designated successor only for good cause. The powersports vehicle manufacturer may request in writing from a designated successor the personal and financial data that is reasonably necessary to determine whether the existing franchise agreement should be honored, and the designated successor shall supply the data promptly upon request.

(3) (a) If a powersports vehicle manufacturer believes that good cause exists for refusing to honor the requested succession, the powersports vehicle manufacturer shall send the designated successor, by certified or overnight mail, notice of its refusal to approve the succession within sixty days after the later of:

(I) Receipt of the notice of the designated successor's intent to succeed the powersports vehicle dealer in the ownership and operation of the dealer; or

(II) The receipt of the requested personal and financial data.

(b) Failure to serve the notice pursuant to paragraph (a) of this subsection (3) shall be considered approval of the designated successor, and the franchise agreement is considered amended to reflect the approval of the succession the day following the last day of the notice period specified in said paragraph (a).

(c) If the powersports vehicle manufacturer gives notice of refusal to approve the succession, the notice shall state the specific grounds for the refusal and shall state that the franchise agreement shall be discontinued not less than ninety days after the date the notice of refusal is served unless the proposed successor files an action in the district court to enjoin the action.

(4) This section shall not be construed to prohibit a powersports vehicle dealer from designating a person as the successor in advance, by written instrument filed with the powersports vehicle manufacturer. If the powersports vehicle dealer files the instrument, that instrument governs the succession rights to the management and operation of the dealer subject to the designated successor satisfying the powersports vehicle manufacturer's qualification requirements as described in this section.

Source: L. 2007: Entire part added, p. 1881, § 4, effective July 1.

12-6-526.5. Audit reimbursement limitations - dealer claims. (1) (a) A manufacturer, distributor, or manufacturer representative shall have the right to audit warranty, sales, or incentive claims of a powersports vehicle dealer for nine months after the date the claim was submitted.

(b) A manufacturer, distributor, or manufacturer representative shall not require documentation for warranty, sales, or incentive claims or audit warranty, sales, or incentive claims of a powersports vehicle dealer more than fifteen months after the date the claim was submitted, nor shall the manufacturer require a charge back, reimbursement, or credit against a future transaction arising out of an audit or request for documentation arising more than nine months after the date the claim was submitted.

(2) The powersports vehicle dealer shall have nine months after making a sale or providing service to submit warranty, sales, or incentive claims to the manufacturer, distributor, or manufacturer representative.

(3) Subsection (1) of this section shall not limit any action for fraud instituted in a court of competent jurisdiction.

(4) A powersports vehicle dealer may request a determination from the executive director, within thirty days, that a charge back, reimbursement, or credit required violates subsection (1) of this section. If a determination is requested within the thirty-day period, then the charge back, reimbursement, or credit shall be stayed pending the decision of the executive director. If the executive director determines after a hearing that the charge back, reimbursement, or credit violates subsection (1) of this section, the charge back, reimbursement, or credit shall be void.

Source: L. 2009: Entire section added, (SB 09-091), ch. 80, p. 296, § 10, effective July 1. **L. 2010:** (1) and (2) amended, (HB 10-1049), ch. 32, p. 122, § 12, effective March 22.

12-6-526.7. Reimbursement for disapproving sale. A manufacturer or distributor shall pay reasonable attorney fees, not to exceed the usual and customary fees charged for the transfer of a franchise, and reasonable expenses that are incurred by the proposed owner or transferee before the manufacturer or distributor exercised its right of first refusal in negotiating and implementing the contract for the proposed change of ownership or the transfer of assets. Payment of attorney fees and expenses is not required if the claimant has failed to submit an accounting of attorney fees and expenses within twenty days after the receipt of the manufacturer's or dealer's written request for an accounting. An expense accounting may be requested by the manufacturer or distributor before exercising its right of first refusal.

Source: L. 2009: Entire section added, (SB 09-091), ch. 80, p. 297, § 10, effective July 1.

12-6-527. Penalty. A person who willfully violates this part 5 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.; except that a person who violates section 12-6-523 (2) commits a class 3 misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars for each separate offense, or if the violator is a corporation, the fine shall be not less than five hundred dollars nor more than two thousand five hundred dollars for each separate offense. A second conviction shall be punished by a fine of two thousand five hundred dollars.

Source: L. 2007: Entire part added, p. 1883, § 4, effective July 1.

12-6-528. Fines - disposition - unlicensed sales. Any fine collected for a violation of section 12-6-523 (2) shall be awarded to the law enforcement agency that investigated and issued the citation for the violation.

Source: L. 2007: Entire part added, p. 1883, § 4, effective July 1.

12-6-529. Drafts or checks not honored for payment - penalties. (1) If a wholesaler, powersports vehicle dealer, or used powersports vehicle dealer issues a draft or check to a wholesaler, powersports vehicle dealer, or used powersports vehicle dealer and fails to honor the draft or check, then the license of the licensee shall be subject to suspension pursuant to section 12-6-520. The license suspension shall be effective upon the date of a final decision against the licensee. A licensee whose license has been suspended pursuant to this subsection (1) shall not be eligible for reinstatement of the license and shall not be eligible to apply for another license issued under this part 5 unless it is demonstrated to the

board that the unpaid draft or check has been paid in full and that any fine imposed on the licensee pursuant to subsection (2) of this section has been paid in full.

(2) A wholesaler, powersports vehicle dealer, or used powersports vehicle dealer that issues a draft or check to a wholesaler, powersports vehicle dealer, or used powersports vehicle dealer and who fails to honor the draft or check, causing loss to a third party, commits a misdemeanor and shall be punished by a fine of two thousand five hundred dollars. Any fine collected for a violation of this subsection (2) shall be awarded to the law enforcement agency that investigated and issued the citation for the violation.

Source: L. 2007: Entire part added, p. 1883, § 4, effective July 1. L. 2009: Entire section amended, (HB 09-1026), ch. 281, p. 1258, § 18, effective October 1.

12-6-530. Right of action for loss. (1) A person shall have a right of action against the dealer, the dealer's salespersons, and the sureties upon their respective bonds if the person suffers loss or damage by reason of fraud practiced on the person or fraudulent representation made to the person by a licensed powersports vehicle dealer or a licensed used powersports vehicle dealer, or one of the dealer's salespersons acting on the dealer's behalf or within the scope of the employment, or suffers loss or damage by reason of the violation by the dealer or salesperson of any of the provisions of this part 5 that are designated by the board by rule, whether or not the violation is the basis for denial, suspension, or revocation of a license. The right of a person to recover for loss or damage as provided in this subsection (1) against the dealer or salesperson shall not be limited to the amount of their respective bonds.

(2) If a person suffers any loss or damage by reason of any unlawful act under section 12-6-523 (1) (a), the person shall have a right of action against the powersports vehicle manufacturer, distributor, or manufacturer representative. In a court action wherein a powersports vehicle manufacturer, distributor, or manufacturer representative has been found liable in damages to any person under this part 5, the amount of damages so determined shall be trebled and shall be recoverable by the person so damaged. Any person so damaged shall also be entitled to recover reasonable attorney fees.

(3) If a licensee suffers loss or damage by reason of an unlawful act under section 12-6-523 (1), the licensee shall have a right of action against the powersports vehicle manufacturer, distributor, or manufacturer representative. In a court action wherein a powersports vehicle manufacturer, distributor, or manufacturer representative has been found liable in damages to a licensee under this part 5, the licensee so damaged shall also be entitled to recover reasonable attorney fees.

Source: L. 2007: Entire part added, p. 1883, § 4, effective July 1.

12-6-531. Contract disputes - venue - choice of law. (1) In the event of a dispute between a powersports vehicle dealer and a powersports vehicle manufacturer under a franchise agreement, notwithstanding any provision of the agreement to the contrary:

(a) At the option of the powersports vehicle dealer, venue shall be proper in the county or judicial district where the dealer resides or has its principal place of business; and

(b) Colorado law shall govern, both substantively and procedurally.

Source: L. 2007: Entire part added, p. 1884, § 4, effective July 1.

12-6-532. Advertisement - inclusion of dealer name. No powersports vehicle dealer or used powersports vehicle dealer or an agent of a dealer shall advertise an offer for the sale, lease, or purchase of a powersports vehicle that creates the false impression that the vehicle is being offered by a private party or that does not contain the name of the dealer or the word "dealer" or, if the name is contained in the offer and does not clearly reflect that the business is a dealer, both the name of the dealer and the word "dealer".

Source: L. 2007: Entire part added, p. 1884, § 4, effective July 1.

12-6-533. Repeal of part. This part 5 is repealed, effective July 1, 2017. Prior to the repeal, the functions of the motor vehicle dealer board and the executive director under this part 5, including licensing, shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 2007: Entire part added, p. 1884, § 4, effective July 1.

12-6-534. Payout exemption to execution. A powersports vehicle dealer's right to receive payments from a manufacturer or distributor required by section 12-6-523 (1) (l) and (1) (r) is not liable to attachment or execution and may not otherwise be seized, taken, appropriated, or applied in a legal or equitable process or by operation of law to pay the debts or liabilities of the manufacturer or distributor. This section shall not prohibit a secured creditor from exercising rights accrued pursuant to a security agreement if the right arose as a result of the manufacturer or distributor voluntarily creating a security interest before paying existing debts or liabilities of the manufacturer or distributor. This section shall not prohibit a manufacturer or distributor from withholding a portion of the payments necessary to cover an amount of money owed to the manufacturer or distributor as an offset to the payments if the manufacturer or distributor provides the motor vehicle dealer written notice thereof.

Source: L. 2010: Entire section added, (HB 10-1049), ch. 32, p. 123, § 13, effective March 22.

12-6-535. Site control extinguishes. If a manufacturer, distributor, or manufacturer representative has terminated, eliminated, or not renewed a franchise agreement containing a site control provision, the powersports vehicle dealer may void a site control provision of a franchise agreement by returning any money the dealer has accepted in exchange for site control prorated by the time remaining before the agreement expires over the time period between the agreement being signed and the agreement expiring. This section does not apply if the termination, elimination, or nonrenewal is for just cause in accordance with section 12-6-523 (1) (d).

Source: L. 2011: Entire section added, (HB 11-1188), ch. 175, p. 662, § 5, effective May 13.

12-6-536. Modification voidable. If a manufacturer, distributor, or manufacturer representative fails to comply with section 12-6-120 (1) (v) (II), the powersports dealer may void the modification or replacement of the franchise agreement.

Source: L. 2011: Entire section added, (HB 11-1188), ch. 175, p. 662, § 5, effective May 13.

12-6-537. Termination appeal. A powersports vehicle dealer who has reason to believe that a manufacturer, distributor, or manufacturer representative has violated section 12-6-523 (1) (d) or (1) (v) may appeal to the board by filing a complaint with the executive director. Upon receiving the complaint and upon a showing of specific facts that a violation has occurred, the executive director shall summarily issue a cease-and-desist order under section 12-6-105 (1) (h) staying the termination, elimination, modification, or nonrenewal of the franchise agreement. The cease-and-desist order remains in effect until the hearing required by section 12-6-105 (1) (h) is held. If a determination is made at the hearing required by section 12-6-105 (1) (h) that a violation occurred, the executive director shall make the cease-and-desist order permanent and take any actions authorized by section 12-6-504 (1). A motor vehicle dealer who appeals to the executive director maintains all rights under the franchise agreement until the later of the executive director issuing a decision or ninety days after the manufacturer, distributor, or manufacturer's representative provides the notice of termination unless the executive director finds that the termination,

cancellation, or nonrenewal was for fraud, a misrepresentation, or committing a crime within the scope of the franchise agreement or in the operation of the dealership, in which case the franchise rights terminate immediately.

Source: L. 2011: Entire section added, (HB 11-1188), ch. 175, p. 662, § 5, effective May 13.

ARTICLE 7

Bail Bonding Agents

12-7-101 to 12-7-113. (Repealed)

Source: L. 2012: Entire article repealed, (HB 12-1266), ch. 280, p. 1509, § 40, effective July 1.

Editor's note: (1) This article was numbered as article 20 of chapter 72, C.R.S. 1963. For amendments to this article prior to its repeal in 2012, consult the 2011 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 52 of chapter 280, Session Laws of Colorado 2012, provides that the act repealing this article applies to offenses committed and applications submitted on or after July 1, 2012.

ARTICLE 8

Barbers and Cosmetologists

Editor's note: This article was numbered as articles 1 and 2 of chapter 15, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1977, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

12-8-101.	Short title.	12-8-114.5.	Registration for places of business. (Repealed)
12-8-102.	Legislative declaration.	12-8-115.	Renewal and reinstatement of license.
12-8-103.	Definitions.	12-8-116.	Fees.
12-8-104.	State board of barbers and cosmetologists. (Repealed)	12-8-117.	Disposition of fees.
12-8-105.	Administrator - assistants. (Repealed)	12-8-118.	Licensure by endorsement.
12-8-106.	Meetings - quorum - rules. (Repealed)	12-8-119.	Issuance of license - display.
12-8-107.	Books and records - report - publications.	12-8-120.	License required.
12-8-108.	Powers and duties of the director - advisory committee - rules - repeal.	12-8-121.	Exemptions.
12-8-109.	Rules and orders adopted by the state board of barbers and cosmetologists under previous law - persons licensed or registered under previous law.	12-8-122.	Director may employ aid - compensation.
12-8-110.	Examinations.	12-8-123.	Inspections.
12-8-111.	Application - form.	12-8-124.	Approved educational program for barbers - requirements. (Repealed)
12-8-112.	Results of examinations.	12-8-124.5.	Instructors of barbering and cosmetology. (Repealed)
12-8-113.	When the director admits applicant.	12-8-125.	License for beauty school - requirements. (Repealed)
12-8-114.	Qualifications of applicants - requirements.	12-8-126.	Beauty school operation. (Repealed)
		12-8-127.	Unauthorized practice - penalties.
		12-8-127.5.	Cease-and-desist orders.
		12-8-128.	Enforcement.
		12-8-129.	Investigations.

12-8-129.1.	Immunity.		judicial review.
12-8-130.	Persons licensed or registered under previous law. (Repealed)	12-8-132.	Grounds for denial, revocation, or suspension of license.
12-8-131.	Disciplinary proceedings - administrative law judges -	12-8-133.	Repeal of article.

12-8-101. Short title. This article shall be known and may be cited as the “Barber and Cosmetologist Act”.

Source: **L. 77:** Entire article R&RE, p. 612, § 1, effective July 1. **L. 90:** Entire section amended, p. 760, § 1, effective July 1.

Editor’s note: This section is similar to former § 12-17-101 as it existed prior to 1977.

12-8-102. Legislative declaration. The purpose of this article is to protect the public’s health, safety, and welfare with respect to the professional practice of barbers, hairstylists, cosmetologists, estheticians, and manicurists, and, therefore, testing procedures and disciplinary actions are of the highest priority. Access of qualified professionals to these professions shall not be unduly restricted. The director of the division of professions and occupations in the department of regulatory agencies is hereby directed to enforce this article to accomplish the purposes set forth in this section.

Source: **L. 77:** Entire article R&RE, p. 612, § 1, effective July 1. **L. 90:** Entire section amended, p. 760, § 2, effective July 1. **L. 2000:** Entire section amended, p. 2015, § 1, effective July 1. **L. 2005:** Entire section amended, p. 560, § 1, effective July 1.

Editor’s note: This section is similar to former § 12-17-102 as it existed prior to 1977.

ANNOTATION

Constitutional regulation. That barber and beauty shops or schools and the public practice of barbering and cosmetology can constitutionally be regulated by the state is not questioned. *People v. Taylor*, 189 Colo. 202, 540 P.2d 320 (1975).

- 12-8-103. Definitions.** As used in this article, unless the context otherwise requires:
- (1) “Barber” means a person who engages in any of the practices of barbering.
 - (2) “Barbering” means any one or combination of the following practices when done upon the upper part of the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments and when done for payment either directly or indirectly or when done without payment for the public generally: Shaving or trimming the beard; cutting the hair; giving facial or scalp massage or treatment with oils, creams, or lotions, or other chemical preparations, either by hand or with mechanical appliances; dyeing the hair or applying hair tonic; applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to the scalp, face, neck, or shoulders.
 - (3) “Barber school” means an establishment operated by a person for the purpose of teaching barbering that is certified by the private occupational school division or the Colorado community college system, or is an accredited technical school that teaches barbering.
 - (4) “Barbershop” or “beauty salon” means a fixed establishment, temporary location, or place in which one or more persons engage in the practice of barbering or cosmetology. The term “temporary location” includes a motor home as defined in section 42-1-102 (57), C.R.S.
 - (5) “Beauty school” means an establishment operated by a person for the purpose of teaching cosmetologists, estheticians, and manicurists that is certified by the private occupational school division or the Colorado community college system, or is an accredited technical school that teaches cosmetology.

- (6) Repealed.
- (7) (Deleted by amendment, L. 2005, p. 560, § 2, effective July 1, 2005.)
- (8) "Cosmetologist" means a person who engages in any of the practices of cosmetology.
- (9) "Cosmetology" means any one act or practice, or any combination of acts or practices, when done for payment either directly or indirectly or when done without payment for the public generally, usually performed by and included in or known as the profession of beauty culturists, beauty operators, beauticians, estheticians, cosmetologists, or hairdressers or of any other person, partnership, corporation, or other legal entity holding itself out as practicing cosmetology by whatever designation and within the meaning of this article. In particular, "cosmetology" includes, but is not limited to, any one or a combination of the following acts or practices: Arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work upon the hair of any person by any means and, with hands or mechanical or electrical apparatus or appliances or by the use of cosmetic or chemical preparations, manicuring or pedicuring the nails of any person; giving facials, applying makeup, giving skin care, or applying eyelashes involving physical contact with any person; beautifying the face, neck, arms, bust, or torso of the human body by use of cosmetic preparations, antiseptics, tonics, lotions, or creams; massaging, cleaning, or stimulating the face, neck, arms, bust, or torso of the human body with the use of antiseptics, tonics, lotions, or creams; removing superfluous hair from the body of any person by the use of depilatories or waxing or by the use of tweezers; and the trimming of the beard.
- (9.3) "Director" means the director of the division of professions and occupations in the department of regulatory agencies.
- (9.4) "Esthetician" means any person who engages in any one or more of the following practices:
 - (a) Giving facials, applying makeup, giving skin care, or applying eyelashes, involving physical contact, to any person;
 - (b) Beautifying the face, neck, arms, bust, or torso of the human body by the use of cosmetic preparations, antiseptics, tonics, lotions, or creams;
 - (c) Massaging, cleaning, or stimulating the face, neck, arms, bust, or torso of the human body by means of the hands, devices, apparatus, or appliances with the use of cosmetic preparations, antiseptics, tonics, lotions, or creams;
 - (d) Removing superfluous hair from the body of any person by the use of depilatories or waxing or by the use of tweezers.
- (9.5) "Free lance shop operator" means an individual who engages in barbering, hairstyling, or cosmetology or practices as an esthetician or manicurist at locations other than fixed or mobile barbershops or beauty shops.
- (9.7) "Hairstyling" means providing one or more of the following hair care services upon the upper part of the human body for cosmetic purposes for payment either directly or indirectly, or when done without payment for the public generally:
 - (a) Cleansing, massaging, or stimulating the scalp with oils, creams, lotions, or other cosmetic or chemical preparations, using the hands or with manual, mechanical, or electrical implements or appliances;
 - (b) Applying cosmetic or chemical preparations, antiseptics, powders, oils, clays, or lotions to the scalp;
 - (c) Cutting, arranging, braiding, applying hair extensions to, or styling the hair by any means using the hands or with manual, mechanical, or electrical implements or appliances;
 - (d) Cleansing, coloring, lightening, waving, or straightening the hair with cosmetic or chemical preparations, using manual, mechanical, or electrical implements or appliances;
 - (e) Trimming the beard.
- (9.8) "Hairstylist" means a person who engages in any of the practices of hairstyling.
- (10) Repealed.
- (10.5) "Manicuring" means any one act or practice, or combination of acts or practices, when done for direct or indirect payment or when done without payment for the public generally. "Manicuring" includes, but is not limited to, the filing, buffing, polishing, cleansing, extending, protecting, wrapping, covering, building, pushing, or trimming of

nails or any other similar work upon the nails of any person by any means, including the softening of the hands, arms, ankles, or feet of any person by use of hands, mechanical or electrical apparatus or appliances, cosmetic or chemical preparations, antiseptics, lotions, or creams or by massaging, cleansing, stimulating, manipulating, or exercising the arms, hands, feet, or ankles of any person. Manicuring also includes waxing or the use of depilatories on the leg up to the knee, and the waxing or the use of depilatories on the arm up to the elbow.

(11) "Manicurist" means a person who engages in the limited practices of cosmetology known as manicuring. Unless otherwise licensed under this article, a manicurist shall not engage in the practice of cosmetology, barbering, or hairstyling or practice as an esthetician.

(12) "Owner" includes any person who has a financial interest in a barbershop or beauty salon or any other place of business entitling such person to participate in the promotion, management, or proceeds thereof. It does not include a person whose connection with the barbershop, beauty salon, or other place of business entitles such person only to reasonable salary or wages for services actually rendered. The owner of a place of business is the person responsible for registering such place of business with the director.

(13) "Place of business" means a fixed establishment, temporary location, or place, including any mobile barber shop or beauty salon, in which one or more persons engage in the practice of barbering, hairstyling, or cosmetology or practice as a manicurist or an esthetician. The term "temporary location" includes a motor home as defined in section 42-1-102 (57), C.R.S.

Source: L. 77: Entire article R&RE, p. 612, § 1, effective July 1. L. 84: (4) amended, p. 408, § 1, effective July 1. L. 90: (9.5), (10.5), and (13) added, (10) repealed, and (11) and (12) amended, pp. 761, 771, §§ 3, 32, effective July 1. L. 94: (4) and (13) amended, p. 2547, § 23, effective January 1, 1995. L. 2000: (6) repealed, (9.3), (9.7), and (9.8) added, and (12) amended, p. 2015, §§ 2, 3, effective July 1. L. 2005: (3), (5), (7), (9), (9.5), (10.5), (11), and (13) amended and (9.4) and (9.7)(e) added, pp. 560, 562, §§ 2, 3, effective July 1.

Editor's note: This section is similar to former §§ 12-8-101 and 12-17-103 as they existed prior to 1977.

ANNOTATION

Annotator's note. Since § 12-8-103 is similar to repealed § 12-17-103, a relevant case construing that provision has been included in the annotations to this section.

Public haircutting may be practiced both by licensed barbers and licensed cosmetologists. *People v. Taylor*, 189 Colo. 202, 540 P.2d 320 (1975).

Cosmetologists meeting the standards for the cutting of hair have a right to engage in that business, subject only to such restrictions as are rationally related to a legitimate state purpose. *People v. Taylor*, 189 Colo. 202, 540 P.2d 320 (1975).

The relationship between a beauty school and those enrolled for the purpose of learning

the practices of cosmetology is that of school and student. *Indus. Comm'n v. Am. Beauty Coll., Inc.*, 167 Colo. 269, 447 P.2d 531 (1968).

This precludes the relationship of master and servant or employer and employee. *Indus. Comm'n v. Am. Beauty Coll., Inc.*, 167 Colo. 269, 447 P.2d 531 (1968).

Since statutory provisions concerning minimum wages of women and children, as a prerequisite to its operation, contemplates the relationship of employer and employee, a minimum wage order was null and void as to beauty schools and their students. *Indus. Comm'n v. Am. Beauty Coll., Inc.*, 167 Colo. 269, 447 P.2d 531 (1968).

12-8-104. State board of barbers and cosmetologists. (Repealed)

Source: L. 77: Entire article R&RE, p. 614, § 1, effective July 1. L. 79: (3) repealed, p. 912, § 16, effective July 1. L. 90: (1) amended, p. 761, § 4, effective July 1. L. 2000: Entire section repealed, p. 2016, § 4, effective July 1.

Editor's note: This section was similar to former §§ 12-8-102, 12-8-103, 12-8-104, 12-17-108, and 12-17-110 as they existed prior to 1977.

12-8-105. Administrator - assistants. (Repealed)

Source: L. 77: Entire article R&RE, p. 614, § 1, effective July 1. L. 78: Entire section amended, p. 257, § 19, effective May 23. L. 90: Entire section repealed, p. 771, § 32, effective July 1.

Editor's note: This section was similar to former §§ 12-8-103 and 12-17-109 as they existed prior to 1977.

12-8-106. Meetings - quorum - rules. (Repealed)

Source: L. 77: Entire article R&RE, p. 615, § 1, effective July 1. L. 90: Entire section amended, p. 762, § 5, effective July 1. L. 2000: Entire section repealed, p. 2017, § 5, effective July 1.

Editor's note: This section was similar to former § 12-17-111 as it existed prior to 1977.

12-8-107. Books and records - report - publications. (1) The director shall keep a record of proceedings. The director shall keep a register of applicants for licenses showing the name and address of each applicant and whether such applicant was granted or refused a license. The director shall keep a register of places of business showing each owner's name and the address of each such place of business. The books and records of the director shall be prima facie evidence of matters contained therein and shall constitute public records.

(2) Repealed.

(3) Publications of the director circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

Source: L. 77: Entire article R&RE, p. 615, § 1, effective July 1. L. 79: (2) amended, p. 435, § 4, effective July 1. L. 83: (2) and (3) amended, p. 828, § 12, effective July 1. L. 90: (1) amended, p. 762, § 6, effective July 1. L. 2000: Entire section amended, p. 2017, § 6, effective July 1. L. 2005: (2) repealed, p. 562, § 4, effective July 1.

Editor's note: This section is similar to former §§ 12-8-105, 12-8-113, and 12-17-112 as they existed prior to 1977.

12-8-108. Powers and duties of the director - advisory committee - rules - repeal.

(1) The director has the following powers and duties:

(a) To promulgate, in accordance with article 4 of title 24, C.R.S., such rules and regulations as are necessary for the administration of this article;

(b) To revoke, suspend, deny, or make probationary licenses upon proof of violation of the rules and regulations established by the director or violation of the statutes of this state;

(c) To prescribe, with the approval of the department of public health and environment, such safety and sanitary rules as the director may deem necessary to protect the health and safety of the public and of employees;

(d) To supervise and regulate the industries of barbering, hairstyling, and cosmetology and the practices of estheticians and manicurists of this state in accordance with this article, but nothing contained in this article shall be construed to abrogate the status, force, or operation of any provisions of any public health law of this state or any local health ordinance or regulation;

(e) To establish criteria for applicant eligibility for examination and to establish procedures for the registration of places of business;

(f) (I) To investigate upon his or her own initiative or upon receiving a complaint all suspected or alleged violations of this article, unless the director or his or her designee determines that a complaint or alleged violation is without merit, and to enter premises in which violations are alleged to have occurred during business hours.

(II) The director or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the director pursuant to this article. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the director.

(III) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(g) By and through the attorney general of this state, to apply to a court of competent jurisdiction for an order enjoining any act or practice which constitutes a violation of this article. Upon a showing to the satisfaction of the court that a person is engaging or intends to engage in any such act or practice, an injunction, temporary restraining order, or other appropriate order shall be granted by such court, regardless of the existence of another remedy therefor. The requirements for notice, hearing, duration of any injunction or temporary restraining order issued pursuant to this paragraph (g), or other similar matter shall be in accordance with the Colorado rules of civil procedure.

(h) (I) To send letters of admonition. When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(II) When a letter of admonition is sent by the director, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(III) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(i) To issue cease-and-desist orders pursuant to section 12-8-127.5;

(j) To issue confidential letters of concern. When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, the complaint should be dismissed, but the director has noticed indications of possible errant conduct by the licensee or registrant that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee or registrant.

(2) (a) The director shall appoint a five-member advisory committee to assist in the performance of the director's duties. The advisory committee shall consist of at least three licensees who have expertise in the area under review, a representative from a Colorado licensed school that provides training for licensees in the industry, and a member of the public. Members of the advisory committee shall be compensated for their services in accordance with the provisions of section 24-34-102 (13), C.R.S. The advisory committee shall meet at least four times a year and prior to the adoption of rules, and at the request of the director.

(b) This subsection (2) is repealed, effective July 1, 2015. Prior to such repeal, the advisory committee shall be reviewed as provided for in section 2-3-1203, C.R.S.

Source: L. 77: Entire article R&RE, p. 615, § 1, effective July 1. L. 90: Entire section R&RE, p. 762, § 7, effective July 1. L. 94: (1)(c) amended, p. 2725, § 322, effective July

1. **L. 2000:** IP(1), (1)(b), (1)(c), (1)(f), and (1)(h) amended and (2) added, p. 2018, § 7, effective July 1. **L. 2004:** (1)(f) and (1)(h) amended, p. 1802, § 20, effective August 4. **L. 2005:** (1)(d), (1)(f)(I), and (2) amended, p. 563, § 5, effective July 1. **L. 2006:** (1)(j) added, p. 774, § 9, effective July 1.

Editor's note: This section is similar to former §§ 12-8-203, 12-17-120, 12-17-121, and 12-17-204 as they existed prior to 1977.

Cross references: For the Colorado rule of civil procedure on injunctions, see C.R.C.P. 65.

ANNOTATION

The entire article adequately provides standards and guidelines under which the board could and did promulgate and adopt its

rules. *State Bd. of Cosmetology v. Maddux*, 162 Colo. 550, 428 P.2d 936 (1967) (decided under repealed § 32-1-18, C.R.S. 1963).

12-8-109. Rules and orders adopted by the state board of barbers and cosmetologists under previous law - persons licensed or registered under previous law. (1) All rules, regulations, rates, orders, and awards of the state board of barbers and cosmetologists lawfully adopted prior to July 1, 2000, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

(2) All licenses issued by the state board of barbers and cosmetologists to practice barbering or cosmetology prior to July 1, 2000, shall remain valid and shall be subject to renewal by the director pursuant to section 12-8-115.

Source: **L. 77:** Entire article R&RE, p. 616, § 1, effective July 1. **L. 2000:** Entire section R&RE, p. 2019, § 8, effective July 1.

Editor's note: This section is similar to former §§ 12-8-205 and 12-17-205 as they existed prior to 1977.

12-8-110. Examinations. (1) For the benefit of applicants, the director shall hold examinations as often as necessary, subject to appropriation constraints.

(2) The respective examinations of applicants for licenses to practice barbering, hair-styling, or cosmetology under this article shall be conducted under rules prescribed by the director and shall include practical demonstrations, written tests in reference to the practices to which a license is applied, and such related studies or subjects as the director may determine necessary for the proper and efficient performance of such practices, and such examinations shall not be confined to any specific system or method. The practical demonstrations shall be conducted under conditions that are as similar to actual operating conditions as possible. The director is authorized to rent adequate facilities in which to hold such examinations.

(3) Such examinations shall be consistent with the practical and theoretical requirements of the practices of barbering, hairstyling, cosmetology, manicurist services, or esthetician services as provided by this article, and such examinations shall be reviewed, revised, and updated periodically on a reasonable basis by the director in consultation with the advisory committee created pursuant to section 12-8-108. Examinations shall be graded promptly, and the results of the examinations shall be made available to the applicants promptly. The examination shall emphasize health and safety issues.

(4) The director shall offer a separate and complete testing station and facility for each applicant, and no oral examination shall be given in connection with practical demonstrations.

(5) No person shall be permitted to examine applicants in any of the practical portions for barbers, hairstylists, cosmetologists, cosmeticians, or manicurists in which said person has not had practical experience and received a license as provided in this article.

(6) Repealed.

Source: **L. 77:** Entire article R&RE, p. 616, § 1, effective July 1. **L. 90:** (1) R&RE, (3) and (5) amended, and (6) repealed, pp. 763, 764, 771, §§ 8, 9, 32, effective July 1. **L. 2000:** (1) to (5) amended, p. 2019, § 9, effective July 1. **L. 2005:** (3) amended, p. 563, § 6, effective July 1.

Editor's note: This section is similar to former §§ 12-8-106 and 12-17-116 as they existed prior to 1977.

12-8-111. Application - form. (1) Each applicant for examination shall file with the director, or the director's designee, a written application in such form as the director may require to set forth the qualifications of the applicant and shall submit satisfactory proof of the required age and education.

(2) Each applicant for registration shall file with the director, or the director's designee, a written application in such form as the director may require pursuant to section 12-8-114.5.

(3) All fees for examinations, registrations, and licenses shall be paid in advance, except as otherwise provided in this article.

Source: **L. 77:** Entire article R&RE, p. 617, § 1, effective July 1. **L. 83:** Entire section amended, p. 520, § 2, effective March 15; entire section amended, p. 519, § 1, effective April 29. **L. 90:** Entire section amended, p. 764, § 10, effective July 1. **L. 2000:** (1) and (2) amended, p. 2020, § 10, effective July 1.

Editor's note: (1) This section is similar to former § 12-17-113 as it existed prior to 1977.

(2) Amendments to this section by House Bill 83-1098 and House Bill 83-1123 were harmonized.

12-8-112. Results of examinations. The results of examinations and the qualifications of applicants for admission to such examinations or for licenses shall be determined by the director or by such person as the director shall designate.

Source: **L. 77:** Entire article R&RE, p. 617, § 1, effective July 1. **L. 2000:** Entire section amended, p. 2020, § 11, effective July 1.

ANNOTATION

Evidence was sufficient to sustain the finding of the trial court that the plaintiff had satisfactorily passed the examination which was given him and that the board was satisfied that plaintiff possessed the required skill and

knowledge to practice the trade of barbering. *Battaglia v. Moore*, 128 Colo. 326, 261 P.2d 1017 (1953) (decided under § 12-8-109 as it existed prior to the 1977 repeal and reenactment of this article).

12-8-113. When the director admits applicant. If the director finds that the applicant meets the qualifications of sections 12-8-111 and 12-8-114 and has submitted any other credentials required by the director for admission to the examination and has paid the required fee, the director shall admit such applicant to examination.

Source: **L. 77:** Entire article R&RE, p. 617, § 1, effective July 1. **L. 2000:** Entire section amended, p. 2020, § 12, effective July 1.

Editor's note: This section is similar to former § 12-17-115 as it existed prior to 1977.

12-8-114. Qualifications of applicants - requirements. (1) An applicant for any license provided in this article or for examination shall be at least sixteen years of age.

(2) An applicant for examination shall furnish proof of graduation from a barber school or beauty school approved by the private occupational school division pursuant to article 59 of this title; approved by the state board for community colleges and occupational education

pursuant to article 60 of title 23, C.R.S.; or, if the school is located in another state or country, approved by the governmental agency responsible for approving such schools in that state or country. The applicant shall also furnish proof that the applicant has successfully completed educational requirements equal to those set by the director. If the applicant has graduated from a school located outside Colorado, the applicant shall furnish proof that the applicant has successfully completed educational requirements substantially equal to those set by the director.

(3) An applicant for examination shall furnish proof of training of not less than the number of hours of course completion in the subject area in which the applicant seeks licensure as follows:

- (a) Sixty credit hours for a cosmetologist;
- (b) Fifty credit hours for a barber;
- (c) Twenty credit hours for an esthetician;
- (d) Twenty credit hours for a manicurist;
- (e) Forty credit hours for a hairstylist.

(4) Every person desiring to obtain a license to practice the occupation of a barber, cosmetologist, esthetician, hairstylist, or manicurist in this state shall apply therefor and pay to the director an examination fee. Applicants who successfully pass such examination and who otherwise qualify shall be issued a license upon the payment of the required fee.

(5) Notwithstanding any law to the contrary, no examinations for a hairstylist license and no hairstylist licenses shall be issued until on or after January 15, 2001.

Source: L. 77: Entire article R&RE, p. 617, § 1, effective July 1. L. 90: Entire section R&RE, p. 764, § 11, effective July 1. L. 91: (2) amended, p. 1464, § 1, effective February 25. L. 2000: (2) and (4) amended and (3)(e) and (5) added, pp. 2020, 2021, §§ 13, 14, effective July 1. L. 2005: (1), (3), and (4) amended, p. 564, § 7, effective July 1. L. 2008: (2) amended, p. 1480, § 22, effective May 28.

Editor's note: This section is similar to former §§ 12-8-109 and 12-17-114 as they existed prior to 1977.

ANNOTATION

Annotator's note. Since § 12-8-114 is similar to § 12-8-109 as it existed prior to the 1977 repeal and reenactment of this article, a relevant case construing that provision has been included in the annotations to this section.

Any legislation purporting to restrict one's right to follow any lawful, useful calling, business or profession, will be strictly construed in favor of the existence of the right, and against the limitation. *Battaglia v. Moore*, 128 Colo. 326, 261 P.2d 1017 (1953).

The right to work in useful employment, and to receive the fruits thereof, is a natural and fundamental right under our system of free enterprise. *Battaglia v. Moore*, 128 Colo. 326, 261 P.2d 1017 (1953).

The right of regulation of any useful occupation arises out of the police power of the state to legislate in the protection of the public health, safety and general welfare. *Battaglia v. Moore*, 128 Colo. 326, 261 P.2d 1017 (1953).

It should be the policy of the law to encourage thrift and industry among its citizens and not to close the door of opportunity to work in any calling unless the regulation imposing the limitation can be said to be reasonably necessary in promotion of the public health, safety or general welfare. *Battaglia v. Moore*, 128 Colo. 326, 261 P.2d 1017 (1953).

12-8-114.5. Registration for places of business. (Repealed)

Source: L. 90: Entire section added, p. 765, § 12, effective July 1. L. 2000: IP(1), (2), and (3) amended, p. 2021, § 15, effective July 1. L. 2005: Entire section repealed, p. 564, § 8, effective July 1.

12-8-115. Renewal and reinstatement of license. All licenses shall expire pursuant to a schedule established by the director and shall be renewed or reinstated pursuant to section

24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

Source: **L. 77:** Entire article R&RE, p. 618, § 1, effective July 1. **L. 90:** (2) amended and (4) repealed, pp. 765, 771, effective July 1. **L. 2000:** (1) amended, p. 2021, § 15, effective July 1. **L. 2004:** Entire section R&RE, p. 1803, § 21, effective August 4.

Editor's note: This section is similar to former §§ 12-8-108, 12-17-126, and 12-17-127 as they existed prior to 1977.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8).

12-8-116. Fees. (1) Fees shall be as established pursuant to section 24-34-105, C.R.S.

(2) No fees shall be refunded.

(3) The executive director of the department of regulatory agencies shall determine the length of time for licensing periods and for license renewal periods, not to exceed three years.

Source: **L. 77:** Entire article R&RE, p. 618, § 1, effective July 1. **L. 79:** (1) R&RE, p. 1645, § 71, effective July 19.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8).

12-8-117. Disposition of fees. All fees shall be collected by the director and transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for expenditures of the director incurred in the performance of the director's duties under this article, which expenditures shall be made out of such appropriations upon vouchers and warrants drawn pursuant to law.

Source: **L. 77:** Entire article R&RE, p. 618, § 1, effective July 1. **L. 79:** Entire section amended, p. 1647, § 72, effective July 19. **L. 2000:** Entire section amended, p. 2021, § 17, effective July 1.

Editor's note: This section is similar to former §§ 12-8-119 and 12-17-124 as they existed prior to 1977.

ANNOTATION

Annotator's note. Since § 12-8-117 is similar to § 12-8-119 as it existed prior to the 1977 repeal and reenactment of this article, a relevant case construing that provision has been included in the annotations to this section.

This section does not create the relationship of debtor or creditor and the fees, fines

and penalties collected are public funds of the state. *Starr v. People*, 113 Colo. 268, 157 P.2d 135 (1945).

A member of the board of barber examiners may be prosecuted for conspiracy to embezzle such funds. *Starr v. People*, 113 Colo. 268, 157 P.2d 135 (1945).

12-8-118. Licensure by endorsement. (1) The director shall issue a license by endorsement to engage in the practice of barbering, cosmetology, hairstyling, manicuring, or esthetician services in this state to an individual who possesses an active license in good standing to practice in that profession in another state or territory of the United States or in a foreign country if the applicant presents proof that is satisfactory to the director, that the applicant:

(a) Possesses a valid license from another state or jurisdiction that is substantially equivalent to the requirements in Colorado for licensure and meets all other requirements for licensure pursuant to this article. The director may specify by rule what shall constitute substantially equivalent licensure and qualifications; and

(b) Has paid the prescribed licensure fees.

Source: L. 77: Entire article R&RE, p. 619, § 1, effective July 1. L. 90: Entire section amended, p. 765, § 14, effective July 1. L. 91: Entire section amended, p. 1465, § 1, effective February 25. L. 2000: Entire section amended, p. 2022, § 18, effective July 1. L. 2005: Entire section R&RE, p. 564, § 9, effective July 1.

Editor's note: This section is similar to former § 12-17-119 as it existed prior to 1977.

12-8-119. Issuance of license - display. If an applicant for examination to practice barbering, hairstyling, or cosmetology or to provide esthetician or manicurist services passes such examination and has paid the required fee and complies with the requirements of this article, the director shall issue a license to that effect. Such license shall be evidence that the person to whom it is issued is entitled to engage in the practices, occupation, or occupations stipulated therein. Such license shall be conspicuously displayed in such licensee's principal office or place of business or employment.

Source: L. 77: Entire article R&RE, p. 619, § 1, effective July 1. L. 2000: Entire section amended, p. 2022, § 19, effective July 1. L. 2005: Entire section amended, p. 565, § 10, effective July 1.

Editor's note: This section is similar to former §§ 12-8-112 and 12-17-117 as they existed prior to 1977.

12-8-120. License required. It is unlawful for any person to engage in, or attempt to engage in, the occupation of barbering, hairstyling, or cosmetology or to provide esthetician or manicurist services in this state unless such person first obtains a license as provided in this article.

Source: L. 77: Entire article R&RE, p. 619, § 1, effective July 1. L. 90: Entire section R&RE, p. 766, § 15, effective July 1. L. 2005: Entire section amended, p. 565, § 11, effective July 1.

Editor's note: This section is similar to former §§ 12-8-107 and 12-17-104 as they existed prior to 1977.

12-8-121. Exemptions. (1) Nothing in this article shall prohibit services by:

(a) Persons authorized under the laws of this state to practice medicine, surgery, dentistry, podiatry, osteopathy, or chiropractic nor services by employees, agents, or volunteers of a health care facility when performing duties incidental to patient care;

(b) Licensed or unlicensed volunteers in the performance of charitable services for washing and setting the hair of:

(I) Patients confined to hospitals or nursing, convalescent, or boarding homes;

(II) Persons confined to their homes by reason of age, physical or mental infirmity, or physical disability;

(c) Therapists permitted to practice their occupations under the laws of this state;

(d) A student of a barbering, hairstyling, or cosmetology school or of esthetician or manicurist services who has received more than twenty percent of the hours of instruction required in section 12-8-114 (3) and who is rendering services at such school under supervision of a licensee within the school setting.

(2) and (3) Repealed.

(4) Lectures and demonstrations on beauty culture, hairdressing, and the use of beauty preparations in retail stores performed without compensation shall not constitute the practice of cosmetology, and nothing in this article shall prevent the giving of such lectures to and demonstrations on any person in retail stores.

Source: **L. 77:** Entire article R&RE, p. 619, § 1, effective July 1. **L. 90:** (1)(c) and (1)(d) added, (2) and (3) repealed, and (4) amended, pp. 766, 771, §§ 16, 32, 17, effective July 1. **L. 93:** (1)(b)(II) amended, p. 1632, § 10, effective July 1. **L. 2000:** (1)(d) amended, p. 2022, § 20, effective July 1. **L. 2005:** (1)(d) amended, p. 565, § 12, effective July 1.

Editor's note: This section is similar to former §§ 12-17-106 and 12-17-125 as they existed prior to 1977.

12-8-122. Director may employ aid - compensation. The director may employ any person licensed pursuant to this article for the purpose of conducting examinations. Such persons shall not be connected with any school teaching barbering, hairstyling, or cosmetology or esthetician or manicurist students. Any person so employed by the director may receive compensation for services for each day employed in the actual discharge of such person's official duties and actual and necessary expenses incurred, to be set by the director upon the approval of the executive director of the department of regulatory agencies.

Source: **L. 77:** Entire article R&RE, p. 620, § 1, effective July 1. **L. 90:** Entire section amended, p. 766, § 18, effective July 1. **L. 2000:** Entire section amended, p. 2022, § 21, effective July 1. **L. 2005:** Entire section amended, p. 565, § 13, effective July 1.

Editor's note: This section is similar to former § 12-17-118 as it existed prior to 1977.

12-8-123. Inspections. Upon written complaint, inspections under section 12-8-108 (1) (f) of barbershops, beauty salons, places of business, and booths rented therein operated by independent licensees may be conducted by the director, or the director may contract for such inspections. The director shall maintain detailed records of all complaints and responses to such complaints.

Source: **L. 77:** Entire article R&RE, p. 620, § 1, effective July 1. **L. 90:** Entire section R&RE, p. 766, § 19, effective July 1. **L. 2000:** Entire section amended, p. 2023, § 22, effective July 1.

Editor's note: This section is similar to former § 12-8-118 as it existed prior to 1977.

ANNOTATION

The board has no power to set up rules and regulations controlling advanced or up-graded training. Colo. State Bd. of Barber Exam'rs v. White, 29 Colo. App. 471, 485 P.2d

928 (1971) (decided under § 12-8-118 as it existed prior to the 1977 repeal and reenactment of this article).

12-8-124. Approved educational program for barbers - requirements. (Repealed)

Source: **L. 77:** Entire article R&RE, p. 620, § 1, effective July 1. **L. 90:** Entire section repealed, p. 771, § 32, effective July 1.

Editor's note: This section was similar to former § 12-8-111 as it existed prior to 1977.

12-8-124.5. Instructors of barbering and cosmetology. (Repealed)

Source: **L. 90:** Entire section added, p. 767, § 20, effective July 1.

Editor's note: Subsection (9)(b) provided for the repeal of this section, effective November 1, 1990. (See L. 90, p. 767.)

12-8-125. License for beauty school - requirements. (Repealed)

Source: **L. 77:** Entire article R&RE, p. 621, § 1, effective July 1. **L. 90:** Entire section repealed, p. 771, § 32, effective July 1.

Editor's note: This section was similar to former § 12-17-105 as it existed prior to 1977.

12-8-126. Beauty school operation. (Repealed)

Source: **L. 77:** Entire article R&RE, p. 621, § 1, effective July 1. **L. 90:** Entire section repealed, p. 771, § 32, effective July 1.

Editor's note: This section was similar to former § 12-17-107 as it existed prior to 1977.

12-8-127. Unauthorized practice - penalties. (1) Any person who practices or offers or attempts to practice barbering, hairstyling, esthetics, manicuring, or cosmetology without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and, for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) In addition to any other penalty, any person who violates the provisions of this article or the rules and regulations of the director promulgated under this article may be penalized by the director upon a finding of a violation pursuant to article 4 of title 24, C.R.S., as follows:

(a) In the first administrative proceeding against any person, a fine of not less than one hundred dollars but not more than five hundred dollars per day per violation;

(b) In any subsequent administrative proceeding against any person for transactions occurring after a final agency action determining that a violation of this article has occurred, a fine of not less than one thousand dollars but not more than two thousand dollars per day per violation.

(3) Repealed.

(4) All fines collected pursuant to this article shall be transferred to the state treasurer, who shall credit such moneys to the general fund.

Source: **L. 77:** Entire article R&RE, p. 621, § 1, effective July 1. **L. 90:** Entire section amended, p. 767, § 21, effective July 1. **L. 2000:** (1) and IP(2) amended, p. 2023, § 23, effective July 1. **L. 2002:** (1) amended, p. 1473, § 49, effective October 1. **L. 2004:** (4) amended, p. 1803, § 22, effective August 4. **L. 2005:** (1) amended, p. 565, § 14, effective July 1. **L. 2006:** (1) amended and (3) repealed, pp. 83, 97, §§ 9, 67, effective August 7.

Editor's note: This section is similar to former §§ 12-8-116, 12-8-211, 12-17-209, and 12-17-128 as they existed prior to 1977.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For article, "Criminal Prosecutions under the Colorado Securities Act", see 47 U. Colo. L. Rev. 233 (1976).

12-8-127.5. Cease-and-desist orders. (1) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a licensee or registrant is acting in a manner that is an imminent threat to the health and safety of the public or a person is acting or has acted without the required license or registration, the director may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (1), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(2) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the director may issue to such person an order to show cause as to why the director should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed or unregistered practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) shall be promptly notified by the director of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (2) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (2). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (2) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the director reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or registration or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed or unregistered practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (2), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has

been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(3) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged in or is about to engage in any unlicensed or unregistered act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the director may enter into a stipulation with such person.

(4) If any person fails to comply with a final cease-and-desist order or a stipulation, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(5) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order as provided in section 12-8-131 (7).

Source: **L. 90:** Entire section added, p. 767, § 22, effective July 1. **L. 2000:** (1) and (2) amended, p. 2023, § 24, effective July 1. **L. 2006:** Entire section amended, p. 774, § 10, effective July 1.

12-8-128. Enforcement. It is the duty of the district attorneys of each judicial district of this state and the attorney general of this state to prosecute all persons charged with the violation of any of the provisions of this article. It is the duty of the director to aid said attorneys in the enforcement of this article.

Source: **L. 77:** Entire article R&RE, p. 621, § 1, effective July 1. **L. 90:** Entire section amended, p. 769, § 23, effective July 1. **L. 2000:** Entire section amended, p. 2023, § 25, effective July 1.

Editor's note: This section is similar to former § 12-17-129 as it existed prior to 1977.

12-8-129. Investigations. The practice and procedure of the director with respect to any investigation by the director authorized by this article shall be in accordance with rules and regulations promulgated by the director, which rules and regulations shall provide for, but need not be limited to, investigation powers, including the right to enter the premises of any place of business registered or subject to registration under this article at any time said business is open or has members of the public present on the premises.

Source: **L. 77:** Entire article R&RE, p. 621, § 1, effective July 1. **L. 90:** Entire section amended, p. 769, § 24, effective July 1. **L. 2000:** Entire section amended, p. 2024, § 26, effective July 1.

Editor's note: This section is similar to former §§ 12-8-206 and 12-17-206 as they existed prior to 1977.

ANNOTATION

Law reviews. For note, "Use of Evidence in Hearings Before Colorado Administrative Agencies", see 29 Dicta 437 (1952).

12-8-129.1. Immunity. The director, the director's staff, any person acting as a witness or consultant to the director, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his

or her capacity as director, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 90: Entire section added, p. 769, § 25, effective July 1. **L. 2001:** Entire section amended, p. 1269, § 11, effective June 5. **L. 2004:** Entire section amended, p. 1803, § 23, effective August 4.

12-8-130. Persons licensed or registered under previous law. (Repealed)

Source: L. 77: Entire article R&RE, p. 622, § 1, effective July 1. **L. 90:** Entire section repealed, p. 771, § 32, effective July 1.

12-8-131. Disciplinary proceedings - administrative law judges - judicial review.

(1) The director may, through the department of regulatory agencies, employ administrative law judges to conduct hearings as provided by this section or on any matter within the director's jurisdiction upon such conditions and terms as the director may determine.

(2) A proceeding for discipline of a licensee shall be commenced when the director has reasonable grounds to believe that a licensee has committed acts which may violate the provisions of this article. Such grounds may be established by an investigation begun by the director on the director's own motion or by an investigation pursuant to a written complaint.

(3) Notice of the commencement of disciplinary proceedings pursuant to this section shall be given to the licensee or applicant in the manner prescribed by section 24-4-105, C.R.S.

(4) Any hearing on the revocation or suspension of a license, or on the denial of an application for a new license, or for renewal of a previously issued license shall be conducted by an administrative law judge, and such administrative law judge shall be vested with all powers and authority prescribed by article 4 of title 24, C.R.S.

(5) The administrative law judge shall make an initial decision, which shall include a statement of findings and conclusions upon all the material issues of fact and law presented by the record and the appropriate order, sanction, or relief. In the absence of an appeal to the director or a review upon motion of the director within thirty days after service of the initial decision of the administrative law judge, the initial decision shall become the decision of the director.

(6) Review by the director of the initial decision of the administrative law judge upon appeal or upon the director's own motion shall be conducted in accordance with section 24-4-105, C.R.S. The findings of fact made by the administrative law judge shall not be set aside by the director on review unless such findings are contrary to the weight of the evidence. The director may remand the matter to the administrative law judge for such further proceedings as the director may direct, or the director may affirm, set aside, or modify the order, sanction, or relief entered, in conformity with the facts and the law. Each decision shall be served as prescribed by section 24-4-105, C.R.S.

(7) Final action by the director may be judicially reviewed. The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

(8) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

Source: **L. 77:** Entire article R&RE, p. 622, § 1, effective July 1. **L. 87:** (1) and (4) to (6) amended, p. 944, § 27, effective March 13. **L. 90:** (2) and (7) amended, p. 770, § 26, effective July 1. **L. 2000:** (1), (2), and (5) to (7) amended, p. 2024, § 27, effective July 1. **L. 2004:** (8) added, p. 1804, § 24, effective August 4.

ANNOTATION

Action by state board of cosmetology did not amount to final action from which judicial review was permissible. *State Bd. of Cosmetology v. District Court*, 187 Colo. 175, 530 P.2d 1278 (1974) (decided under repealed § 12-17-123).

12-8-132. Grounds for denial, revocation, or suspension of license. (1) The director may deny, revoke, suspend, or make probationary any license issued under the director’s authority pursuant to this article upon proof that the licensee:

- (a) Has been convicted of or has entered a plea of nolo contendere to a felony. In considering the conviction of or such plea to any such crime, the director shall be governed by the provisions of section 24-5-101, C.R.S.
- (b) Has made any misstatement on his or her application for licensure to practice as a barber, hairstylist, cosmetologist, esthetician, or manicurist;
- (c) Is incompetent to practice a profession licensed under this article, which shall include performing services outside of the person’s area of training, experience, or competence;
- (d) Excessively or habitually uses or abuses alcohol or controlled substances;
- (e) Has violated any of the provisions of this article or any valid order of the director;
- (f) Is guilty of unprofessional or dishonest conduct;
- (g) Advertises by means of false or deceptive statement;
- (h) Fails to display the license as provided in section 12-8-119;
- (i) Fails to comply with the rules promulgated by the director as provided in section 12-8-108 (1) (a); or
- (j) Is guilty of willful misrepresentation.

Source: **L. 77:** Entire article R&RE, p. 622, § 1, effective July 1. **L. 82:** (1)(d) amended, p. 252, § 1, effective May 3. **L. 90:** IP(1), (1)(c), (1)(e), and (1)(i) amended, p. 770, § 27, effective July 1. **L. 2000:** IP(1), (1)(a), (1)(e), and (1)(i) amended, p. 2025, § 28, effective July 1. **L. 2005:** (1)(b) and (1)(d) amended, p. 566, § 15, effective July 1.

Editor’s note: This section is similar to former §§ 12-8-207, 12-8-114, and 12-17-207 as they existed prior to 1977.

Cross references: For an alternative disciplinary action for persons licensed pursuant to this article, see § 24-34-106.

ANNOTATION

Law reviews. For note, “Use of Evidence in Hearings Before Colorado Administrative Agencies”, see 29 Dicta 437 (1952).

Annotator’s note. Since § 12-8-132 is similar to § 12-8-114 as it existed prior to the 1977 repeal and reenactment of this article and repealed § 32-1-18, C.R.S. 1963, relevant cases construing those provisions have been included in the annotations to this section.

The power to grant a license also contains the power to revoke it, where it is necessary for the protection of the public interest. *State Bd. of Cosmetology v. Maddux*, 162 Colo. 550, 428 P.2d 936 (1967).

Misdemeanor penalties are not the exclusive penalties that can be imposed against those who fail to maintain the required minimum standards. *State Bd. of Cosmetology v. Maddux*, 162 Colo. 550, 428 P.2d 936 (1967).

To so hold would mean that our citizens would be without protection in a matter of public health and safety because a violator could keep his establishment open merely by paying an occasional fine or by having others operate his school during his incarceration. *State Bd. of Cosmetology v. Maddux*, 162 Colo. 550, 428 P.2d 936 (1967).

Revocation cannot be arbitrary, and it

must be for good cause shown after due notice and fair hearing in accordance with constitutional due process. State Bd. of Cosmetology v. Maddux, 162 Colo. 550, 428 P.2d 936 (1967).

The trial court correctly ruled that the board exceeded its statutory authority in adopting the rules governing demonstrations

and advanced or upgrade training classes, and since there was no evidence that either barber was in violation of any statutory provisions or any other rules or regulations, it was error for the board to have suspended their licenses. Colo. State Bd. of Barber Exam'rs v. White, 29 Colo. App. 471, 485 P.2d 928 (1971).

12-8-133. Repeal of article. This article is repealed, effective July 1, 2015. Prior to such repeal, the licensing functions of the director shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 77: Entire article R&RE, p. 623, § 1, effective July 1. **L. 91:** Entire section amended, p. 679, § 12, effective April 20. **L. 2000:** Entire section amended, p. 2025, § 29, effective July 1. **L. 2005:** Entire section amended, p. 566, § 17, effective July 1.

ARTICLE 9

Bingo and Raffles Law

Editor's note: This article was numbered as article 3 of chapter 129, C.R.S. 1963. This article was repealed in 1998 and was subsequently recreated and reenacted in 1999, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1998, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

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PART 2

PART 3

COLORADO BINGO-RAFFLE
ADVISORY BOARD

REPEAL OF ARTICLE

12-9-301. Repeal - review of functions.

- 12-9-201. Colorado bingo-raffle advisory board - creation.
- 12-9-202. Board - duties.

PART 1

GENERAL PROVISIONS

12-9-101. Short title. This article shall be known and may be cited as the “Bingo and Raffles Law”.

Source: L. 99: Entire article RC&RE, p. 1406, § 1, effective June 5.

ANNOTATION

This article permits certain organizations, e.g., religious and charitable, to obtain a license under specified conditions for conducting bingo games and raffles. *S Maldone v. People, 173 Colo. 385, 479 P.2d 973 (1971).*

The fact that certain types of gambling were allowed pursuant to this article did not deny the petitioner, who was charged with

gambling violations equal protection of the law, especially, where § 18-10-101 et seq. under which charges of gambling were issued against the petitioner applied equally to all persons and made no classifications or distinctions. *S Maldone v. People, 173 Colo. 385, 479 P.2d 973 (1971).*

12-9-102. Definitions. As used in this article, unless the context otherwise requires:

- (1) “Bingo” means a game of chance played, with or without the aid of an electronic device, for prizes using cards or sheets containing five rows of five squares bearing numbers, except for the center square which is a free space. Traditional bingo also requires that the letters “B I N G O” appear in order over each column. The holder of a card or sheet matches the numbers on such card or sheet to numbers randomly drawn. The game is won when a previously designated arrangement of numbers on such card or sheet is covered.
- (1.1) “Bingo aid computer system” means a computer system that interfaces with and controls the use of electronic devices used as aids in the game of bingo.
- (1.2) “Bingo-raffle licensee” means any qualified organization to which a bingo-raffle license has been issued by the licensing authority.
- (1.3) “Bingo-raffle manufacturer” means a person, other than a bingo-raffle licensee, who makes, assembles, produces, or otherwise prepares pull tabs, bingo cards or sheets, electronic devices used as aids in the game of bingo, or other equipment or parts thereof for games of chance, as defined in subsection (7) of this section. “Bingo-raffle manufacturer” does not include a person who prints raffle tickets, other than pull tabs, for and at the request of a bingo-raffle licensee.
- (1.4) “Bingo-raffle supplier” means a person, other than a bingo-raffle licensee, who sells, distributes, or otherwise furnishes pull tabs, bingo cards or sheets, electronic devices used as aids in the game of bingo, or other games of chance equipment, as defined in subsection (5) of this section. “Bingo-raffle supplier” does not include a person who prints raffle tickets, other than pull tabs, for and at the request of a bingo-raffle licensee.
- (1.5) “Board” means the Colorado bingo-raffle advisory board created in section 12-9-201.
- (1.6) “Card” means either a disposable and nonreusable paper bingo card identified by color, serial number, and card number, or a reusable bingo card intended for repeated use, including but not limited to a hard card or shutter card. “Card” does not include an electronic representation or electronic image of a bingo card.

(1.7) "Charitable gaming" means bingo, pull tab games, and raffles, as defined in subsections (1), (18.1), and (19.3) of this section.

(1.8) "Charitable organization" means any organization, not for pecuniary profit, that is operated for the relief of poverty, distress, or other condition of public concern within this state and that has been so engaged for five years prior to making application for a license under this article.

(2) "Chartered branch or lodge or chapter of a national or state organization" means any such branch or lodge or chapter that is a civic or service organization, not for pecuniary profit, and authorized by its written constitution, charter, articles of incorporation, or bylaws to engage in a fraternal, civic, or service purpose within this state and that has been so engaged for five years prior to making application for a license under this article.

(2.3) "Commercial bingo facility" means premises rented by a bingo-affle licensee for the purpose of conducting games of chance.

(2.5) "Commercial landlord" means any person renting or offering to rent a commercial bingo facility to any bingo-affle licensee.

(2.7) "Deal" means each separate package or series of packages of pull tabs with the same name, form number, serial number, and color code.

(3) "Dues-paying membership" means those members of an organization who pay regular monthly, annual, or other periodic dues or who are excused from paying such dues by the bylaws, articles of incorporation, or charter of the organization and those who contribute voluntarily to the corporation or organization to which they belong for the support of such corporation or organization.

(4) "Educational organization" means any organization within this state, not organized for pecuniary profit, whose primary purpose is educational in nature and designed to develop the capabilities of individuals by instruction and that has been in existence for five years prior to making application for a license under this article.

(5) "Equipment" means: With respect to bingo or lotto, the receptacle and numbered objects drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the board or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address system, and all other articles essential to the operation, conduct, and playing of bingo or lotto; or, with respect to raffles, implements, devices, and machines designed, intended, or used for the conduct of raffles and the identification of the winning number or unit and the ticket or other evidence or right to participate in raffles. "Equipment" includes electronic devices used as aids in the game of bingo.

(5.5) "Exempt organization" means an organization that complies with each of the following criteria:

(a) That is exempt from taxation under section 501 (c) (3) of the federal "Internal Revenue Code of 1954", as amended through December 31, 1984;

(b) Of the type commonly known as a community chest, which organizes and carries out intensive, limited-time, and community-wide fund drive campaigns by volunteer workers soliciting charitable contributions from a broad base of citizens and businesses in the community with the objective of providing financial support to other organizations that are exempt from taxation under section 501 (c) (3) of the federal "Internal Revenue Code of 1954", as amended through December 31, 1984, and that provides charitable, educational, civic, health, or human services within the same community and that has the further objective of minimizing the necessity for multiple, overlapping, and competing fund drives by such recipient organizations to enable them to deliver such services;

(c) That assists in acquiring noncash prizes donated by participating private businesses or government agencies as an ancillary means of creating interest in a charitable fund-raising drive held by such business or agency;

(d) That collects voluntary contributions and distributes more than eighty percent of such contributions to other organizations that are exempt from taxation under section 501 (c) (3) of the federal "Internal Revenue Code of 1954", as amended through December 31, 1984, and that provide charitable, educational, civic, health, or human services;

(e) On behalf of whose fund-raising drives drawings are held by participating private businesses or government agencies, which drawings are open only to the employees of such businesses or agencies and are not open to the general public;

(f) Whose fund-raising drives are jointly planned and managed by the participating private businesses and government agencies; and

(g) Whose fund-raising drives include only the awarding of noncash prizes by the participating private businesses or government agencies.

(6) "Fraternal organization" means any organization within this state, including college and high school fraternities, not for pecuniary profit, that is a branch, lodge, or chapter of a national or state organization and exists for the common business, brotherhood, or other interests of its members and that has so existed for five years prior to making application for a license under this article. "Fraternal organization" also includes a graduate or alumni division or branch of a college fraternity, which division or branch holds a charter issued by the state of Colorado and that meets all other criteria set forth in this subsection (6). As used in this subsection (6), "fraternity" includes a sorority.

(7) "Game of chance" means that specific kind of game of chance commonly known as bingo or lotto in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random and that specific kind of game of chance commonly known as raffles that is conducted by drawing for prizes or the allotment of prizes by chance, by the selling of shares or tickets or rights to participate in such a game.

(8) "Gross receipts" means receipts from the sale of shares, tickets, or rights in any manner connected with participation in a game of chance or the right to participate therein, including any admission fee or charge, the sale of equipment or supplies, the sale or lease of electronic devices used as aids in the game of bingo, and all other miscellaneous receipts.

(9) "Labor organization" means any organization, not for pecuniary profit, within this state that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and that has existed for such purpose and has been so engaged for five years prior to making application for a license under this article.

(9.5) "Landlord licensee" means the holder of a current, valid commercial landlord license.

(10) "Lawful purposes" means the lawful purposes of organizations permitted to conduct games of chance, as provided in section 2 of article XVIII of the state constitution.

(11) "Lawful use" means the devotion of the entire net proceeds of a game of chance exclusively to lawful purposes.

(11.5) "License" means any license or certification issued by the licensing authority pursuant to this article, including, without limitation, the certification of a games manager pursuant to section 12-9-105.1.

(12) "Licensed agent" means an individual who holds a current, valid agent's license for a bingo-raffle manufacturer or supplier.

(12.5) "Licensee" means the holder of any license or certification issued by the licensing authority pursuant to this article. "Licensee" includes the former holder of such license or certification for purposes of investigation of activities that took place during the period in which such license or certification was effective.

(13) "Licensing authority" means the secretary of state or his or her duly authorized deputy.

(13.3) "Manufacturer's agent" means an individual who represents a manufacturer in any of its activities in connection with the presales, driver sales, or distribution with excess stock of pull tabs, bingo cards or sheets, electronic devices used as aids in the game of bingo, or other games of chance equipment; except employees of commercial delivery services.

(13.5) "Manufacturer licensee" means the holder of a current, valid Colorado manufacturer license.

(14) "Member" means an individual who has qualified for membership in a qualified organization pursuant to its bylaws, articles of incorporation, charter, rules, or other written statement.

(15) "Net proceeds" means the receipts less such expenses, charges, fees, and deductions as are specifically authorized under this article.

(16) "Occasion" means a single gathering or session at which a series of successive bingo or lotto games is played, not to exceed thirty-five in number.

(17) "Person" means a natural person, firm, association, corporation, or other legal entity.

(18) "Premises" means any room, hall, enclosure, or outdoor area used for the purpose of playing a game of chance.

(18.1) "Pull tab game" means a type of game of chance commonly known as a pickle, break-open, jar raffle, last sale ticket, or seal card for which tickets are preprinted with markings distinguishing winners and nonwinners, each ticket so made that its markings and winning or nonwinning status cannot be known or revealed until the ticket is broken or torn apart.

(19) (a) "Qualified organization" means any bona fide chartered branch, lodge, or chapter of a national or state organization or any bona fide religious, charitable, labor, fraternal, educational, voluntary firefighters', or veterans' organization operating without profit to its members that has been in existence continuously for a period of five years immediately prior to the making of an application for a license under this article and that has had, during the entire five-year period, a dues-paying membership engaged in carrying out the objects of said corporation or organization.

(b) "Qualified organization" includes, without limitation:

(I) A political party; and

(II) The Colorado state fair authority.

(19.3) "Raffle" means a game in which a participant buys a ticket for a chance at a prize with the winner determined by a random method of selecting numbers, as determined by rules of the licensing authority, or a pull tab ticket as described in subsection (18.1) of this section. The term "raffle" does not mean and shall not be interpreted to include any activity that is authorized or regulated by the state lottery division pursuant to part 2 of article 35 of title 24, C.R.S., or the "Limited Gaming Act of 1991", article 47.1 of this title.

(20) "Religious organization" means any organization, church, body of communicants, or group, not for pecuniary profit, gathered in common membership for mutual support and edification in piety, worship, and religious observances or a society, not for pecuniary profit, of individuals united for religious purposes at a definite place that organization, church, body of communicants, group, or society has been so gathered or united for five years prior to making application for a license under this article.

(20.1) "Sheet" means a leaf of paper upon which is printed one or more disposable bingo cards.

(20.3) "Supplier's agent" means an individual who represents a bingo-raffle supplier in the course of the bingo-raffle supplier's presales, driver sales, or distribution with excess bingo-supplier stock, electronic devices used as aids in the game of bingo, or chance equipment on hand; except employees of commercial delivery services.

(20.5) "Supplier licensee" means the holder of a current, valid Colorado supplier license.

(21) "Veterans' organization" means any organization within this state or any branch, lodge, or chapter of a national or state organization within this state, not for pecuniary profit, the membership of which consists of individuals who were members of the armed services or forces of the United States, that has been in existence for five years prior to making application for a license under this article.

(22) "Voluntary firefighters' organization" means any organization within this state, not for pecuniary profit, established by the state or any of its political subdivisions that has been in existence for five years prior to making application for a license under this article.

Source: L. 99: Entire article RC&RE, p. 1406, § 1, effective June 5. L. 2001: (1), (1.3), (1.4), (1.6), (1.7), (5), (8), (13.3), and (20.3) amended and (1.1), (1.8), and (20.1) added, p. 129, § 2, effective October 1. L. 2002: (2.7) added and (11.5), (12.5), and (18.1) amended, p. 1645, § 1, effective August 7. L. 2006: (5) and (19.3) amended, p. 985, § 1, effective May 25. L. 2008: (19) amended, p. 298, § 1, effective April 3.

Cross references: For the legislative declaration contained in the 2001 act amending subsections (1), (1.3), (1.4), (1.6), (1.7), (5), (8), (13.3), and (20.3) and enacting subsections (1.1), (1.8), and (20.1), see section 1 of chapter 58, Session Laws of Colorado 2001.

ANNOTATION

Organizations which operate outside the state are excluded from obtaining licenses for games of chance. Only the branches, lodges, or chapters of such organizations, if otherwise qualified, are eligible for licenses. Am. Hist. Soc. of Germans v. Meyer, 794 P.2d 1025 (Colo. App. 1989).

Any reference in this article to games of chance includes raffles, except as otherwise specified, since raffles is a game of chance. Am. Hist. Soc. of Germans v. Meyer, 794 P.2d 1025 (Colo. App. 1989).

12-9-102.3. Fraud and deception prohibited. (1) No bingo-raffle licensee, landlord licensee, bingo-raffle supplier, bingo-raffle manufacturer, or any member or agent thereof engaged in any charitable gaming activity shall directly or indirectly:

- (a) Employ any device, scheme, or artifice to defraud or deceive;
- (b) Intentionally make any untrue or misleading statement of fact; or
- (c) Engage in any act, practice, or course of conduct constituting fraud or deceit.

Source: L. 99: Entire article RC&RE, p. 1411, § 1, effective June 5.

12-9-102.5. Legislative declaration - consideration for tickets - conditions - rules.

(1) The general assembly hereby finds and declares that prize promotions involving the conduct of free product giveaways through the use of free chances for purposes of commercial advertisement, the creation of goodwill, the promotion of new products or services, or the collection of names should not be subject to regulation under this article. Such giveaways shall be exempt from regulation under this article when all of the conditions set forth in this section are satisfied.

(2) No award of prizes by chance for a purpose set forth in subsection (1) of this section shall be deemed a lottery or game of chance, nor shall any share or ticket or right to participate in such award of prizes be deemed to have been sold or charged for, notwithstanding that such award is made to persons who have paid a fee entitling them to general admission to the grounds or premises on which such award is made, if each share or ticket by means of which the award is made is given away free of charge and without any obligation on the part of the person receiving it.

(3) (Deleted by amendment, L. 99, p. 1411, § 1, effective June 5, 1999.)

(4) (a) Within ten days after the award of any prize, the licensee shall file with the licensing authority a written report containing a description of the prize, the value of the prize, and such other information as the licensing authority may require by rule. Any prize offered pursuant to this section shall be awarded by the end of the calendar quarter in which it was offered.

(b) (I) A licensee may conduct a prize promotion on the licensed premises, whether such premises are rented or owned by the licensee. The promotion and its cost, if any, to the licensee shall be clearly disclosed, in the rental agreement or otherwise, pursuant to rules adopted by the licensing authority.

(II) A landlord licensee shall not require a bingo-raffle licensee to participate in or conduct a promotion under this section, nor may a games manager for any occasion assist in any such promotion conducted during an occasion by a landlord licensee. Prizes offered as part of a promotion shall not be considered as part of the prizes subject to limitation under section 12-9-107 (13).

(c) Before conducting a promotion under this section, the licensee shall provide evidence of ownership, free and clear, of the prizes to be offered unless all such prizes are available for viewing on the premises on the day they are to be awarded. The licensee offering any promotional prize shall disclose, at the beginning of the promotion, full and complete information identifying the prizes to be awarded and the method by which such

prizes may be won. This disclosure need not be made separately or personally to each participant, but may be made by conspicuously posting or displaying, at the premises where the promotion is being conducted, either the available prizes themselves or a list and complete description of the prizes and the method by which they may be won.

(d) The licensing authority may establish by rule the maximum amount or value of a cash prize or a prize of a product or service that may be awarded; except that such maximum amount shall not be less than one thousand dollars.

Source: **L. 99:** Entire article RC&RE, p. 1411, § 1, effective June 5. **L. 2002:** Entire section amended, p. 1646, § 2, effective August 7. **L. 2006:** (4) amended, p. 986, § 2, effective May 25. **L. 2008:** (4)(a) and (4)(d) amended, p. 298, § 2, effective April 3.

12-9-103. Licensing and enforcement authority - powers - rules - duties - license suspension or revocation proceedings - definitions. (1) The secretary of state is hereby designated as the “licensing authority” of this article. As licensing authority, the secretary of state’s powers and duties are as follows:

(a) (I) To grant or refuse to grant bingo-raffle licenses under this article and to grant or refuse to grant licenses to landlords, manufacturers, manufacturers’ agents, suppliers, and suppliers’ agents. If any such license application has not been approved or disapproved within forty-five days after the licensing authority has received all information that constitutes a complete application, the license shall be deemed to be approved. The licensing authority shall notify the applicant upon receipt of all information that the licensing authority deems a complete application. Such notification shall be the start of the forty-five-day period in which the licensing authority shall affirmatively act upon the application. The licensing authority’s failure to act upon an application within forty-five days after receipt shall not preclude the licensing authority from later filing a complaint challenging the application on the ground that it is in conflict with the Colorado constitution or this article. All such licenses and applications for such licenses shall be made available for inspection by the public. In addition, the licensing authority has the power and the responsibility, after investigation and hearing before an administrative law judge, to suspend or revoke any license issued by the licensing authority, in accordance with any order of such administrative law judge. When a license is ordered suspended or revoked, the licensee shall surrender the license to the licensing authority on or before the effective date of the suspension or revocation. No license is valid beyond the effective date of the suspension or revocation, whether surrendered or not. Any bingo-raffle license may be temporarily suspended for a period not to exceed ten days pending any prosecution, investigation, or public hearing.

(II) In lieu of seeking a suspension or revocation of any license issued by the licensing authority, the licensing authority may impose a reasonable fine for any violation of this article or any rule adopted pursuant to this article, not to exceed one hundred dollars per citation. The imposition of any such fine may be appealed to an administrative law judge.

(III) The refusal of the licensing authority to grant or renew a license shall entitle the applicant to administrative review of such refusal by an administrative law judge in accordance with subsection (2) of this section.

(IV) If a licensee or bingo-raffle affiliate fails within forty-five days after a written request by the licensing authority to voluntarily produce records at the office of the licensing authority, or if a licensee fails to file a report within the time required by this article, or if such report is not properly verified or is not fully, accurately, and truthfully completed on its face, the licensing authority may refuse to renew the licensee’s license until the licensee has corrected such failure or deficiency. If the licensing authority refuses to renew a license pursuant to this subparagraph (IV), the licensee shall not engage in activity authorized by such license until such license is renewed.

(b) To supervise the administration and enforcement of this article and, in consultation with the board, to adopt, amend, and repeal rules governing the holding, operating, and conducting of games of chance, the purchase of equipment, the establishment of a schedule of reasonable fines, not to exceed one hundred dollars per citation, for violation by licensees of this article or of rules adopted pursuant to this article, to the end that games of chance

shall be held, operated, and conducted only by licensees for the purposes and in conformity with the state constitution and the provisions of this article;

(c) To provide forms for and supervise the filing of any reports made by mail, computer, electronic mail, or any other electronic device by any licensee. As soon as possible after July 1, 2006, the licensing authority shall ensure that delivery of a document subject to this article by an applicant or a licensee may be accomplished electronically without the necessity for presentation of a physical original document, report, or image, if all required information is included and is readily retrievable from the data transmitted. The licensing authority may, by rule, require certain organizations to file reports and other documents electronically. All electronically filed documents shall be stored by the licensing authority in an electronic or other medium and shall be retrievable by the licensing authority in an understandable and readable form. Notwithstanding any other provision of law requiring the signature of, or execution by, a person on a document, no such signature shall be required when the document is submitted electronically. Causing a document to be delivered to the licensing authority by an applicant or a licensee shall constitute the affirmation or acknowledgment of the individual causing the delivery, under penalty of perjury, that the document is the individual's act and deed or the act and deed of the organization or entity on whose behalf the document was delivered and that the facts stated in the document are true.

(d) Upon application by any licensee, to issue a letter ruling granting approval for any new concept, method, technology, practice, or procedure that may be applied to, or used in the conduct of, games of chance that are not in conflict with the constitution or this article. Application for such approval shall be submitted in a form prescribed by the licensing authority. If an application is not acted upon within forty-five days after receipt by the licensing authority, the licensee may implement such concept, method, technology, practice, or procedure so long as it is not in conflict with the constitution or this article; except that the licensing authority's failure to act upon an application within forty-five days after receipt shall not preclude the licensing authority from later filing a complaint challenging such concept, method, technology, practice, or procedure on the ground that it is in conflict with the constitution or this article. An adverse ruling on such application may be appealed to an administrative law judge.

(e) To keep records of all actions and transactions relating to licensing and enforcement activity;

(f) To prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to the provisions of section 24-1-136, C.R.S., a report accounting to the governor for the efficient discharge of all responsibilities assigned by law or directive to the authority, and to issue publications of the authority intended for circulation in quantity outside the executive branch in accordance with the provisions of section 24-1-136, C.R.S.;

(g) To license devices for reading pull tabs as provided in section 12-9-107.7; except that the licensing authority shall not impose or collect any fee for the issuance of such a license.

(1.5) For the purpose of any investigation or examination of records, the licensing authority or any officer designated by the licensing authority may require, at the office of the licensing authority, the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the licensing authority deems relevant or material to the inquiry. In case of refusal to obey a request for the production of documents issued to any licensee or an affiliate of a licensee, the district court of the city and county of Denver, upon application by the licensing authority, may issue an order requiring that person to appear before the licensing authority or the officer designated by the licensing authority to produce documents or to give evidence touching upon the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(2) The licensing authority may revoke, suspend, annul, limit, or modify a license pursuant to section 24-4-104, C.R.S. Hearings that are held for the purpose of determining whether a licensee's license should be revoked, suspended, annulled, limited, or modified shall be conducted by an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., and shall be held in the manner and pursuant to the rules and

procedures described in sections 24-4-104, 24-4-105, and 24-4-106, C.R.S. Hearings shall be held and concluded, in accordance with such rules, with reasonable dispatch and without unnecessary delay, and a decision shall be issued within ten days after such hearing.

(3) (a) Upon a finding by an administrative law judge of a violation of this article, the rules adopted pursuant to this article, or any other provision of law, such as would warrant the revocation, suspension, annulment, limitation, or modification of a license, in addition to any other penalties that may be imposed, the licensing authority may declare the violator ineligible to conduct a game of bingo and to apply for a license pursuant to this article for a period not exceeding five years after the date of such declaration or a shorter period designated by the licensing authority pursuant to this subsection (3). The licensing authority shall designate a shorter period of license ineligibility only in the absence of aggravating factors associated with the violation for which the revocation was imposed. Aggravating factors shall include willfulness, intent, a previous intentional violation of this article, and violations involving theft or fraud. Such declaration of ineligibility may be extended to include, in addition to the violator, any of its subsidiary organizations, its parent organization, or otherwise, affiliated with the violator when, in the opinion of the licensing authority, the circumstances of the violation warrant such action.

(b) The decision of the administrative law judge in any controversy concerning licensing, the imposition of a fine, or the approval of any proposed new concept, method, technology, practice, or procedure shall be final and subject to review by the court of appeals, pursuant to the provisions of section 24-4-106 (11), C.R.S.

(4) (Deleted by amendment, L. 2006, p. 986, § 3, effective May 25, 2006.)

(5) Upon an administrative or judicial finding of a violation of this article, the rules adopted pursuant to this article, or any other provision of law, such as would warrant the suspension or revocation of a license, the licensing authority, in addition to any other penalties that may be imposed, may issue an order excluding the violator or any owner, officer, director, or games manager of the violator from the licensed premises during the conduct of games of chance.

(6) (a) The secretary of state shall confer with the executive director of the department of revenue or his or her designee concerning:

(I) The desirability and practicability of transferring the responsibility for enforcement, licensing, or both under this article from the secretary of state to the department of revenue;

(II) The constitutional and statutory changes that would be necessary to effectuate such transfer; and

(III) The recommendations of the secretary of state and the executive director of the department of revenue for any other or additional constitutional or statutory changes to improve the regulation of bingo and raffles in Colorado.

(b) On or before December 31, 2008, the secretary of state and the executive director of the department of revenue shall jointly prepare and transmit a report of their findings and recommendations to the house and senate committees on finance and the house and senate committees on state, veterans, and military affairs, or their successor committees.

Source: L. 99: Entire article RC&RE, p. 1412, § 1, effective June 5. L. 2002: (1)(a)(III), (1)(d), and (3)(a) amended and (1)(a)(IV) and (5) added, p. 1647, §§ 3, 4, effective August 7. L. 2006: (1)(a)(I), (1)(a)(IV), (1)(c), (2), (3)(a), and (4) amended and (1.5) added, p. 986, § 3, effective May 25. L. 2008: IP(1) and (1)(b) amended and (6) added, p. 299, § 3, effective April 3.

ANNOTATION

Under circumstances in which the secretary of state stopped the operation of a raffles game, former subsection (2)(a) required that the hearing be held within ten days after the notice of suspension. Because the hearing was not held within this period, the secretary of state lost

jurisdiction to proceed with the suspension hearing and to suspend the licensee's license. *Am. Hist. Soc. of Germans v. Meyer*, 794 P.2d 1025 (Colo. App. 1989) (decided prior to 1993 amendment).

12-9-103.5. Fees - department of state cash fund. (1) All fees collected by the licensing authority pursuant to this article shall be transmitted to the state treasurer who shall credit the same to the department of state cash fund created in section 24-21-104 (3) (b), C.R.S., also referred to in this section as the “fund”. The moneys in the fund shall be subject to annual appropriation by the general assembly for the purposes of financing the licensing and enforcement activities of the secretary of state as specified in this article.

(2) (Deleted by amendment, L. 2002, p. 1648, § 5, effective August 7, 2002.)

(3) (a) Fees authorized by this article shall be established by the licensing authority, in consultation with the board, in amounts sufficient to ensure that the total revenue generated by the collection of such fees approximates the direct and indirect costs incurred by the licensing authority in carrying out its duties under this article. The amounts of all fees shall be reviewed annually. The licensing authority shall furnish to the board both an annual and a quarterly accounting of all fee and fine revenues received and expenditures made pursuant to this article, together with a list of all fees in effect.

(b) The cost of implementing the electronic application and report filing system required by section 12-9-103 (1) (c), including the cost of promulgating any new or amended rules for use of the system, shall be recovered through a temporary fee increase or surcharge assessed on licensees during the first five years of operation of the system. The licensing authority shall establish the temporary fee or surcharge on a sliding or graduated scale, based on the quarterly gross receipts of each licensee that is required to file quarterly reports or pay fees under section 12-9-107.5 (5) or section 12-9-108 (6) (b), and in an amount sufficient to recover all of such costs within the five-year period.

(4) All fines assessed pursuant to this article shall be paid to the state treasurer who shall credit the same to the general fund of the state.

Source: L. 99: Entire article RC&RE, p. 1414, § 1, effective June 5. L. 2002: (1), (2), and (3) amended, p. 1648, § 5, effective August 7; (3) amended, p. 881, § 17, effective August 7. L. 2006: (3) amended, p. 989, § 4, effective May 25.

Editor’s note: Amendments to subsection (3) by House Bill 02-1321 and House Bill 02-1352 were harmonized.

Cross references: For provision concerning limitations on reserves in cash funds, see § 24-75-402.

12-9-104. Bingo-raffle license - fee. (1) A bona fide chartered branch, lodge, or chapter of a national or state organization or any bona fide religious, charitable, labor, fraternal, educational, voluntary firefighters’, or veterans’ organization or any association, successor, or combination of association and successor of any of the said organizations that operates without profit to its members and that has been in existence continuously for a period of five years immediately prior to the making of application for a bingo-raffle license under this article and has had during the entire five-year period dues-paying members engaged in carrying out the objects of said corporation or organization is eligible for a bingo-raffle license to be issued by the licensing authority under this article. If a license is revoked, the bingo-raffle licensee and holder thereof is not eligible to apply for another license under subsection (2) of this section until after the expiration of the period of five years after the date of such revocation.

(2) The bingo-raffle licenses provided by this article shall be issued by the licensing authority to applicants qualified under this article upon payment of a fee established in accordance with section 12-9-103.5 (3). Licenses shall expire at the end of the calendar year in which they were issued by the licensing authority and may be renewed by the licensing authority upon the filing of an application for renewal thereof provided by the licensing authority and the payment of the fee established for such renewal. No license granted under this article or any renewal thereof shall be transferable. The fees required to be paid for a new or renewal license shall be deposited in the bingo-raffle cash fund.

Source: L. 99: Entire article RC&RE, p. 1415, § 1, effective June 5. L. 2006: (1) amended, p. 989, § 5, effective May 25.

ANNOTATION

Licensees, if otherwise qualified, are entitled to only one license each and are limited to one location for each license. All licensees, except exempt umbrella charitable organizations, must hold their games of chance at one location. *Am. Hist. Soc. of Germans v. Meyer*, 794 P.2d 1025 (Colo. App. 1989).

Five-year period of operation requirement not met by charitable organization that had

separated from another charitable organization two years before applying for a bingo-raffle license. Applicant organization was not a "successor" because it did not completely take the place of the organization it separated from. *Ginny's Kids Int'l, Inc. v. Office of the Sec'y of State*, 29 P.3d 333 (Colo. App. 2000).

12-9-104.5. Landlord licensees - stipulations. (1) No person except a landlord licensee shall rent or offer to rent to any bingo-raffle licensee any premises to be used to conduct games of chance. A lease of the premises for a bingo occasion shall be for a period of at least five consecutive hours unless the landlord licensee and bingo-raffle licensee agree to a shorter or longer period. The amount of rent to be charged, and the method used to calculate such rent, shall be established by agreement between the parties.

(2) No landlord licensee or any employee of a landlord licensee shall require, induce, or coerce a bingo-raffle licensee to enter into any contract, agreement, or lease contrary to the provisions of this article.

(3) No landlord licensee or any employee of a landlord licensee shall require, induce, or coerce a bingo-raffle licensee to purchase supplies or equipment, or to purchase or lease electronic devices used as aids in the game of bingo, from a particular supplier, distributor, or manufacturer as a condition of conducting games of chance at a commercial bingo facility.

(4) Rent charged to a bingo-raffle licensee by a landlord licensee for the use of a commercial bingo facility shall cover all expenses and items reasonably necessary for the use of the commercial bingo facility for a bingo occasion including, but not limited to, insurance and maintenance for such facility, adequate and secure storage space, restrooms, janitorial services, and utilities.

(5) No activity or business other than licensed games of chance may be conducted in a commercial bingo facility within space leased to a bingo-raffle licensee during the time allocated to the bingo-raffle licensee with the exception of the sale of food, beverages, bingo-related merchandise and supplies, the operation of an automated cash service device, and such other activities and businesses as the bingo-raffle licensee may agree to. A landlord licensee may conduct other businesses and activities in space not included in the bingo-raffle licensee's rental agreement and in which games of chance are not held.

(6) No landlord licensee or any employee or agent of a landlord licensee shall be a party responsible for or assisting with the conduct, management, or operation of any game of chance within Colorado; except that a landlord licensee that is also a bingo-raffle licensee may conduct such activities as its bingo-raffle license allows exclusively on its own behalf.

(7) Notwithstanding subsection (6) of this section, a landlord, supplier, or manufacturer licensee may instruct and train a bingo-raffle licensee in the repair, operation, and maintenance of bingo-raffle equipment, subject to specific criteria established by rule.

(8) Every landlord licensee shall file with the licensing authority all leases, agreements, and other documents required in order for a bingo-raffle licensee to lease its commercial bingo facility.

Source: L. 99: Entire article RC&RE, p. 1415, § 1, effective June 5. L. 2001: (3) amended, p. 135, § 5, effective October 1.

Cross references: For the legislative declaration contained in the 2001 act amending subsection (3), see section 1 of chapter 58, Session Laws of Colorado 2001.

12-9-105. Application for bingo-raffle license. (1) Each applicant for a bingo-raffle license to be issued under the provisions of this section shall file with the licensing authority

a written application in the form prescribed by the licensing authority, duly executed and verified, and in which shall be stated:

- (a) The name and address of the applicant;
 - (b) Sufficient facts relating to its incorporation and organization to enable the licensing authority to determine whether or not it is a bona fide chartered branch, lodge, or chapter of a national or state organization or a bona fide religious, charitable, labor, fraternal, educational, voluntary firefighters', or veterans' organization that operates without profit to its members, has been in existence continuously for a period of five years immediately prior to the making of said application for such license, and has had during the entire five-year period dues-paying members engaged in carrying out the objectives of said applicant;
 - (c) The names and addresses of its officers;
 - (d) The specific kind of games of chance intended to be held, operated, and conducted by the applicant;
 - (e) (I) The place where such games of chance are intended to be held, operated, and conducted by the applicant under the license applied for; or
 - (II) In the case of the application of an exempt organization, the place or places where drawings are intended to be held, operated, and conducted by the organization under the license applied for;
 - (f) A statement that no commission, salary, compensation, reward, or recompense will be paid to any person for holding, operating, or conducting such games of chance or for assisting therein except as otherwise provided in this article;
 - (g) Such other information deemed advisable by the licensing authority to insure that the applicant falls within the restrictions set forth by the state constitution.
- (2) (a) In each application there shall be designated active members of the applicant organization under whom the games of chance described in the application are to be held, operated, and conducted, and to the application shall be appended a statement executed by the applicant and by the members so designated that they will be responsible for the holding, operation, and conduct of such games of chance in accordance with the terms of the license and the provisions of this article.
- (b) Each designated games manager shall have been an active member of the applicant for at least the six months immediately preceding his or her designation and shall be certified by the licensing authority pursuant to section 12-9-105.1 before assuming games management duties.
- (3) In the event any premises are to be leased or rented in connection with the holding, operating, or conducting of any game of chance under this article, a written statement shall accompany the application signed and verified by the applicant, which shall state the address of the leased or rented premises and the amount of rent that will be paid for said premises and which shall certify that the premises are to be rented from a landlord licensee.

Source: L. 99: Entire article RC&RE, p. 1416, § 1, effective June 5. L. 2002: (2) amended, p. 1649, § 7, effective August 7.

ANNOTATION

Jar raffle games may not be supervised or operated by employees of members of the non-profit organization which is licensed to

hold the jar raffle game. *Am. Hist. Soc. of Germans v. Meyer*, 794 P.2d 1025 (Colo. App. 1989).

12-9-105.1. Games managers - certification. (1) The licensing authority shall issue a games manager certification to any qualified applicant who has demonstrated sufficient knowledge of this article, as determined by the licensing authority, and who has paid the fee established in accordance with section 12-9-103.5 (3). A games manager certification shall be valid for a time period to be determined by the licensing authority by rule, and may be denied, suspended, or revoked for any violation of this article or any rule or order of the licensing authority promulgated or issued pursuant to this article.

(1.5) A person shall not be eligible for certification or act as a games manager in the

conduct of a game of chance pursuant to this article unless the person is eighteen years of age or older.

(2) A person shall not be eligible for certification or act as a games manager in the conduct of any game of chance pursuant to this article if such person has been convicted of any felony or any offense involving gambling.

(3) A person shall not be designated or serve as a games manager for more than three bingo-raffle licensees simultaneously. The licensing authority may promulgate rules establishing the circumstances under which a person may be designated and serve as games manager for more than three, but in no event more than five, bingo-raffle licensees within a specified period of time.

Source: L. 2002: Entire section added, p. 1649, § 6, effective August 7. **L. 2006:** (1.5) added, p. 989, § 6, effective May 25.

12-9-105.3. Application for landlord license - fee. (1) Each applicant for a landlord license shall file with the licensing authority a written application, duly executed and verified, in the form presented by the licensing authority, which application shall include, but not be limited to, the following information:

(a) The name and address of the landlord and, if such commercial landlord is a corporation, partnership, association, or other business entity, the names and addresses of all partners, associates, and persons holding an ownership interest of ten percent or more;

(b) The name and address of the landlord's resident agent if the commercial landlord does not reside in Colorado and the location in Colorado where its records will be available to the licensing authority;

(c) The location of the premises for which the applicant is seeking such license;

(d) A statement by the landlord or the chief executive officer of the landlord that the landlord is familiar with the provisions of this article as to commercial bingo facilities and landlords thereof and accepts responsibility for compliance with such provisions;

(e) Repealed.

(f) A statement by the landlord or the chief executive of the landlord that the primary purpose of the premises described in paragraph (e) of this subsection (1) is the conduct of bingo occasions.

(2) Each application shall designate an individual who shall act as agent for the landlord and who shall receive all communications concerning the license.

(3) There shall be attached to each application an affidavit signed by the applicant stating that the landlord has not been convicted of any felony or any gambling-related offense as defined in article 10 of title 18, C.R.S. If the landlord is a corporation, limited liability company, or partnership, such affidavit shall make such verification as to each officer and director of such corporation, each member and manager of such limited liability company, or each partner and associate of such partnership.

(4) A landlord license shall expire at the end of the calendar year in which it was issued. Each license issued shall be conspicuously displayed at the premises for which the license has been issued. No landlord license is transferable. The annual fee for each landlord license shall be established in accordance with section 12-9-103.5 (3).

Source: L. 99: Entire article RC&RE, p. 1417, § 1, effective June 5. **L. 2002:** (3) amended, p. 1649, § 8, effective August 7. **L. 2008:** (1)(e) repealed, p. 300, § 4, effective April 3.

12-9-105.5. Application for manufacturer license. (1) Each application for a manufacturer license shall include, but not be limited to, the following information:

(a) The name and address of the applicant;

(b) The name and address of the manufacturer and, if the manufacturer is a corporation, the name and address of each officer, director, and shareholder holding an ownership interest of ten percent or more;

(c) A description of the equipment manufactured in connection with games of chance activities in Colorado;

(d) The name and address of the resident agent of the manufacturer if the applicant does not reside in Colorado and the location in Colorado where the records of the manufacturer will be available to the licensing authority;

(e) The names and addresses of the Colorado suppliers and agents of the manufacturer; and

(f) A statement by the manufacturer or the chief executive officer of the manufacturer that such manufacturer is familiar with the provisions of this article as to bingo-raffle manufacturers and accepts responsibility for compliance with such provisions.

(2) To each application for a manufacturer license shall be attached a statement that the applicant or its owners or its officers or directors if a corporation, or its members, managers, partners, or associates if another business entity, has not been convicted of any felony or any offense involving gambling as defined in article 10 of title 18, C.R.S.

(3) Any bingo-raffle manufacturer, as defined in section 12-9-102 (1.3), upon filing a true, complete, written, verified application in the form presented by the licensing authority, together with the fee for the license, is eligible for a manufacturer license. A manufacturer license shall be renewed annually, on or before March 31 of each year in which such licensee engages in or anticipates engaging in a licensed activity. A manufacturer license is nontransferable. The annual fee for each license shall be established in accordance with section 12-9-103.5 (3).

Source: L. 99: Entire article RC&RE, p. 1418, § 1, effective June 5. L. 2001: (1)(c) amended, p. 135, § 6, effective October 1. L. 2002: (2) amended, p. 1650, § 9, effective August 7. L. 2006: (1)(c) amended, p. 990, § 7, effective May 25.

Cross references: For the legislative declaration contained in the 2001 act amending subsection (1)(c), see section 1 of chapter 58, Session Laws of Colorado 2001.

12-9-105.7. Application for supplier license. (1) Each application for a supplier license shall include, but not be limited to, the following information:

(a) The name and address of the applicant;

(b) The name and address of the supplier and, if the supplier is a corporation, the name and address of each officer, director, and shareholder holding an ownership interest of ten percent or more;

(c) A description of the equipment and supplies sold or distributed in connection with games of chance activities in Colorado;

(d) The name and address of the resident agent of the supplier if the applicant does not reside in Colorado and the location in Colorado where the records of the supplier will be available to the licensing authority;

(e) The names and addresses of the Colorado agents of the supplier; and

(f) A statement by the supplier or the chief executive officer of the supplier that such supplier is familiar with the provisions of this article as to bingo-raffle suppliers and accepts responsibility for compliance with such provisions.

(2) To each application for a supplier license shall be attached a statement that the applicant or its owners or its officers or directors if a corporation, or its members, managers, partners, or associates if another business entity, has not been convicted of any felony or any offense involving gambling as defined in article 10 of title 18, C.R.S.

(3) Any bingo-raffle supplier, as defined in section 12-9-102 (1.4), upon filing a true, complete, written, verified application in the form presented by the licensing authority, together with the fee for the license, is eligible for a supplier license. A supplier license shall be renewed annually, on or before March 31 of each year in which such licensee engages in or anticipates engaging in a licensed activity. A supplier license is nontransferable. The annual fee for each license shall be established in accordance with section 12-9-103.5 (3).

Source: L. 99: Entire article RC&RE, p. 1419, § 1, effective June 5. L. 2001: (1)(c) amended, p. 135, § 7, effective October 1. L. 2002: (2) amended, p. 1650, § 10, effective August 7. L. 2006: (1)(c) amended, p. 990, § 8, effective May 25.

Cross references: For the legislative declaration contained in the 2001 act amending subsection (1)(c), see section 1 of chapter 58, Session Laws of Colorado 2001.

12-9-105.9. Application for manufacturer's agent license or supplier's agent license. (1) Each application for a manufacturer's agent license or supplier's agent license shall include, but not be limited to, the following information:

- (a) The name and address of the applicant;
- (b) The name and address of the supplier or manufacturer represented by the applicant;
- (c) A statement by the applicant that he or she has read, understands, and will comply with the provisions of this article as to manufacturer's and supplier's agents and the conditions of the agent's license;
- (d) A statement by the chief executive officer of the manufacturer or supplier represented by the agent, which statement acknowledges consent to representation by the applicant; and
- (e) The location in Colorado where the agent's records of sales and distributions of bingo and raffle equipment and supplies will be available to the licensing authority.

(2) To each agent's application shall be attached a statement that the applicant has not been convicted of any felony or any offense involving gambling as defined in article 10 of title 18, C.R.S.

(3) Any supplier's agent or manufacturer's agent as defined in section 12-9-102 (13.3) and (20.3), upon filing a complete, written, verified application in the form presented by the licensing authority, together with the fee for the license, is eligible for a manufacturer's or supplier's agent license. A manufacturer's or supplier's agent license shall be renewed annually, on or before March 31 of each year in which such licensee engages in or anticipates engaging in a licensed activity. Neither a manufacturer's agent license nor a supplier's agent license is transferable. The annual fee for each license shall be established in accordance with section 12-9-103.5 (3).

Source: **L. 99:** Entire article RC&RE, p. 1420, § 1, effective June 5. **L. 2001:** (1)(e) amended, p. 135, § 8, effective October 1. **L. 2006:** (1)(e) amended, p. 990, § 9, effective May 25.

Cross references: For the legislative declaration contained in the 2001 act amending subsection (1)(e), see section 1 of chapter 58, Session Laws of Colorado 2001.

12-9-106. Form of bingo-raffle licenses - display. (1) Each bingo-raffle license shall contain a statement of the name and address of the licensee and the place where such bingo or lotto games or the drawing of the raffles is to be held. If the bingo-raffle licensee moves from the games or drawing location listed on its license, the bingo-raffle licensee shall notify the licensing authority in writing prior to commencing bingo or conducting a raffle drawing at the new location. The licensing authority may issue a letter of authorization to move the location of the bingo or lotto games or the drawing of the raffles. Any such letter of authorization shall remain with the original license and be available for inspection at the place where such games or drawings are to be held. Any such license issued for an exempt organization shall provide for the inclusion of the place or places where drawings are to be held. Each bingo-raffle license issued for the conduct of any such games of chance shall be conspicuously displayed at the place where the game is to be conducted or the drawings held at all times during the conduct thereof. An exempt organization may comply with the requirements of this section by providing written notice of such a license to all employees of a participating private business or government agency holding a fund-raising drive that includes a drawing on behalf of such organization. Such notice shall state that the exempt organization shall make such license available for public inspection during reasonable business hours and shall specify where such license shall be maintained for inspection.

(2) Notwithstanding subsection (1) of this section, a bingo-raffle licensee conducting a pull tab game for the benefit of its members and guests on premises that are owned by it, or leased by it for purposes other than the conduct of a bingo occasion, may display a copy

of its license, in a format approved by the licensing authority, on such premises during any time the licensee is also conducting a bingo or raffle occasion at a separate location.

Source: **L. 99:** Entire article RC&RE, p. 1420, § 1, effective June 5. **L. 2006:** (1) amended, p. 990, § 10, effective May 25.

12-9-106.5. Form of landlord license - display - fee. (1) Each landlord license shall contain a statement of the name and address of the licensee and the location of the premises. Each license issued shall be conspicuously displayed at the premises for which the license has been issued.

(2) A landlord license shall be issued to qualified applicants by the licensing authority upon payment of a fee and completion and approval of the landlord license application pursuant to section 12-9-105.3. Such license shall expire at the end of the calendar year in which it was issued by the licensing authority and may be renewed upon the filing and approval of an application for renewal provided by the licensing authority and the payment of a fee. No landlord license is transferable. The fees required to be paid for new and renewed licenses shall be established in accordance with section 12-9-103.5 (3).

Source: **L. 99:** Entire article RC&RE, p. 1421, § 1, effective June 5.

12-9-107. Persons permitted to conduct games of chance - premises - equipment - expenses. (1) (a) No games of chance shall be conducted by any person, firm, or organization within this state, unless a bingo-affle license as provided in this article has been issued by the licensing authority. No person shall hold, operate, or conduct games of chance under a license issued under this article except an active member of the organization to which the bingo-affle license is issued, and no person shall assist in the holding, operating, or conducting of any games of chance under such license, except such an active member or a member of an organization or association that is an auxiliary to the licensee, a member of an organization or association of which such licensee is an auxiliary, or a member of an organization or association that is affiliated with the licensee by being, with it, auxiliary to another organization or association. No item of expense shall be incurred or paid in connection with the holding, operating, or conducting of a game of chance held, operated, or conducted pursuant to a license issued under this article, except bona fide expenses in a reasonable amount for goods, wares, and merchandise furnished or services rendered, reasonably necessary for the holding, operating, or conducting thereof.

(b) No games of chance shall be conducted with any equipment unless it is owned by a bingo-affle licensee, owned or leased by a landlord licensee, or owned or leased by a bingo-affle licensee operating such equipment on premises that are owned, leased, or rented by the bingo-affle licensee, used as its principal place of business, and controlled so that admittance to the premises is limited to the bingo-affle licensee's members and bona fide guests. Nothing in this paragraph (b) shall prohibit a bingo-affle licensee from leasing electronic devices used as aids in the game of bingo.

(2) (a) The officers of a bingo-affle licensee shall designate one or more bona fide, active members of the licensee as its games managers to be in charge and primarily responsible for the conduct of the games of bingo or lotto on each occasion. The games managers shall supervise all activities on the occasion for which they are in charge and are responsible for the making of the required report thereof. The games managers, governing board of the licensee, and the individual acting in the role of a treasurer on behalf of the licensee shall be familiar with the provisions of the state laws, the rules of the licensing authority, and the provisions of the license. The governing board of the licensee shall be ultimately responsible for the maintenance of books and records and the filing of the reports pursuant to this section. At least one games manager shall be present on the premises continuously during the games and for a period sufficient to ensure that all books and records for the occasion have been closed and that all supplies and equipment have been secured.

(b) An exempt organization may designate more than one of its bona fide, active members in order to comply with the requirements of this subsection (2).

(3) The officers of a bingo-raffle licensee shall designate an officer to be in full charge and primarily responsible for the proper utilization of the entire net proceeds of any game in accordance with the state law.

(4) The entire net proceeds of any game shall be devoted to a lawful use or uses.

(5) (a) Each license issued for the conduct of games of chance shall be conspicuously displayed at the place where any game is being conducted at all times during the conduct of the game and for at least thirty minutes after the last game has been concluded.

(b) An exempt organization may comply with the requirements of this subsection (5) by providing written notice of such a license to all employees of a participating private business or government agency holding a fund-raising drive that includes a drawing on behalf of such organization. Such notice shall state that the exempt organization shall make such license available for public inspection during reasonable business hours and shall specify where such license shall be maintained.

(6) The premises where any game of chance is being held, operated, or conducted, where it is intended that any game of chance be held, operated, or conducted, or where it is intended that any equipment be used, at all times, shall be open to inspection by the licensing authority, its agents and employees, and by peace officers of any political subdivision of the state.

(7) No licensee may hold, operate, or conduct a game of bingo or lotto more often than as specified by the licensing authority by rule, after consultation with the board.

(8) When any merchandise prize is awarded in a game of bingo, its value shall be its current retail price. No merchandise prize shall be redeemable or convertible into cash directly or indirectly.

(9) (a) Equipment, prizes, and supplies for games of bingo shall not be purchased or sold at prices in excess of the usual price thereof. A licensee shall not sell or offer for sale any game of chance or supplies for a game of chance that is not authorized by this article or by rules adopted by the licensing authority pursuant to this article.

(b) Cards and sheets that are designed or intended for use with electronic devices used as aids in the game of bingo shall not be purchased or sold at prices in excess of the usual price of cards and sheets that are not so designed or intended. Charges imposed by any manufacturer, supplier, agent thereof, or bingo-raffle licensee for cards and sheets that are designed or intended for use with electronic devices used as aids in the game of bingo shall be stated and imposed separately from any charges imposed by such manufacturer, supplier, agent thereof, or bingo-raffle licensee for the purchase, lease, or use of electronic devices used as aids in the game of bingo. Manufacturers, suppliers, and agents thereof shall not include costs attributable to the manufacture or distribution of electronic devices used as aids in the game of bingo in charges imposed for the purchase or lease of equipment, including cards and sheets.

(10) No alcoholic beverage shall be offered or given as a prize in any such game.

(11) The net proceeds derived from the holding of games of chance must be devoted, within one year, to the lawful purposes of the organization permitted to conduct the same. Any organization desiring to hold the net proceeds of games of chance for a period longer than one year shall apply to the licensing authority for special permission and, upon good cause shown, the licensing authority may grant the request.

(12) Any licensee that does not report, during any one-year period, net proceeds will be required to show cause before the licensing authority why its right to conduct games of chance should not be revoked.

(13) (a) The licensing authority shall establish by rule the method of play and amount of prizes that may be awarded; except that the maximum prize that may be awarded shall be at least five hundred dollars.

(b) Notwithstanding the limitations stated in paragraph (a) of this subsection (13), during a bingo occasion a bingo-raffle licensee may also start a single game of progressive bingo, in an amount established by rule by the licensing authority, in which the game is won when a previously designated arrangement of numbers or spaces on the card or sheet is covered within a previously designated number of objects or balls drawn. If the game is not

won within the drawing of the previously designated number of objects or balls, the game shall be replayed during each occasion the licensee conducts at the same location, using the previously designated arrangement of numbers or spaces.

(c) A bingo-raffle licensee may award a consolation prize for a game of progressive bingo in which the progressive prize is not won. The amount of the consolation prize shall be an amount determined by the bingo-raffle licensee. Notice of the amount shall be conspicuously displayed prior to the beginning of the bingo-raffle occasion, and the amount shall be included as part of the aggregate amount of all prizes offered or given in games played on a single occasion, as set forth in paragraph (b) of this subsection (13). If a consolation prize is offered, the game shall be continued until the previously designated arrangement of numbers or spaces on the card or sheet is covered, regardless of the number of balls drawn, in order to determine the winner of the consolation prize. If no consolation prize is offered, the progressive game shall end without a prize awarded when the last of the previously designated number of balls is drawn and shall be replayed at the next occasion the licensee conducts, in accordance with paragraph (b) of this subsection (13).

(d) A bingo-raffle licensee may fund a secondary jackpot from ten percent of the gross proceeds collected from the sale of progressive cards or sheets at the occasion where the game is offered. Notwithstanding the limitation stated in paragraph (b) of this subsection (13), the amount in the secondary jackpot may be used to start a single game of progressive bingo after a previous progressive jackpot is won.

(e) The licensing authority may establish by rule the maximum jackpot that may be awarded in a progressive bingo game; except that such maximum may not be less than fifteen thousand dollars.

(f) The licensing authority may establish by rule the maximum number of progressive bingo games, not less than one, that may be conducted during an occasion. In order to ensure that all prizes offered are timely awarded, the licensing authority may limit by rule the number of occasions in which a progressive bingo game may be conducted before a prize must be awarded; except that such number of occasions shall be not less than thirty.

(g) A bingo-raffle licensee may offer a progressive pull tab game in which a prize may be carried over and increased from one deal to another until a prize is awarded. Such game may include a subsequent pull tab deal bearing a different serial number from that offered in a previous deal. No prize greater, in amount or value, than five thousand dollars shall be offered or given in any progressive pull tab game. The licensing authority may limit by rule the types of progressive pull tab games allowed to be sold by supplier licensees. A bingo-raffle licensee may offer an event pull tab series. For the purposes of this paragraph (g):

(I) "Event pull tab series" means a pull tab series that includes a predetermined number of pull tabs that allow a player to advance to an event round.

(II) "Event round" means a secondary element of chance where the prizes are determined based on pull tabs that match specific winning numbers drawn in a bingo game and the winning numbers shall fall within numbers one to seventy-five, inclusive.

(h) When a deal of progressive pull tabs is received in two or more packages, boxes, or other containers, all of the progressive pull tabs from the respective packages, boxes, or other containers shall be placed out for play at the same time.

(i) A bingo-raffle licensee may offer a prize to the purchaser of a last sale ticket in a pull tab game, deal, or series without regard to its winning or nonwinning status as revealed if broken or torn apart.

(j) The licensing authority shall establish, by rule, safeguards to protect the bingo-raffle licensee's players against defaults in charitable gaming debts owed or to become payable by the bingo-raffle licensee.

(14) The equipment used in the playing of bingo and the method of play shall be such that each card has an equal opportunity to be a winner. The objects or balls to be drawn shall be essentially the same as to size, shape, weight, balance, and all other characteristics that may influence their selection. All objects or balls shall be present in the receptacle before each game is begun. All numbers announced shall be plainly and clearly audible to all the players present. Where more than one room is used for any one game, the receptacle and the caller must be present in the room where the greatest number of players are present, and

all numbers announced shall be plainly audible to the players in the aforesaid room and also audible to the players in the other rooms.

(15) The receptacle and the caller must be visible to all the players at all times except where more than one room is used for any one game, in which case the provisions of subsection (14) of this section shall prevail.

(16) The particular arrangement of numbers required to be covered in order to win the game and the amount of the prize shall be clearly and audibly described and announced to the players immediately before each game is begun.

(17) Any player is entitled to call for a verification of all numbers drawn at the time a winner is determined and for a verification of the objects or balls remaining in the receptacle and not yet drawn. The verification shall be made in the immediate presence of the member designated to be in charge of the occasion, but if such member is also the caller, then in the immediate presence of any officer of the licensee.

(18) In the playing of bingo, no person who is not physically present on the premises where the game is actually conducted shall be allowed to participate as a player in the game.

(19) (a) No person shall act as a caller or assistant to the caller in the conduct of any game of bingo unless such person has been a member in good standing of the bingo-affle licensee conducting such game or one of its licensed auxiliaries for at least three months immediately prior to the date of such game, is of good moral character, and never has been convicted of a felony or a crime involving gambling.

(b) (Deleted by amendment, L. 2006, p. 991, § 11, effective May 25, 2006.)

(20) No owner, co-owner, or lessee of premises or, if a corporation is the owner of the premises, any officer, director, or stockholder owning more than ten percent of the outstanding stock shall be a person responsible for or assisting in the holding, operating, or conducting of any game of bingo.

(21) The licensing authority shall not require an exempt organization to use raffle tickets in any particular form or displaying any particular information that would cause undue expense to the exempt organization and therefore interfere with the charitable fund-raising drive of such organization.

(21.5) Effective September 1, 1999:

(a) No licensee shall possess, use, sell, offer for sale, or put into play any computerized or electromechanical facsimile of a pull tab game.

(b) No licensee shall possess, use, sell, offer for sale, or put into play any device that reveals the winning or nonwinning status of a pull tab ticket unless such device has been tested, approved, and licensed pursuant to section 12-9-107.7 and not subsequently altered or tampered with.

(c) Any of the following persons that are found to have violated paragraph (b) of this subsection (21.5) shall be subject to immediate and permanent revocation of all licenses issued under this article:

(I) The manufacturer of the device;

(II) The supplier through which the device was supplied;

(III) The landlord licensee on whose premises the device was found; and

(IV) The bingo-affle licensee of the occasion during which the device was present.

(22) No licensee shall possess, use, sell, offer for sale, or put into play any bingo or pull tab game, ticket, card, or sheet unless it conforms to the definitions and requirements of this article, and was purchased by the licensee from a licensed bingo-affle manufacturer or supplier or licensed agent thereof. No licensee shall possess, use, sell, offer for sale, or put into play any electronic device used as an aid in the game of bingo unless it conforms to the requirements of this article and was purchased or leased by the licensee from a licensed bingo-affle manufacturer or supplier or licensed agent thereof.

(23) No licensee shall possess, use, sell, offer for sale, or put into play any bingo or pull tab game, ticket, card, or sheet for which it does not have, at the location of the game, an invoice from its licensed supplier showing at least the name, description, color code (if any), and serial number of the pull tab, card, or sheet.

(24) No licensee shall sell, offer for sale, or put into play any pull tab ticket except at the location of and during its licensed bingo occasions or upon premises that are:

(a) Owned, leased, or rented by the bingo-raffle licensee, used as its principal place of business, and controlled so that admittance to the premises is limited to the bingo-raffle licensee's members and bona fide guests; or

(b) Owned, leased, or rented by a landlord licensee.

(25) No person or licensee shall permit any person who has not attained the age of eighteen years to purchase the opportunity to participate in any game of chance or purchase pull tab games.

(26) No person or licensee shall permit any person who has not attained the age of fourteen years to assist in the conduct of bingo or pull tabs.

(27) No operator shall reserve or allow to be reserved any bingo cards for use by players except braille cards or other cards for use by legally blind players. Legally blind players may use their personal braille cards when a licensed organization does not provide such cards. A licensed organization has the right to inspect and to reject any personal braille card. A legally blind or disabled person may use a braille card or hard card in place of a purchased disposable paper bingo card.

(28) (a) If a card or sheet is played with the aid of an electronic device, a winning bingo may be determined and verified by reference to such card or sheet or may be determined and verified by reference to the electronic device. Nothing in this article shall be construed to authorize the playing of bingo solely by means of an electronic device.

(b) A bingo-raffle licensee shall adequately mark, destroy, or dispose of cards or sheets played with the aid of an electronic device in order to prevent the reuse of such cards or sheets.

(c) The licensing authority may establish by rule the maximum number of bingo cards that a bingo player who plays using the aid of an electronic device shall be permitted to use with the aid of such a device per game; except that such maximum number shall not be less than thirty-six.

(d) A bingo-raffle licensee shall not be required to use or offer the use of electronic devices used as aids in the game of bingo during a bingo session.

(29) (a) With the application for a letter ruling pursuant to section 12-9-103 (1) (d) for the approval of a new type of electronic device used in the aid of bingo, the manufacturer of such device shall provide the following to the licensing authority:

(I) A prototype of the new type of electronic device used in the aid of bingo with a prototype bingo aid computer system and a user's manual used for such electronic device; and

(II) A certification by the manufacturer that the new type of electronic device used in the aid of bingo and all such electronic devices used in the state meet the following standards:

(A) The electronic device provides a means for the input of numbers announced by a bingo caller;

(B) The electronic device compares the numbers entered to the numbers contained on bingo cards previously stored in the electronic data base of such electronic device;

(C) The electronic device identifies winning bingo patterns; and

(D) The electronic device signals when a winning bingo pattern is achieved.

(b) The licensing authority shall return the prototype electronic device used in the aid of bingo, the prototype bingo aid computer system, and the user's manual submitted pursuant to subparagraph (I) of paragraph (a) of this subsection (29) no later than forty-five days after receiving such items.

(c) When a complaint regarding an electronic device used in the aid of bingo that is in use in the state of Colorado has been filed with the licensing authority, the manufacturer of such device shall provide to the licensing authority a sample of such device and bingo aid computer system to assist the investigation by the licensing authority. The licensing authority shall return such electronic device and bingo aid computer system no later than forty-five days after receiving such items, unless the licensing authority needs such electronic device longer to complete the investigation.

(d) Any electronic device used in the aid of bingo, any bingo aid computer system, and any user's manual for such a device that is in the custody of the licensing authority pursuant to this section shall not be construed to be public records.

(30) A bingo aid computer system used by a bingo-affle licensee for bingo sessions shall meet the following standards:

(a) Such system shall contain a record of all transactions occurring during a bingo-affle session. Such record shall be retained in memory until the transactions have been totaled, printed, and cleared by the bingo-affle licensee, regardless of whether the power supply has been interrupted.

(b) Such system shall be able to compute and total all transactions processed by the system during a bingo-affle session and to print all information required by the secretary of state, in the form prescribed by the secretary of state.

(c) Such system shall maintain and control the transaction number, time, and date of sale. Such information shall be secure enough that only a manufacturer's qualified personnel can change or reset such information. A detailed record, supported by service documents, shall be retained by such personnel for each service call that involves a change of the time, date of sale, or transaction number.

(31) If an electronic device used as an aid in the game of bingo complies with sub-subparagraphs (A) to (D) of subparagraph (II) of paragraph (a) of subsection (29) of this section, and if the bingo aid computer system for such electronic device substantially complies with the requirements of subsection (30) of this section, the licensing authority shall approve such electronic device and computer system for use by a letter ruling pursuant to section 12-9-103 (1) (d).

Source: **L. 99:** Entire article RC&RE, p. 1421, § 1, effective June 5. **L. 2001:** (9) and (22) amended and (28) to (31) added, p. 131, § 3, effective October 1. **L. 2002:** (9)(a) and (13) amended, p. 1650, § 11, effective August 7. **L. 2006:** (1), (2)(a), (13), (19), (28)(a), and (28)(c) amended, p. 991, § 11, effective May 25. **L. 2008:** (7) amended, p. 300, § 5, effective April 3.

Cross references: For the legislative declaration contained in the 2001 act amending subsections (9) and (22) and enacting subsections (28) to (31), see section 1 of chapter 58, Session Laws of Colorado 2001.

ANNOTATION

Jar raffle games may not be supervised or operated by employees of members of the non-profit organization which is licensed to

hold the jar raffle game. Am. Hist. Soc. of Germans v. Meyer, 794 P.2d 1025 (Colo. App. 1989).

12-9-107.5. Persons permitted to manufacture and distribute games of chance equipment - reporting requirements. (1) No person other than a manufacturer licensee or licensed agent shall act as a bingo-affle manufacturer within Colorado. The manufacture of electronic devices used as aids in the game of bingo, and the printing of raffle tickets other than pull tabs, as designed and requested by a licensee, does not constitute the manufacture of games of chance equipment; except that such electronic devices shall be subject to the reporting requirements of subsections (5) and (6) of this section, and the fees established by the licensing authority in accordance with section 12-9-103.5 (3) and subsection (5) of this section.

(2) (Deleted by amendment, L. 99, p. 1425, § 1, effective June 5, 1999.)

(3) No individual shall act for or represent a landlord, manufacturer, or supplier licensee with respect to an activity covered by such license unless such individual is the licensee's owner, officer, director, partner, member, or ten percent or more shareholder of record with the licensing authority, or is the manufacturer's or supplier's licensed agent. No manufacturer or supplier licensee shall allow any person not authorized by this subsection (3) to represent it or serve as its agent with regard to any Colorado transaction.

(4) Except to the extent otherwise provided in section 12-9-107 (1), no manufacturer or supplier licensee or licensed agent shall buy, receive, sell, lease, furnish, or distribute any pull tabs, bingo cards or sheets, electronic devices used as aids in the game of bingo, or

other games of chance equipment from or to any person within Colorado other than manufacturer or supplier licensees or agents and bingo-raffle licensees; except that:

(a) A landlord licensee, supplier, or manufacturer or its agent may sell or distribute cards, sheets, equipment, or electronic devices used as aids in the game of bingo for the playing of bingo not for resale to nursing homes and other entities that distribute the cards, sheets, or electronic devices and allow playing of the game free of charge, without consideration given or received by any person for the privilege of playing; and

(b) A bingo-raffle licensee may sell its used equipment to another bingo-raffle licensee.

(5) Every manufacturer and supplier licensee shall file, upon forms prescribed by the licensing authority, quarterly reports on its licensed activities within Colorado. Such reports shall be accompanied by quarterly fees established by the licensing authority in accordance with section 12-9-103.5 (3) and deposited in the bingo-raffle cash fund. Such reports shall be filed with the licensing authority no later than April 30, July 31, October 31, and January 31 of each year licensed, and each report shall cover the preceding calendar quarter. Reports shall enumerate by quantity, purchaser or lessee, and price the pull tabs, bingo cards or sheets, electronic devices used as aids in the game of bingo, and other games of chance equipment manufactured, conveyed, or distributed within Colorado or for use or distribution in Colorado and shall include the licensee's total sales, including amounts realized from leases, of equipment as defined in section 12-9-102 (5) and electronic devices used as aids in the game of bingo and the names and addresses of all Colorado suppliers or agents of the licensee and shall be signed and verified by the owner or the chief executive officer of the licensee. These quarterly reports shall not be public records as defined in section 24-72-202, C.R.S.

(6) Every manufacturer or supplier licensee, and every licensed agent for such licensee, shall keep and maintain complete and accurate records, in accord with generally accepted accounting principles, of all licensed activities. The records shall include invoices for all games of chance equipment or electronic devices used as aids in the game of bingo conveyed or distributed within Colorado, or for use or distribution in Colorado, which invoices are specific as to the nature, description, quantity, and serial numbers of the pull tabs, bingo cards or sheets, electronic devices used as aids in the game of bingo, and other equipment so conveyed or distributed. The records shall also show all receipts and expenditures made in connection with licensed activities, including, but not limited to, records of sales by dates, purchasers, and items sold or leased, monthly bank account reconciliations, disbursement records, and credit memos for any returned items. These records shall be maintained for a period of at least three years.

(7) No manufacturer or supplier licensee or licensed agent shall be a person responsible for or assisting in the conduct, management, or operation of any game of chance within Colorado.

Source: L. 99: Entire article RC&RE, p. 1425, § 1, effective June 5. L. 2001: (1), IP(4), (4)(a), (5), and (6) amended, p. 133, § 4, effective October 1.

Cross references: For the legislative declaration contained in the 2001 act amending subsection (1), the introductory portion to subsection (4), and subsections (4)(a), (5), and (6), see section 1 of chapter 58, Session Laws of Colorado 2001.

ANNOTATION

Secretary of state was not required to promulgate rules under the "State Administrative Procedure Act" in order to implement the re-

porting requirement under this section. *Bingo Games Supply Co., Inc. v. Meyer*, 895 P.2d 1125 (Colo. App. 1995).

12-9-107.7. Pull tab reading devices - approval required - tracking of transactions.

(1) Every mechanical, electronic, or electromechanical device that reveals the winning or nonwinning status of a pull tab ticket shall be tested, inspected, and licensed by the licensing authority before being used in charitable gaming. The licensing authority shall employ an independent contractor to conduct such tests and inspections, the cost of which

shall be borne by the manufacturer or supplier seeking approval of the device. No license shall be issued for a device until the device is secured in a manner prescribed by the licensing authority and the contractor receives payment in full for the cost of such tests and inspections.

(2) Every person shipping or importing into Colorado a device subject to subsection (1) of this section shall provide the licensing authority with a copy of the shipping invoice at the time of shipment. Such invoice shall contain, at a minimum, the destination of the shipment and the serial number and description of each device being transported.

(3) Every person receiving a device subject to subsection (1) of this section shall, upon receipt of the device, provide the licensing authority with the serial number and description of each device received and information describing the location of each such device. The requirements of this subsection (3) shall apply regardless of whether the device is received from a licensed supplier or from any other source.

(4) A device licensed pursuant to this section shall be licensed for and may only be used in one specific licensed location identified by the licensing authority. Any movement of the device from such licensed location for use at another licensed location shall be reported to the licensing authority in advance.

(5) The licensing authority may adopt rules and prescribe all necessary forms in furtherance of this section.

(6) Notwithstanding any other provision of this article, the licensing authority shall not license:

(a) A pull tab game that is stored, electronically or otherwise, within a device and designed to be played on such device; or

(b) Any device that qualifies as a slot machine pursuant to section 9(4)(c) of article XVIII of the Colorado constitution.

(7) The prohibition contained in subsection (6) of this section shall not be construed to prohibit the licensing of:

(a) A device that merely dispenses pull tab tickets to players; or

(b) A device that merely reads or validates a pull tab ticket inserted by a player, if:

(I) The pull tab ticket itself displays its winning or nonwinning status so that use of the device is not required to determine such status; and

(II) The device cannot be used in a manner that would qualify it as a slot machine pursuant to section 9(4)(c) of article XVIII of the Colorado constitution.

(8) Repealed.

Source: L. 99: Entire article RC&RE, p. 1427, § 1, effective June 5.

Editor's note: Subsection (8)(b) provided for the repeal of subsection (8), effective July 1, 2000. (See L. 99, p. 1427.)

12-9-108. Bingo-raffle licensee's statement of receipts - expenses - fee. (1) (a) On or before April 30, July 31, October 31, and January 31 of each year, every bingo-raffle licensee shall file with the licensing authority upon forms prescribed by the licensing authority a duly verified statement covering the preceding calendar quarter showing the amount of the gross receipts derived during said periods from games of chance, the expenses incurred or paid, and a brief description of the classification of such expenses, the net proceeds derived from games of chance, and the uses to which such net proceeds have been or are to be applied. It is the duty of each licensee to maintain and keep such books and records as may be necessary to substantiate the particulars of each such report.

(b) Exempt organizations shall not be subject to the requirements of this subsection (1), except to the extent that they shall file with the licensing authority statements showing the amount of the gross proceeds from their fund-raising drives and identifying all organizations receiving portions of such proceeds and the amounts received by each such organization.

(2) (a) If a bingo-raffle licensee fails to file reports within the time required or if reports are not properly verified or not fully, accurately, and truthfully completed, any existing license may be suspended until such time as the default has been corrected.

(b) Exempt organizations shall be subject to the requirements of this subsection (2) only to the extent that such requirements apply to paragraph (b) of subsection (1) of this section.

(3) (a) All moneys collected or received from the sale of admission, extra regular cards, special game cards, sale of supplies, and all other receipts from the games of bingo, raffles, and pull tab games shall be deposited in a special checking or savings account, or both, of the licensee, which shall contain only such money. All funds shall be withdrawn from said account by consecutively numbered checks or withdrawal slips or by electronic transactions referenced by transaction number or date. No check or withdrawal slip shall be drawn to "cash" or a fictitious payee. The licensee shall maintain all of its books and records in accordance with generally accepted accounting principles.

(b) Exempt organizations shall not be subject to the requirements of this subsection (3).

(4) No part of the net proceeds, after they have been given over to another organization, shall be used by the donee organization to pay any person for services rendered or materials purchased in connection with the conducting of bingo by the donor organization.

(5) No item of expense shall be incurred or paid in connection with holding, operating, or conducting a game of chance pursuant to a bingo-affle license except bona fide expenses of a reasonable amount. Such expenses include those incurred in connection with all games of chance, for the following purposes:

(a) Advertising and marketing;

(b) Legal fees related to any action brought by the licensing authority against the bingo-affle licensee in connection with games of chance;

(c) The purchase of goods, wares, and merchandise furnished to the licensee for the purpose of operating games of chance pursuant to this article;

(d) The purchase or lease of electronic devices used as aids in the game of bingo;

(e) Payment for services rendered that are reasonably necessary for repairs of equipment and operating or conducting games of chance;

(f) Rent, if the premises are rented, or for janitorial services if not rented;

(g) Accountant's fees; and

(h) License fees.

(6) (a) For the purposes enumerated in subsection (5) of this section, the following terms shall have the following meanings:

(I) "Goods, wares, and merchandise" means prizes, equipment as defined in section 12-9-102 (5), and articles of a minor nature.

(II) "Services rendered" means:

(A) The repair of equipment;

(B) Compensation to bookkeepers or accountants for services in preparing financial reports for a reasonable amount as determined by the licensing authority by rule. No landlord, manufacturer, or supplier licensee, or employee of a landlord, manufacturer, or supplier licensee, shall act as a bookkeeper or accountant for a bingo-affle licensee, nor shall a landlord, manufacturer, or supplier licensee offer or provide accounting or bookkeeping services in connection with the preparation of financial reports on bingo-affle activities, except for the transfer or encoding of data necessitated by the sale, upgrade, or maintenance of accounting software sold or leased to a bingo-affle licensee by a landlord, manufacturer, or supplier licensee. A landlord licensee that is also a bingo-affle licensee may act as a bookkeeper or accountant on such licensee's own behalf.

(C) The rental of premises;

(D) A reasonable amount for janitorial service as determined by the licensing authority in rules for each occasion; and

(E) A reasonable amount for security expense based on established need as determined by the licensing authority in rules for each occasion.

(b) There shall be paid to the licensing authority an administrative fee, established in accordance with section 12-9-103.5 (3), upon the gross receipts of any game of chance held, operated, or conducted under the provisions of this article; except that an exempt organization shall not be charged more than twenty dollars per year. All administrative fees collected by the licensing authority under this article shall be deposited in the department of state cash fund created in section 24-21-104, C.R.S.

(7) Each licensee, at the time each financial report is submitted to the licensing authority, shall pay to the order of the licensing authority the amount of administration expense provided in subsection (6) of this section.

Source: **L. 99:** Entire article RC&RE, p. 1428, § 1, effective June 5. **L. 2001:** (5) and (6) amended, p. 135, § 9, effective October 1. **L. 2002:** (6) amended, p. 1651, § 12, effective August 7. **L. 2006:** (3)(a), (5), (6)(a)(I), (6)(a)(II)(A), and (6)(a)(II)(B) amended, p. 994, § 12, effective May 25.

Cross references: For the legislative declaration contained in the 2001 act amending subsections (5) and (6), see section 1 of chapter 58, Session Laws of Colorado 2001.

ANNOTATION

Rent is a legitimate permitted expense for all games of chance, including raffles. A reasonable rental may be paid to an establishment for a licensee's jar raffles operations. *Am. Hist. Soc. of Germans v. Meyer*, 794 P.2d 1025 (Colo. App. 1989).

The administrative fee imposed on a bingo-raffle licensee under subsection (6) is required to be calculated on the aggregate profit from all games of chance conducted by the licensee. *Catholic Media Groups, Inc. v. Meyer*, 879 P.2d 480 (Colo. App. 1994).

12-9-109. Examination of books and records. The licensing authority and its agents have power to examine or cause to be examined the books and records of any licensee to which any license is issued pursuant to this article insofar as they may relate to any transactions connected with activities under the license. The licensing authority may require by rule that licensees that have failed to keep proper books and records, or to maintain their books and records in accordance with generally accepted accounting principles, adopt certain internal financial controls and attend training to ensure the integrity of the reporting of games of chance activities pursuant to this article.

Source: **L. 99:** Entire article RC&RE, p. 1430, § 1, effective June 5. **L. 2006:** Entire section amended, p. 995, § 13, effective May 25.

12-9-110. Forfeiture of license - ineligibility to apply for license. Any person who makes any false statement in any application for any such license or in any statement annexed thereto, fails to keep sufficient books and records to substantiate the quarterly reports required under section 12-9-108, falsifies any books or records insofar as they relate to any transaction connected with the holding, operating, and conducting of any game of chance under any such license, or violates any of the provisions of this article or of any term of such license, if convicted, in addition to suffering any other penalties that may be imposed, shall forfeit any license issued to it under this article and shall be ineligible to apply for a license under this article for at least one year thereafter.

Source: **L. 99:** Entire article RC&RE, p. 1430, § 1, effective June 5.

12-9-111. Volunteer services - legislative declaration - immunity. (1) The Colorado constitution recognizes that the conduct of charitable gaming activities is directly related to the need of nonprofit organizations to fulfill their lawful purposes. Notwithstanding this recognition, however, the willingness of bingo-raffle volunteers to offer their services has been increasingly deterred by a perception that they put personal assets at risk should a tort action be filed seeking damages arising from their volunteer activities.

(2) All bingo-raffle volunteers shall be immune from civil actions and liabilities pursuant to section 13-21-115.5, C.R.S., which provides that volunteers shall not be personally liable for their acts or omissions if they are acting in good faith and within the scope of their official function and duty for a charitable organization, with respect to such organization's conduct of games of chance. Bingo-raffle volunteers shall not be liable under

this section if the harm is not caused by willful and wanton misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.

Source: L. 99: Entire article RC&RE, p. 1430, § 1, effective June 5.

12-9-112. Unfair trade practices. (1) The provisions of the “Unfair Practices Act”, article 2 of title 6, C.R.S., and the “Colorado Antitrust Act of 1992”, article 4 of title 6, C.R.S., are specifically applicable to charitable gaming activities conducted by any licensee. Within thirty days after receiving a complaint alleging a violation of either of said acts, the licensing authority shall transmit such complaint to the attorney general.

(2) A licensee that violates any provision of article 2 of title 6, C.R.S., or article 4 of title 6, C.R.S., shall have its license revoked by the licensing authority for a period of one year from the date of the finding of such violation. Upon the expiration of such period, the licensee may apply for the issuance of a new license.

Source: L. 99: Entire article RC&RE, p. 1430, § 1, effective June 5.

12-9-112.5. Common members - bingo-raffle licensees. (1) For the purposes of this section, “bingo-raffle licensee affiliate” means the following:

(a) Any person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, a bingo-raffle licensee specified; or

(b) Any person that has an officer, director, member, manager, partner, games manager, salaried employee, or member of their immediate families in common with a bingo-raffle licensee.

(2) Proceeds from a bingo or raffle game that are transferred from a bingo-raffle licensee to a bingo-raffle licensee’s affiliate shall not be used to pay the salary, remuneration, or expenses of any officer, director, member, manager, partner, games manager, or employee of such affiliate. All such transferred proceeds shall be deposited by the donee entity or organization in a segregated account that contains only such donations, and such transferred proceeds shall not be commingled with other funds of the donee entity or organization. The licensing authority and its agents may examine or cause to be examined the books and records of any donee entity or organization insofar as they may relate to account or to any transactions connected with bingo or raffle proceeds.

Source: L. 2002: Entire section added, p. 1652, § 13, effective August 7.

12-9-113. Enforcement. It is the duty of all sheriffs and police officers to enforce the provisions of this article, to receive complaints, to initiate investigations, and to arrest and complain against any person violating any provisions of this article. It is the duty of the district attorney of the respective districts of this state to prosecute all violations of this article in the manner and form as is now provided by law for the prosecutions of crimes and misdemeanors, and it is a violation of this article for any such person knowingly to fail to perform his duty under this section.

Source: L. 99: Entire article RC&RE, p. 1431, § 1, effective June 5.

12-9-114. Penalties for violation. Every licensee and every officer, agent, or employee of the licensee and every other person or corporation who willfully violates or who procures, aids, or abets in the willful violation of this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.; except that, if the underlying factual basis of the violation constitutes a crime as defined by any other provision of law, then such person may be charged, prosecuted, and punished in accordance with such other provision of law.

Source: **L. 99:** Entire article RC&RE, p. 1431, § 1, effective June 5. **L. 2002:** Entire section amended, p. 1652, § 14, effective August 7; entire section amended, p. 1473, § 50, effective October 1.

Editor's note: Amendments to this section by House Bill 02-1046 and House Bill 02-1321 were harmonized.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

PART 2

COLORADO BINGO-RAFFLE ADVISORY BOARD

12-9-201. Colorado bingo-raffle advisory board - creation. (1) There is hereby created, within the department of state, the Colorado bingo-raffle advisory board.

(2) The board shall consist of nine members, all of whom shall be citizens of the United States who have been residents of the state for at least the past five years. No member shall have been convicted of a felony or gambling-related offense, notwithstanding the provisions of section 24-5-101, C.R.S. No more than five of the nine members shall be members of the same political party. At the first meeting of each fiscal year, a chair and vice-chair of the board shall be chosen from the membership by a majority of the members. Membership and operation of the board shall additionally meet the following requirements:

(a) (I) Three members of the board shall be bona fide members of a bingo-raffle licensee that is classified as a religious organization, a charitable organization, a labor organization, an educational organization, or a voluntary firefighter's organization; except that no more than one member shall be appointed from any one such classification;

(II) One member of the board shall be a bona fide member of a bingo-raffle licensee that is a veterans' organization;

(III) One member of the board shall be a bona fide member of a bingo-raffle licensee that is a fraternal organization;

(IV) One member of the board shall be a supplier licensee;

(V) Two members of the board shall be landlord licensees; and

(VI) One member of the board shall be a registered elector of the state who is not employed by or an officer or director of a licensee, does not have a financial interest in any license, and does not have an active part in the conduct or management of games of chance by any bingo-raffle licensee.

(b) (I) Of the five members of the board who are categorized as bona fide members of a bingo-raffle licensee, two shall be appointed by the president of the senate, two shall be appointed by the speaker of the house of representatives, and one shall be appointed jointly by the president and the speaker.

(II) Of the two members of the board who are categorized as landlord licensees, one shall be appointed by the president of the senate and one shall be appointed by the speaker of the house of representatives.

(III) The president of the senate shall appoint the member of the board who is a supplier licensee. The speaker of the house shall appoint the member of the board who is a registered elector.

(c) Initial members shall be appointed to the board as follows: Two members to serve until July 1, 2000, two members to serve until July 1, 2001, two members to serve until July 1, 2002, and three members to serve until July 1, 2003. All subsequent appointments shall be for terms of four years. No member of the board shall be eligible to serve more than two consecutive terms.

(d) Any vacancy on the board shall be filled for the unexpired term in the same manner as the original appointment. The member appointed to fill such vacancy shall be from the same category described in paragraph (a) of this subsection (2) as the member vacating the position.

(e) Any member of the board having a direct personal or private interest in any matter before the board shall disclose such fact on the board's record. A member may disqualify himself or herself for any cause deemed by him or her to be sufficient.

(f) The term of any member of the board who misses more than two consecutive regular board meetings without good cause, or who no longer meets the requirements for membership imposed by this section, shall be terminated by the appointing officer. Such member's successor shall be appointed in the manner provided for appointments under this section.

(g) Board members shall receive as compensation for their services fifty dollars for each day spent in the conduct of board business, not to exceed five hundred dollars per member per year, and shall be reimbursed for necessary travel and other reasonable expenses incurred in the performance of their official duties.

(h) Prior to commencing his or her term of service, each person nominated to serve on the board shall file with the secretary of state a financial disclosure statement in the form required and prescribed by the secretary of state and as commonly used for other Colorado boards and commissions. Such statement shall be renewed as of each January 1 during the member's term of office.

(i) The board shall hold at least six meetings each year and such additional meetings as the members may deem necessary. In addition, special meetings may be called by the chair, any three board members, or the secretary of state if written notification of such meeting is delivered to each member at least seventy-two hours prior to such meeting. Notwithstanding the provisions of section 24-6-402, C.R.S., in emergency situations in which a majority of the board certifies that exigencies of time require that the board meet without delay, the requirements of public notice and of seventy-two hours' actual advance written notice to members may be dispensed with, and board members as well as the public shall receive such notice as is reasonable under the circumstances.

(j) A majority of the board shall constitute a quorum, and the concurrence of a majority of the members present shall be required for any final determination by the board.

(k) The board shall keep a complete and accurate record of all its meetings.

Source: L. 99: Entire article RC&RE, p. 1431, § 1, effective June 5. L. 2002: (2)(a)(VI), (2)(f), and (2)(i) amended, p. 1653, § 16, effective August 7.

12-9-202. Board - duties. (1) In addition to any other duties set forth in this part 2, the board shall have the following duties:

(a) To conduct a continuous study of charitable gaming throughout the state for the purpose of ascertaining any defects in this article or in the rules promulgated pursuant to this article;

(b) To formulate and recommend changes to this article to the general assembly.

(c) Repealed.

(2) The board shall offer advice to the licensing authority upon subjects which shall include, but are not limited to, the following:

(a) The types of charitable gaming activities to be conducted, the rules for those activities, and the number of occasions per year upon which a licensee may hold, operate, or conduct a game of bingo or lotto;

(b) The requirements, qualifications, and grounds for the issuance of all types of permanent and temporary licenses required for the conduct of charitable gaming;

(c) The requirements, qualifications, and grounds for the revocation, suspension, and summary suspension of all licenses required for the conduct of charitable gaming;

(d) Activities that constitute fraud, cheating, or illegal activities;

(e) The granting of licenses with special conditions or for limited periods, or both;

(f) The establishment of a schedule of reasonable fines to be assessed in lieu of license revocation or suspension for violations of this article or any rule adopted pursuant to this article;

(g) The amount of fees for licenses issued by the licensing authority and for the performance of administrative services pursuant to this article;

(h) The establishment of criteria under which a person may serve as a games manager;

(i) The content and conduct of classes or training seminars to benefit bingo-raffle charitable licensees, officers, and volunteers to better account for funds collected from games of chance;

(j) Standardized rules, procedures, and policies to clarify and simplify the auditing of licensees' records;

(k) The types of charitable gaming activities to be conducted in the future, based upon a continuing review of the available state of the art of equipment in Colorado and elsewhere, and the policies and procedures approved and implemented by other states for the conduct of their charitable gaming activities; and

(l) The conditions for a licensee's plan for disposal of any equipment and the distribution of any remaining net proceeds upon termination of a bingo-raffle license for the licensee's failure to timely or sufficiently renew such license.

Source: L. 99: Entire article RC&RE, p. 1433, § 1, effective June 5. L. 2002: (1)(c) repealed, p. 881, § 18, effective August 7. L. 2008: (2)(a) amended, p. 300, § 6, effective April 3.

PART 3

REPEAL OF ARTICLE

12-9-301. Repeal - review of functions. This article is repealed, effective July 1, 2017. Prior to such repeal, the licensing functions of the secretary of state and the functions of the Colorado bingo-raffle advisory board in the department of state shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 99: Entire article RC&RE, p. 1434, § 1, effective June 5. L. 2008: Entire section amended, p. 300, § 7, effective April 3.

ARTICLE 10

Boxing

Editor's note: This article was numbered as article 1 of chapter 129, C.R.S. 1963. The provisions of this article were repealed and reenacted in 2000, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 2000, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

12-10-101.	Short title.	12-10-107.	Director - appointment - qualification - powers and duties.
12-10-102.	Legislative declaration.		
12-10-103.	Definitions.	12-10-107.1.	Grounds for discipline.
12-10-104.	Office of boxing - creation.	12-10-107.5.	Toughperson fighting prohibited.
12-10-105.	Colorado state boxing commission - creation.	12-10-108.	Immunity.
12-10-106.	General powers and duties of the commission.	12-10-109.	Fees - boxing cash fund - created.
12-10-106.3.	License required.	12-10-110.	Violations.
12-10-106.5.	Renewal and reinstatement of licenses.	12-10-111.	Repeal of article.

12-10-101. Short title. This article shall be known and may be cited as the "Colorado Professional Boxing Safety Act".

Source: L. 2000: Entire article R&RE, p. 1940, § 1, effective July 1.

12-10-102. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that the federal “Professional Boxing Safety Act of 1996” requires the state of Colorado to establish a state boxing commission. Because there is no state boxing commission, any professional boxing match held in Colorado has to be supervised by another state’s boxing commission, using safety guidelines and procedures implemented by that state.

(2) The general assembly further finds and declares that it is in the best interests of the residents of Colorado, professional boxing participants, and the future of the sport of boxing in Colorado that the conduct of the sport be subject to an effective and efficient system of strict control designed by the general assembly. Such system shall, at a minimum:

(a) Protect the safety of the participants; and

(b) Promote the public trust and confidence in the conduct of professional boxing.

(3) To further public confidence and trust, this article and rules promulgated pursuant to this article shall regulate all persons, practices, and associations that relate to the operation of live professional boxing events, performances, or contests held in Colorado.

Source: L. 2000: Entire article R&RE, p. 1940, § 1, effective July 1. L. 2010: Entire section amended, (HB 10-1245), ch. 131, p. 432, § 4, effective July 1.

12-10-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Boxer” means an individual who participates in a boxing match.

(2) “Boxing” means fighting, striking, forcing an opponent to submit, or disabling an opponent, including the disciplines of kickboxing and mixed martial arts.

(3) “Commission” means the Colorado state boxing commission created in section 12-10-105.

(4) “Contest” means a match in which the participants strive earnestly to win.

(5) “Department” means the department of regulatory agencies.

(6) “Director” means the director of the office of boxing created in section 12-10-104.

(6.5) “Division” means the division of professions and occupations within the department.

(7) “Exhibition” means a match in which the participants display their boxing skills and techniques without striving earnestly to win.

(8) (Deleted by amendment, L. 2010, (HB 10-1245), ch. 131, p. 432, § 5, effective July 1, 2010.)

(9) “Kickboxing” means engaging in martial arts fighting techniques using the hands and feet, the object of which is to win by a decision, knockout, or technical knockout.

(10) “Match” means a professional boxing contest or exhibition, the object of which is to win by a decision, knockout, or technical knockout, and includes an event, engagement, sparring or practice session, show, or program where the public is admitted and there is intended to be physical contact. “Match” does not include a training or practice session when no admission is charged.

(10.5) “Mixed martial arts” means the combined techniques of boxing and martial arts disciplines such as grappling, kicking, and striking, including the use of full, unrestrained physical force.

(11) “Office” means the office of boxing created in section 12-10-104.

(12) “Participant” means a person who engages in a match as a boxing contestant.

(13) “Physician” means an individual licensed to practice medicine pursuant to article 36 of this title.

(13.5) “Place of training” means a facility where alcohol beverages are not permitted, an admission fee is not charged for nonstudents, instructors of particular disciplines train students in the art of physical disciplines, and students pay a fee to be enrolled in classes and receive instruction.

(14) “Professional” means a participant who has received or competed for a purse or any other thing of value for participating in a match.

(15) “Toughperson fighting” means a physical contest, match, tournament, exhibition, or bout, or any activity that involves physical contact between two or more individuals engaging in combative skills using the hands, feet, or body, whether or not prizes or purses

are awarded at the event or promised in future events or spectator admission fees are charged or received, and the contest, match, tournament, exhibition, bout, or activity is not recognized by and not sanctioned by any state, regional, or national boxing sanctioning authority that is recognized by the executive director of the department of regulatory agencies. "Toughperson fighting" does not mean activities occurring under a martial arts instructor at a place of training or other types of instructor-student or student-student contact occurring under the supervision of an instructor at a place of training. "Toughperson fighting" does not mean a sanctioned boxing event approved by the commission.

Source: L. 2000: Entire article R&RE, p. 1941, § 1, effective July 1. L. 2004: (13.5) and (15) added, p. 1071, § 1, effective May 21. L. 2010: (2), (7), (8), (10), (12), and (15) amended and (6.5) and (10.5) added, (HB 10-1245), ch. 131, p. 432, § 5, effective July 1.

12-10-104. Office of boxing - creation. There is hereby created, within the division of professions and occupations in the department of regulatory agencies, the office of boxing. The office of boxing and the Colorado state boxing commission, created in section 12-10-105, shall exercise their respective powers and perform their respective duties and functions as specified in this article under the department of regulatory agencies as if the same were transferred to the department by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

Source: L. 2000: Entire article R&RE, p. 1942, § 1, effective July 1. L. 2002: Entire section amended, p. 371, § 1, effective July 1.

12-10-105. Colorado state boxing commission - creation. (1) There is hereby created, within the office of boxing, the Colorado state boxing commission. The commission shall regulate matches in Colorado.

(2) (a) The commission shall consist of five voting members and two nonvoting advisory members. All members shall be residents of Colorado, be of good character and not have been convicted of any felony or match-related offense, notwithstanding the provisions of section 24-5-101, C.R.S., and be appointed as follows:

(I) Three voting members shall be appointed by the governor. One shall serve for an initial term of three years, one for an initial term of two years, and one for an initial term of one year.

(II) One voting member shall be appointed by the president of the senate for an initial term of one year.

(III) One voting member shall be appointed by the speaker of the house of representatives for an initial term of one year.

(IV) (A) Two nonvoting advisory members who are licensed physicians shall be appointed, one by the speaker of the house of representatives and one by the president of the senate. Both nonvoting members shall be appointed for an initial term of one year.

(B) The two nonvoting advisory members shall advise the commission on matters concerning the health and physical condition of boxers and health issues relating to the conduct of matches. The nonvoting members may prepare and submit to the commission for its consideration and approval any rules that in their judgment will safeguard the physical welfare of the participants engaged in boxing.

(b) The terms for all members except the initial appointees shall be three years.

(c) The commission shall designate by majority vote which member is to serve as chair. Any member may be removed from office by the person making the appointment for misfeasance, malfeasance, willful neglect of duty, or other cause.

(d) Members shall serve until their successors are appointed and have been qualified. Any vacancy in the membership of the commission shall be filled in the same manner as the original appointment. A vacancy in the membership of the commission other than by expiration of term shall be filled for the remainder of the unexpired term only.

(3) Meetings of the commission shall be held at least annually and shall be called by the chair or by any two members of the commission and shall be open to the public. Any

three voting members shall constitute a quorum at any meeting. Action may be taken and motions and resolutions may be adopted at any meeting at which a quorum exists by the affirmative vote of a majority of the voting members present. Members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear one another at all times during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.

Source: **L. 2000:** Entire article R&RE, p. 1942, § 1, effective July 1. **L. 2010:** (2)(a)(IV)(B), (2)(c), and (3) amended, (HB 10-1245), ch. 131, p. 433, § 6, effective July 1.

12-10-106. General powers and duties of the commission. (1) In addition to any other powers specifically granted to the commission in this article, the commission shall issue such rules as are necessary for the regulation of the conduct, promotion, and performance of live boxing matches in this state. Such rules shall be consistent with this article and applicable federal law and shall include:

- (a) Requirements for issuance of licenses and permits for boxers, seconds, inspectors, promoters, judges, and referees;
 - (b) Regulation of ticket sales;
 - (c) Physical requirements for participants, including classification by weight and skill;
 - (d) Provisions for supervision of contests and exhibitions by referees and licensed physicians;
 - (e) Requirements for insurance covering participants and bonding of promoters;
 - (f) Guidelines for compensation of participants and licensees;
 - (g) Guidelines for contracts and financial arrangements between promoters and participants;
 - (h) Prohibition of dishonest, unethical, and injurious practices;
 - (i) Guidelines for reports of fraud;
 - (j) Responsibilities of participants, including female boxers; and
 - (k) Regulation of facilities.
- (2) No member shall receive compensation for serving on the commission; however, a member may be reimbursed for expenses incurred in the performance of such services.
- (3) to (5) (Deleted by amendment, L. 2010, (HB 10-1245), ch. 131, p. 434, § 7, effective July 1, 2010.)

Source: **L. 2000:** Entire article R&RE, p. 1943, § 1, effective July 1. **L. 2002:** (1)(a), (4), and (5) amended, p. 371, § 2, effective July 1. **L. 2010:** IP(1), (1)(b), (1)(e), (1)(g), (1)(j), (3), (4), and (5) amended, (HB 10-1245), ch. 131, p. 434, § 7, effective July 1.

12-10-106.3. License required. No person shall participate, officiate, judge, referee, promote, or second a professional boxing arts contest unless the person is licensed pursuant to this article.

Source: **L. 2010:** Entire section added, (HB 10-1245), ch. 131, p. 434, § 8, effective July 1.

12-10-106.5. Renewal and reinstatement of licenses. All licenses shall expire pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of

professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

Source: L. 2004: Entire section added, p. 1804, § 25, effective August 4.

12-10-107. Director - appointment - qualification - powers and duties. (1) The director shall be appointed by the director of the division and shall be under the supervision of the director of the division.

(2) The director shall:

(a) Be of good character and not have been convicted of any felony or match-related offense, notwithstanding the provisions of section 24-5-101, C.R.S.; and

(b) Not be engaged in any other profession or occupation that could present a conflict of interest with the duties of director of the office.

(3) In addition to the duties imposed upon the director elsewhere in this article, the director shall:

(a) Direct and supervise the administrative and technical activities of the commission and supervise and administer the operation of matches in accordance with the provisions of this article and the rules of the commission;

(b) Attend meetings of the commission or appoint a designee to attend in the director's place;

(c) Repealed.

(d) (Deleted by amendment, L. 2010, (HB 10-1245), ch. 131, p. 434, § 9, effective July 1, 2010.)

(e) Repealed.

(f) Advise the commission and recommend to the commission such rules and other procedures as the director deems necessary and advisable to improve the conduct of boxing;

(g) Repealed.

(h) Furnish any documents of the commission that may be required by the state auditor in the performance of audits performed in conformance with part 1 of article 3 of title 2, C.R.S.;

(i) to (k) Repealed.

(l) Enforce this article and investigate allegations of activity that may violate this article.

Source: L. 2000: Entire article R&RE, p. 1944, § 1, effective July 1. **L. 2002:** (3)(c), (3)(e), (3)(g), and (3)(i) to (3)(k) repealed, p. 372, § 3, effective July 1. **L. 2010:** (1) and (3)(d) amended and (3)(l) added, (HB 10-1245), ch. 131, p. 434, § 9, effective July 1.

12-10-107.1. Grounds for discipline. (1) The director may deny, suspend, revoke, place on probation, or issue a letter of admonition against a license or an application for a license if the applicant or licensee:

(a) Violates any order of the commission or the director or any provision of this article or the rules established under this article;

(b) Fails to meet the requirements of this article or the rules of the commission;

(c) Is convicted of or has entered a plea of nolo contendere or guilty to a felony; except that the director shall be governed by the provisions of section 24-5-101, C.R.S., in considering such conviction or plea;

(d) Is addicted to or dependent upon alcohol or any controlled substance, as defined in section 18-18-102 (5), C.R.S., or is a habitual user of said controlled substance, if the use, addiction, or dependency is a danger to other participants or officials;

(e) Has incurred disciplinary action related to professional boxing in another jurisdiction. Evidence of such disciplinary action shall be prima facie evidence for denial of a license or other disciplinary action if the violation would be grounds for such disciplinary action in this state; or

(f) Uses fraud, misrepresentation, or deceit in applying for or attempting to apply for licensure.

(2) (a) Any proceeding to deny, suspend, revoke, or place on probation a license shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(b) Upon completing an investigation, the director shall make one of the following findings:

(I) The complaint is without merit and no further action need be taken.

(II) There is no reasonable cause to warrant further action.

(III) The investigation discloses an instance of conduct that does not warrant formal action and should be dismissed, but the director notices indications of possible errant conduct that could lead to serious consequences if not corrected. If this finding is made, the director shall send a confidential letter of concern to the licensee.

(IV) The investigation discloses an instance of conduct that does not warrant formal action but should not be dismissed as being without merit. If this finding is made, the director may send a letter of admonition to the licensee by certified mail.

(V) The investigation discloses facts that warrant further proceedings by formal complaint. If this finding is made, the director shall refer the complaint to the attorney general for preparation and filing of a formal complaint.

(c) (I) When a letter of admonition is sent by certified mail to a licensee, the director shall include in the letter a notice that the licensee has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(II) If the request for adjudication is timely made, the letter of admonition is vacated and the director shall proceed by means of formal disciplinary proceedings.

(d) (Deleted by amendment, L. 2010, (HB 10-1245), ch. 131, p. 435, § 10, effective July 1, 2010.)

(e) The director shall conduct all proceedings pursuant to this subsection (2) expeditiously and informally so that no licensee is subjected to unfair and unjust charges and that no complainant is deprived of the right to a timely, fair, and proper investigation of a complaint.

(3) (a) The director or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the director pursuant to this article. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the commission or the director.

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(4) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(5) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public or a person is acting or has acted without the required license, the director may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (5), the respondent may request a hearing on the question of whether

acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(6) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the director may issue to such person an order to show cause as to why the director should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (6) shall be promptly notified by the director of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (6) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (6). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (6) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (6) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the director reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (6), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(7) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the director may enter into a stipulation with such person.

(8) If any person fails to comply with a final cease-and-desist order or a stipulation, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

Source: L. 2002: Entire section added, p. 372, § 4, effective July 1. **L. 2004:** IP(1) and (2) amended and (3) and (4) added, p. 1804, § 26, effective August 4. **L. 2006:** (2)(e) and (5) to (8) added, p. 776, §§ 11, 12, effective July 1; (2)(a) amended, p. 97, § 66, effective August 7. **L. 2010:** IP(1), (1)(b), (1)(d), (1)(e), (2)(b) to (2)(e), and (3)(b) amended and (1)(f) added, (HB 10-1245), ch. 131, p. 435, § 10, effective July 1. **L. 2012:** (1)(d) amended, (HB 12-1311), ch. 281, p. 1610, § 10, effective July 1.

12-10-107.5. Toughperson fighting prohibited. (1) Toughperson fighting is prohibited in the state of Colorado. No person or entity shall promote, advertise, conduct, or compete or participate in toughperson fighting. No license or permit shall be issued for toughperson fighting or for any contests or exhibitions of a similar nature.

(2) Any violation of this section is a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 2004: Entire section added, p. 1072, § 2, effective May 21.

12-10-108. Immunity. Any member of the commission, the director, the commission's staff, the director's staff, any person acting as a witness or consultant to the commission or director, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as commission member, director, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 2000: Entire article R&RE, p. 1945, § 1, effective July 1. **L. 2004:** Entire section amended, p. 1805, § 27, effective August 4.

12-10-109. Fees - boxing cash fund - created. (1) The director of the division shall establish and collect nonrefundable license fees and may establish and collect surcharges and other moneys as the director of the division deems necessary; except that such fees and surcharges shall not exceed the amount necessary to implement this article.

(2) Moneys collected under this article other than civil penalties shall be transmitted to the state treasurer, who shall credit the same to the division of professions and occupations cash fund created in section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for expenditures of the office incurred in the performance of its duties under this article. Such expenditures shall be made from such appropriations upon vouchers and warrants drawn pursuant to law. Civil penalties collected under this article shall be transferred to the state treasurer and credited to the general fund.

Source: L. 2000: Entire article R&RE, p. 1946, § 1, effective July 1. **L. 2002:** Entire section amended, p. 373, § 5, effective July 1. **L. 2010:** Entire section amended, (HB 10-1245), ch. 131, p. 436, § 11, effective July 1.

12-10-110. Violations. (1) **Civil penalties.** The director may issue an order against any person who willfully violates this article, after providing prior notice and an opportunity for a hearing pursuant to section 24-4-105, C.R.S. The director may impose a civil penalty in an amount up to five thousand dollars for a single violation or twenty-five thousand dollars for multiple violations in a proceeding or a series of related proceedings.

(2) **Criminal penalties.** Any person who engages in or offers or attempts to engage in the conduct, promotion, or performance of live boxing matches without an active license or permit issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and, for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(3) **Injunction.** Whenever it appears to the director that a person has engaged or is about to engage in an act or practice that violates this article or a rule or order issued under this article, the director may bring an action to enjoin the acts or practices and to enforce compliance with this article or any rule or order.

- (4) **Enforcement.** The commission and director may assist local law enforcement agencies in their investigations of violations of this article and may initiate and carry out such investigations in coordination with local law enforcement agencies.
- (5) **Judicial review.** Final director actions and orders appropriate for judicial review may be judicially reviewed in the court of appeals in accordance with section 24-4-106 (11), C.R.S.

Source: **L. 2000:** Entire article R&RE, p. 1946, § 1, effective July 1. **L. 2002:** (2) amended, p. 1473, § 51, effective October 1. **L. 2006:** (2) amended, p. 83, § 10, effective August 7. **L. 2010:** (1), (2), (3), and (5) amended, (HB 10-1245), ch. 131, p. 437, § 12, effective July 1.

Editor’s note: This section is similar to former § 12-10-123 as it existed prior to 2000.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

- 12-10-111. Repeal of article.** (1) This article is repealed, effective July 1, 2017.
- (2) Prior to such repeal, the office and the commission shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: **L. 2000:** Entire article R&RE, p. 1947, § 1, effective July 1. **L. 2010:** (1) amended, (HB 10-1245), ch. 131, p. 431, § 3, effective July 1.

ARTICLE 11

Slaughterers

Cross references: For meat processing, see article 33 of title 35; for processing of inedible meat, see article 59 of title 35.

12-11-101 to 12-11-114. (Repealed)

Source: **L. 2009:** Entire article repealed, (SB 09-151), ch. 89, p. 347, §§ 8, 7, effective July 1.

Editor’s note: This article was numbered as article 15 of chapter 8 of article 15, C.R.S. 1963. For amendments to this article prior to its repeal in 2009, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. The provisions of this article were relocated to part 2 of article 43 of title 35. For the location of specific provisions, see the editor’s note following each section in said part 2 and the comparative tables located in the back of the index.

ARTICLE 12

Cemeteries

Cross references: For preneed funeral contracts, see article 15 of title 10.

12-12-101.	Definitions.	12-12-106.	Plats of land to be recorded.
12-12-102.	Cemetery board - appointment - terms - qualifications - compensation - officers - meetings. (Repealed)	12-12-107.	License and renewal. (Repealed)
12-12-103.	Organization as endowment care cemetery - when.	12-12-108.	Suspension, revocation, and reinstatement of licenses. (Repealed)
12-12-104.	Nonendowment section in endowment care cemetery.	12-12-109.	Endowment care fund.
12-12-105.	Acquisition of land.	12-12-110.	Reports.
		12-12-111.	Examination. (Repealed)
		12-12-112.	Disposition of fees - appropri-

	ation. (Repealed)	12-12-114.	Discrimination.
12-12-113.	Delivery of copy of contract - required.	12-12-115.	Violations - penalties.
12-12-113.5.	Burial memorial - changes - notice of ownership.	12-12-116.	Abandoned graves - right to reclaim.

12-12-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Burial memorial" means any type of gravestone, tombstone, headstone, memorial, monument, or marker that commemorates the permanent disposition of the remains of a human body either below or above the surface of the ground.

(1.5) "Cemetery" means any place, including a mausoleum, in which there is provided space either below or above the surface of the ground for the interment of the remains of human bodies. "Cemetery" does not include a cemetery that is owned, operated, or maintained by a government or governmental agency, by a church or synagogue, by a labor organization, by a cooperative association as defined in section 7-55-101, C.R.S., by a corporation organized and operated exclusively for religious purposes, or by a fraternal society, order, or association operating under the lodge system and exempt from the payment of state income tax and that has as its main business something other than the ownership, operation, or maintenance of any business connected with the burial of the dead.

(2) "Cemetery authority" means any person who owns, maintains, or operates a cemetery.

(2.5) Repealed.

(3) "Endowment care cemetery" means any cemetery, the authority of which does, or represents to the public that it does, collect funds for the purpose of caring for, maintaining, or embellishing the cemetery to preserve it from becoming unkempt or a place of reproach and desolation. It does not include a cemetery which is owned, operated, or maintained by a government or governmental agency, by a church, by a labor organization, by a cooperative association as defined in section 7-55-101, C.R.S., by a corporation organized and operated exclusively for religious purposes, or by a fraternal society, order, or association operating under the lodge system and exempt from the payment of state income tax and which has as its main purpose something other than the ownership, operation, or maintenance of any business connected with burial of the dead.

(4) "Grave space" means any space in the ground for the interment of the remains of a human body.

(4.5) "Inscription" means any words or symbols on a burial memorial.

(5) "Interment" means the permanent disposition of the remains of a deceased person by cremation, inurnment, entombment, or burial.

(6) "Niche" or "crypt" means a space in any structure above the ground for the interment of the remains of a human body.

(7) "Nonendowment care cemetery" means any cemetery other than an endowment care cemetery.

(8) "Person" means a person as defined by section 2-4-401 (8), C.R.S.

Source: L. 65: p. 641, § 15. C.R.S. 1963: § 61-3-15. L. 76: (2.5) added, p. 397, § 2, effective April 3. L. 92: (2.5) repealed, p. 1606, § 146, effective May 20. L. 2004: (1) amended and (1.5) and (4.5) added, p. 259, § 1, effective April 5.

12-12-102. Cemetery board - appointment - terms - qualifications - compensation - officers - meetings. (Repealed)

Source: L. 65: p. 632, § 1. C.R.S. 1963: § 61-3-1. L. 72: p. 548, § 9. L. 76: Entire section repealed, p. 400, § 11, effective April 3.

12-12-103. Organization as endowment care cemetery - when. Any person who, after July 1, 1965, establishes or acquires a cemetery within twenty miles from the exterior boundary of any city with a population of five thousand or more, according to the latest federal decennial census, shall be organized as an endowment care cemetery.

Source: L. 65: p. 639, § 11. C.R.S. 1963: § 61-3-11.

12-12-104. Nonendowment section in endowment care cemetery. Any cemetery authority of an endowment care cemetery which has a nonendowed section that is used only as single graves for indigents may continue to donate said graves for the burial of indigents. Nothing in this article shall be construed to prevent a cemetery authority of an endowed care cemetery from donating such a grave space for the burial of an indigent person without placing money in the endowment care fund for such space.

Source: L. 65: p. 639, § 9. C.R.S. 1963: § 61-3-9.

12-12-105. Acquisition of land. Any cemetery authority may acquire suitable and sufficient land for a cemetery in a manner provided by articles 1 to 7 of title 38, C.R.S.

Source: L. 65: p. 639, § 10. C.R.S. 1963: § 61-3-10. L. 92: Entire section amended, p. 1606, § 147, effective May 20.

12-12-106. Plats of land to be recorded. Any cemetery authority shall cause its land or such portion thereof as may become necessary for that purpose to be surveyed into blocks, lots, avenues, and walks and platted. The plat of ground as surveyed shall be acknowledged by some officer of the cemetery authority and filed for record in the office of the clerk and recorder of the county in which the land is situated. Each block or lot shall be regularly numbered by the surveyor, and such numbers shall be marked on the plat.

Source: L. 65: p. 639, § 12. C.R.S. 1963: § 61-3-12. L. 92: Entire section amended, p. 1606, § 148, effective May 20.

12-12-107. License and renewal. (Repealed)

Source: L. 65: p. 633, § 2. C.R.S. 1963: § 61-3-2. L. 68: p. 120, § 112. L. 76: (1) to (3) amended, p. 397, § 3, effective April 3. L. 91: (5) amended, p. 1236, § 17, effective June 5. L. 92: Entire section repealed, p. 1615, § 174, effective May 20.

12-12-108. Suspension, revocation, and reinstatement of licenses. (Repealed)

Source: L. 65: p. 634, § 4. C.R.S. 1963: § 61-3-4. L. 68: p. 121, § 113. L. 76: (1) and (3) amended, p. 398, § 4, effective April 3. L. 92: Entire section repealed, p. 1615, § 174, effective May 20.

12-12-109. Endowment care fund. (1) A cemetery authority of an endowment care cemetery shall establish an irrevocable endowment care fund for each endowment care cemetery owned, maintained, or operated by it in a state bank or trust company authorized to act as fiduciary and under the supervision of the banking board or in a national banking association authorized to act as fiduciary or in a state or federally chartered savings and loan association authorized to act as a fiduciary. Such endowment care fund shall be invested in investments lawful for trustees, which shall not include investments in nor mortgages on property owned or contracted for by the cemetery authority or any owned or affiliated company.

(2) (a) A cemetery authority of an endowment care cemetery shall make deposits in the endowment care fund or, if it operates more than one endowment care fund, in the appropriate endowment care fund, in accordance with one of the following plans:

(1) Plan A:

It shall deposit in such fund not more than thirty days after any sale is completed at least fifteen percent of the sales price of any grave space and at least ten percent of the sales price of any crypt or niche, and in case any sale has not been completed within sixty months after date of first payment, it shall deposit in such fund, not later than one month after the sixtieth month, at least fifteen percent of the sales price of any grave space and at least ten percent

of the sales price of any crypt or niche. A sale is completed at the time the final payment is made and no balance remains due to the cemetery authority, whether or not a deed has been issued. If a contract of sale is rewritten, the date of the first payment under the original contract of sale shall be the date of first payment under the rewritten contract of sale.

(II) Plan B:

It shall deposit, not later than thirty days after the end of the fiscal year in which such payments are received, fifteen percent of all payments received on account of the sale of any grave space and at least ten percent of all payments received on account of the sale of a niche or crypt. This deposit requirement applies to all uncompleted sales contracts which carry an endowment care provision.

(III) Plan C: (applicable only to sale of niches or crypts in a mausoleum)

It shall deposit in its endowment care fund for such mausoleum, not later than thirteen months after the end of its fiscal year in which any sale is completed, at least ten percent of the sale price of any niche or crypt, and in case any sale has not been completed within twenty-four months after date of first payment, it shall deposit in such fund, not later than one month after the end of its fiscal year in which the last day of such twenty-four month period occurs, at least ten percent of the sales price of any niche or crypt. A sale is completed at the time the final payment is made and no balance remains due to the cemetery authority, whether or not a deed has been issued. If a contract of sale is rewritten, the date of first payment under the original contract of sale shall be the date of first payment under the rewritten contract of sale.

(b) As to any endowment care cemetery in operation on July 1, 1965, this subsection (2) shall only apply to all sales contracts entered into on or after said date.

(3) (a) The cemetery authority of an endowment care cemetery, before commencing operation, on or after July 1, 1965, shall have on deposit in the endowment care fund a sum in accordance with the following scale:

For 10,000 or less population	\$10,000
For more than 10,000 but less than 20,000 population	\$15,000
For 20,000 but less than 25,000 population	\$20,000
For 25,000 or more population	\$25,000

(b) "Population" means the people residing within a twenty-mile radius of the location of the endowment care cemetery, the population figure to be taken from the latest federal decennial census.

(c) The cemetery authority for such endowment care cemetery shall thereafter make deposits in accordance with subsection (2) of this section. When such deposits have reached twice the amount stated in the above table, the cemetery authority may withdraw the sum of the initial deposit in amounts equal to the amounts deposited thereafter until the initial deposit has been withdrawn.

(4) A cemetery authority of a nonendowment care cemetery which converts to operation as an endowment care cemetery on or after July 1, 1965, shall deposit in its endowment care fund the sum of ten thousand dollars before making any further sale of any grave space or niche or crypt. The cemetery authority for such cemetery shall thereafter make deposits in accordance with subsection (2) of this section until total deposits into the endowment care fund have reached twenty thousand dollars. It may thereafter withdraw from the initial ten thousand dollar deposit amounts equal to the amounts of deposits thereafter made until the entire ten thousand dollar initial deposit has been withdrawn and replaced by deposits in accordance with subsection (2) of this section.

(5) The cemetery authority of an endowment care cemetery that constructs foundations for the setting of markers or memorials and receives payment for the care of such markers or memorials as part of the cost of foundation construction, setting charges, or itemized endowment requirements shall deposit all of said care payments in their irrevocable endowment care fund not later than one month after the end of its fiscal year in which such payments are received.

(6) The cemetery authority of an endowment care cemetery shall keep in its principal office a copy of the report referred to in section 12-12-110, which shall be available to any grave space, niche, or crypt owner or his duly authorized representative for inspection and study.

(7) The endowment care fund, for all purposes, shall constitute a nonprofit irrevocable trust fund. Endowment care is a provision for the benefit and protection of the public by preserving and keeping cemeteries from becoming unkempt and places of reproach and desolation in the communities in which they are situated. The income and increments and gains from such funds are for the benefit of the public for the purposes provided for in such trusts.

Source: L. 65: p. 635, § 5. C.R.S. 1963: § 61-3-5. L. 67: p. 486, § 1. L. 88: (1) amended, p. 418, § 11, effective April 11. L. 2004: (1) amended, p. 152, § 64, effective July 1.

12-12-110. Reports. (1) Each cemetery authority shall keep on file annually, within three months after the end of its fiscal year, a written report setting forth:

(a) The total amount deposited in the endowment care fund, listing separately the total amounts paid for endowment of grave spaces, for niches, and for crypts, in accordance with the provisions of section 12-12-109;

(b) The total amount of endowment care funds invested in each of the investments authorized by law and the amount of cash on hand not invested;

(c) Any other facts necessary to show the actual financial condition of the fund; and

(d) The total number of interments and entombments for the preceding year.

(2) Each such report shall be verified by the owner or by the president or the vice-president and one other officer of the cemetery authority and shall be attested to by the accountant, auditor, or other person preparing the same.

(3) (Deleted by amendment, L. 92, p. 1606, § 149, effective May 20, 1992.)

Source: L. 65: p. 637, § 7. C.R.S. 1963: § 61-3-7. L. 76: IP(1) and (3) amended, p. 398, § 5, effective April 3. L. 92: Entire section amended, p. 1606, § 149, effective May 20.

12-12-111. Examination. (Repealed)

Source: L. 65: p. 638, § 8. C.R.S. 1963: § 61-3-8. L. 67: p. 486, § 2. L. 76: IP(1), (1)(a), and (4) amended, p. 398, § 6, effective April 3. L. 92: Entire section repealed, p. 1615, § 174, effective May 20.

12-12-112. Disposition of fees - appropriation. (Repealed)

Source: L. 65: p. 634, § 3. C.R.S. 1963: § 61-3-3. L. 73: p. 1372, § 24. L. 76: Entire section amended, p. 399, § 7, effective April 3. L. 92: Entire section repealed, p. 1615, § 174, effective May 20.

12-12-113. Delivery of copy of contract - required. A duplicate original of any contract entered into between a purchaser of any lot, grave space, interment right, niche, or crypt and any cemetery authority shall be given to the buyer at the time both parties become bound by the contract and any consideration whatsoever is given by the buyer and retained pursuant to the contract by the cemetery authority.

Source: L. 65: p. 640, § 13. C.R.S. 1963: § 61-3-13. L. 76: Entire section amended, p. 399, § 8, effective April 3. L. 92: Entire section amended, p. 1607, § 151, effective May 20.

12-12-113.5. Burial memorial - changes - notice of ownership. (1) No person other than the owner of a burial memorial or a person authorized by the owner of the burial memorial shall make a change to the inscription on such burial memorial.

(2) If a burial memorial is to be placed at a grave space, niche, or crypt that is purchased on or after July 1, 2004, the cemetery authority shall give written notice to the purchaser of the grave space, niche, or crypt of who shall be the owner of such burial memorial and, as owner, who shall be entitled to make or authorize a change to the inscription on such burial memorial.

(3) Any person violating the provisions of subsection (1) of this section commits the crime of defacing property as defined in section 18-4-509 (1) (b), C.R.S.

Source: L. 2004: Entire section added, p. 260, § 2, effective April 5.

12-12-114. Discrimination. There shall be no limitation, restriction, or covenant based upon race, color, sex, sexual orientation, marital status, disability, national origin, or ancestry on the size, placement, location, sale, or transfer of any cemetery grave space, niche, or crypt or in the interment of a deceased person.

Source: L. 65: p. 637, § 6. **C.R.S. 1963:** § 61-3-6. **L. 2008:** Entire section amended, p. 1599, § 15, effective May 29.

Cross references: For the legislative declaration contained in the 2008 act amending this section, see section 1 of chapter 341, Session Laws of Colorado 2008.

12-12-115. Violations - penalties. (1) It is unlawful for any person to sell or offer to sell a grave space, niche, or crypt upon the promise, representation, or inducement of resale at a financial profit.

(2) (Deleted by amendment, L. 92, p. 1607, § 152, effective May 20, 1992.)

(3) Any person who violates any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. Whenever any person has reason to believe that any person is liable to punishment under this article, such person may certify the facts to the district attorney of the judicial district in which the alleged violation occurred who shall cause appropriate proceedings to be brought.

(4) (Deleted by amendment, L. 92, p. 1607, § 152, effective May 20, 1992.)

Source: L. 65: p. 640, § 14. **C.R.S. 1963:** § 61-3-14. **L. 76:** (3) and (4) amended, p. 399, § 9, effective April 3. **L. 92:** Entire section amended, p. 1607, § 152, effective May 20.

12-12-116. Abandoned graves - right to reclaim. (1) If there is a lot, grave space, niche, or crypt in a cemetery in which no remains have been interred, no burial memorial has been placed, and no other improvement has been made for a continuous period of no less than seventy-five years, a cemetery authority may initiate the process of reclaiming title to the lot, grave space, niche, or crypt in accordance with this section.

(2) A cemetery authority seeking to reclaim a lot, grave space, niche, or crypt shall:

(a) Send written notice of the cemetery authority's intent to reclaim title to the lot, grave space, niche, or crypt to the owner's last-known address by first-class mail; and

(b) Publish a notice of the cemetery authority's intent to reclaim title to the lot, grave space, niche, or crypt in a newspaper of general circulation in the area in which the cemetery is located once per week for four weeks.

(3) The notice required by subsection (2) of this section shall clearly indicate that the cemetery authority intends to terminate the owner's rights and title to the lot, grave space, niche, or crypt and include a recitation of the owner's right to notify the cemetery authority of the owner's intent to retain ownership of the lot, grave space, niche, or crypt.

(4) If the cemetery authority does not receive from the owner of the lot, grave space, niche, or crypt a letter of intent to retain ownership of the lot, grave space, niche, or crypt within sixty days after the last publication of the notice required by paragraph (b) of

subsection (2) of this section, all rights and title to the lot, grave space, niche, or crypt shall transfer to the cemetery authority. The cemetery authority may then sell, transfer, or otherwise dispose of the lot, grave space, niche, or crypt without risk of liability to the prior owner of the lot, grave space, niche, or crypt.

(5) A cemetery authority that reclaims title to a lot, grave space, niche, or crypt in accordance with this section shall retain in its records for no less than one year a copy of the notice sent pursuant to paragraph (a) of subsection (2) of this section and a copy of the notice published pursuant to paragraph (b) of subsection (2) of this section.

(6) If a person submits to a cemetery authority a legitimate claim to a lot, grave space, niche, or crypt that the cemetery authority has reclaimed pursuant to this section, the cemetery authority shall transfer to the person at no charge a lot, grave space, niche, or crypt that, to the extent possible, is equivalent to the reclaimed lot, grave space, niche, or crypt.

(7) Notwithstanding any provision of law to the contrary, on and after August 7, 2006, a cemetery authority shall not convey title to the real property surveyed as a lot in a cemetery for use as a burial space. A cemetery authority may grant interment rights to a lot, grave space, niche, or crypt in a cemetery.

Source: L. 2006: Entire section added, p. 442, § 2, effective August 7.

Editor’s note: Section 5 of chapter 128, Session Laws of Colorado 2006, provides that the act enacting this section applies to cemetery lots, grave spaces, niches, and crypts purchased before, on, or after August 7, 2006.

ARTICLE 13

Life Care Institutions

Editor’s note: This article was numbered as article 11 of chapter 91, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1981, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1981, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated.

12-13-101.	Definitions.	12-13-110.	Examination - fees.
12-13-102.	Certificate of authority re- quired - application. (Re- pealed)	12-13-111.	Rules.
		12-13-112.	Violation.
12-13-103.	Issuance, denial, suspension, and revocation of certificate of authority. (Repealed)	12-13-113.	Article does not apply to fa- cilities licensed by depart- ment of public health and environment.
12-13-104.	Escrow account for entrance fees.	12-13-114.	Life care contract - content.
12-13-105.	Withdrawal or dismissal of person - refund.	12-13-115.	Register.
12-13-106.	Recording of lien by commis- sioner.	12-13-116.	Advertisements and solici- tations of life care contracts - requirements.
12-13-107.	Reserve requirements.	12-13-117.	Injunction against violations - prosecution.
12-13-108.	Annual report by providers - fee.	12-13-118.	Local regulations.
12-13-109.	Rehabilitation of provider. (Repealed)	12-13-119.	Name change not to affect rights or obligations. (Re- pealed)

12-13-101. Definitions. As used in this article, unless the context otherwise requires:

(1) “Aged person” means any person sixty-two years of age or older.

(1.5) “Board” means the financial services board created in section 11-44-101.6, C.R.S.

(2) “Commissioner” means the state commissioner of financial services, serving in accordance with section 11-44-102, C.R.S.

(3) "Entrance fee" means the total of any initial or deferred transfer to or for the benefit of a provider of a sum of money or other property made or promised to be made as full or partial consideration for the acceptance or maintenance of a specified individual as a resident in a facility.

(4) "Facility" means the place in which a provider undertakes to provide life care to a resident.

(5) "Life care" means care provided, pursuant to a life care contract, for the life of an aged person, including but not limited to services such as health care, medical services, board, lodging, or other necessities.

(6) "Life care contract" means a written contract to provide life care to a person for the duration of such person's life conditioned upon the transfer of an entrance fee to the provider of such services in addition to or in lieu of the payment of regular periodic charges for the care and services involved. Any life care contract payable to or for the provider in four or more installments shall be subject to the provisions of the "Uniform Consumer Credit Code", articles 1 to 9 of title 5, C.R.S.

(7) "Living unit" means a room, apartment, or other area within a facility set aside for the exclusive use or control of one or more identified residents.

(8) "Person" means all corporations, associations, partnerships, or individuals, including fraternal or benevolent orders or societies.

(9) "Provider" means a person who undertakes to provide services in a facility pursuant to a life care contract.

(10) "Resident" means any person entitled pursuant to a life care contract to receive life care in a facility.

(11) "Third-party service providers" means any person, other than a provider, who is the holder of a management contract with a provider or who contracts with a provider to provide life care services to residents.

Source: L. 81: Entire article R&RE, p. 678, § 1, effective July 1. L. 92: (2), (6), (9), and (11) amended, p. 1608, § 153, effective May 20. L. 99: (1.5) added, p. 1015, § 9, effective August 4.

Editor's note: This section is similar to former § 12-13-101 as it existed prior to 1981.

12-13-102. Certificate of authority required - application. (Repealed)

Source: L. 81: Entire article R&RE, p. 679, § 1, effective July 1. L. 92: Entire section repealed, p. 1615, § 174, effective May 20.

Editor's note: This section was similar to former § 12-13-104 as it existed prior to 1981.

12-13-103. Issuance, denial, suspension, and revocation of certificate of authority. (Repealed)

Source: L. 81: Entire article R&RE, p. 683, § 1, effective July 1. L. 92: Entire section repealed, p. 1615, § 174, effective May 20.

Editor's note: This section was similar to former § 12-13-105 as it existed prior to 1981.

12-13-104. Escrow account for entrance fees. (1) Each provider shall establish an escrow account which provides that all of any entrance fee received by the provider prior to the date the resident is permitted to occupy his or her living unit in the facility be placed in escrow with a bank, trust company, or other licensed corporate escrow agent located in Colorado and approved by the commissioner, subject to the condition that such funds may be released only as follows:

(a) If the entrance fee applies to a living unit which has been previously occupied in the facility, the entrance fee shall be released to the provider at such time as the living unit

becomes available for occupancy by the new resident and is in compliance with local government regulations applicable to living units, as certified by the provider.

(b) If the entrance fee applies to a living unit which has not previously been occupied by any resident, the entrance fee shall be released to the provider at such time as the commissioner is satisfied that all of the following conditions exist:

(I) Construction or purchase of the facility has been substantially completed, and an occupancy permit covering the living unit has been issued by the local government having authority to issue such permits;

(II) A commitment has been received by the provider for any permanent mortgage loan or other long-term financing described in the statement of anticipated source and application of funds submitted by the provider and any conditions of the commitment prior to disbursement of funds thereunder have been substantially satisfied;

(III) Aggregate entrance fees received or receivable by the provider pursuant to binding life care contracts, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment, are equal to not less than ninety percent of the aggregate cost of constructing, equipping, and furnishing, or purchasing the facility and not less than ninety percent of the funds estimated in the statement of anticipated source and application of funds submitted by the provider to be necessary to fund start-up losses and assure full performance of the obligations of the provider pursuant to life care contracts.

(2) If the funds in an escrow account required to be established under subsection (1) of this section are not released within such time as provided by rules and regulations issued by the commissioner, then such funds shall be returned by the escrow agent to the persons who had made payment to the provider.

(3) An entrance fee held in escrow may be returned by the escrow agent to the person or persons who had made payment to the provider at any time upon receipt by the escrow agent of notice from the provider that such person is entitled to a refund of the entrance fee.

(4) Nothing in this section shall be interpreted as requiring the escrow of any nonrefundable application fee, designated as such in the life care contract received by the provider from a prospective resident.

Source: L. 81: Entire article R&RE, p. 683, § 1, effective July 1. L. 92: Entire section amended, p. 1608, § 154, effective May 20.

12-13-105. Withdrawal or dismissal of person - refund. (1) If the agreement permits withdrawal or dismissal of the resident from the life care institution prior to the expiration of the agreement, with or without cause, an amount equal to the difference between the amount paid in and the amount used for the care of the resident during the time he remained in the institution, based upon the per capita cost to the institution as determined in a manner acceptable to the commissioner, shall be refunded to the resident; but in cases where a consideration greater than the minimum charge has been paid for accommodations above standard, a sum equal to the difference between the amount paid in and the ratio of the amount paid to the minimum consideration for standard accommodations times the current per capita cost to the institution applied to the period the resident remained in the institution shall be refunded to the resident. If the per capita cost to the institution during the period cannot be established otherwise, the cost during the period shall be deemed to be the cost at the time of the withdrawal or dismissal. For refund purposes "cost" shall include a reasonable profit to the provider.

(2) If the provider is an organization described in section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, and exempt from income taxation under section 501 (a) of the federal "Internal Revenue Code of 1986", as amended, it shall be entitled to make refund according to a schedule provided in its agreement with the resident so long as such schedule provides for amortization of the amount paid by such resident over a period of not less than sixty months or over the life expectancy of the resident if such expectancy is less than sixty months. In such case, the refund may be delayed for a reasonable period thereafter until the securing by the provider of a substitute fee from

another resident or prospective resident. The provider may also deduct from any such refund amounts due it from the resident for damage done or for any other legitimate offsetting item.

Source: **L. 81:** Entire article R&RE, p. 684, § 1, effective July 1. **L. 92:** Entire section amended, p. 1609, § 155, effective May 20.

Editor's note: This section is similar to former § 12-13-108 as it existed prior to 1981.

12-13-106. Recording of lien by commissioner. (1) The commissioner shall record with the county clerk and recorder of any county a notice of lien on behalf of all residents who enter into life care contracts with a provider to secure performance of the provider's obligations to residents pursuant to life care contracts. All reasonable costs of recording such lien shall be paid by the provider.

(2) From the time of such recording, there exists a lien for an amount equal to the reasonable value of services to be performed under a life care contract in favor of each resident on the land and improvements owned by the provider, not exempt from execution, which are listed in the notice of lien filed pursuant to subsection (3) of this section and which are located in the county in which the notice of lien is recorded.

(3) The lien shall be perfected by the commissioner by executing by affidavit the notice and claim of lien, which shall contain:

- (a) The legal description of the lands and improvements to be charged with a lien;
- (b) The name of the owner of the property affected;
- (c) A statement providing that the lien has been filed by the commissioner pursuant to this section.

(4) The lien may be foreclosed by civil action.

(5) Any number of persons claiming liens against the same property pursuant to this section may join in the same action. If separate actions are commenced, the court may consolidate such actions. The court shall, as part of the costs, allow reasonable attorney fees for each claimant who is a party to the action.

(6) In a civil action filed pursuant to this section, the judgment shall be given in favor of each resident having a lien who has joined in the foreclosure action for the amount equal to the reasonable value of services to be performed under a life care contract in favor of each resident. The court shall order the sheriff to sell any property subject to the lien at the time judgment is given, in the same manner as real and personal property is sold on execution. The lien for the reasonable value of services to be performed under a life care contract shall be on equal footing with claims of other residents. If a sale is ordered and the property sold and the proceeds of the sale are not sufficient to discharge all liens of residents against the property, the proceeds shall be prorated among the respective residents.

(7) The liens provided for in this section are preferred to all liens, mortgages, or other encumbrances upon the property attaching subsequently to the time the lien is recorded and are preferred to all unrecorded liens, mortgages, and other encumbrances. The amount secured by any lien having priority to the lien filed pursuant to this section may not be increased without prior approval of the commissioner.

(8) The commissioner shall file a release of the lien upon proof of complete performance of all obligations to residents pursuant to life care contracts.

(9) The commissioner may subordinate any lien filed pursuant to this section to the lien of a first mortgage or other long-term financing obtained by the provider, regardless of the time at which the subsequent lien attaches.

Source: **L. 81:** Entire article R&RE, p. 685, § 1, effective July 1. **L. 92:** (1) amended, p. 1610, § 156, effective May 20.

Editor's note: This section is similar to former § 12-13-112 as it existed prior to 1981.

12-13-107. Reserve requirements. (1) Any provider shall maintain reserves covering obligations under all life care agreements. The reserves shall be equivalent to the sum of the following:

(a) (I) For those debt obligations that are collateralized by the provider's facility and that require a balloon payment, the amount of interest due and payable or accrued in the next eighteen months.

(II) For purposes of this paragraph (a), any amounts held in reserve or escrow to fulfill debt agreements shall be considered eligible to meet the requirements of this paragraph (a).

(b) (I) For all other debt obligations that are collateralized by the provider's facility, an amount equal to the next twelve months' principal and interest.

(II) For purposes of this paragraph (b), any amounts held in reserve or escrow to fulfill debt agreements shall be considered eligible to meet the requirements of this paragraph (b).

(c) (I) An amount not less than twenty percent of the facility's operating expenses for the immediately preceding year.

(II) For purposes of this paragraph (c), "operating expenses":

(A) Includes all expenses of the facility, except interest included in paragraphs (a) and (b) of this subsection (1) and depreciation or amortization expenses; and

(B) Means budgeted expenses pursuant to a budget approved by the governing board of the provider, for providers in operation less than twelve months.

(2) The reserves shall consist of the following:

(a) Savings accounts or certificates of deposit in state or national banks located in this state which are members of the federal deposit insurance corporation or any successor agency thereto;

(b) Savings accounts or savings certificates in state or federal savings or loan associations located in this state which are members of the federal deposit insurance corporation or any successor agency thereto;

(c) Notes receivable from residents to the extent of the portion due and payable within twelve months;

(d) Bonds and stocks selected from an approved list, as determined by the commissioner. If stocks, bonds, and securities that are not on the approved list are part of the reserves, and if they are to be retained as part of the reserves, it shall not be necessary that such unapproved stocks, bonds, and securities be disposed of immediately, but they shall be disposed of in accordance with rules promulgated pursuant to this article, which disposal shall be accomplished in a gradual manner so as to avoid loss to providers. Securities which, although not on the approved list, should be retained in the reserve for reasons acceptable to the commissioner may be retained with the specific approval of the commissioner. Investments in stocks and bonds will be valued at their fair market value.

(e) (Deleted by amendment, L. 95, p. 150, § 1, effective April 7, 1995.)

(f) (I) Except as provided in subparagraph (II) of this paragraph (f), accounts receivable with respect to life care contracts that are:

(A) Not considered past due by the provider if owed to the provider by a natural person;

(B) Due from the United States or any agency thereof, any state in the United States or any agency thereof, or any institution, pension fund, or trust fund from which collection is reasonably assured.

(II) Accounts receivable that are eligible under this paragraph (f) may be used to fulfill no more than fifty percent of the provider's total reserve requirement.

(g) and (h) (Deleted by amendment, L. 95, p. 150, § 1, effective April 7, 1995.)

(i) Investment certificates or shares in open-end investment trusts whose management has been managing a mutual fund registered under the federal "Investment Company Act of 1940" or whose management has been registered as an investment adviser under the federal "Investment Advisers Act of 1940", and in either case currently has at least one hundred million dollars under its supervision, is qualified for sale in Colorado, has at least forty percent of its directors or trustees not affiliated with the fund's management company or principal underwriter or any of their affiliates, is registered under the federal "Investment Company Act of 1940", and is a fund listed as qualifying under rules maintained by the secretary of state in cooperation with the division of insurance.

(3) (Deleted by amendment, L. 95, p. 150, § 1, effective April 7, 1995.)

(4) Any person or organization which entered into life care contracts prior to January 1, 1974, but which was not required prior to such date to obtain a license, is not required

to maintain reserves covering obligations assumed under any such contract entered into prior to January 1, 1974.

(5) (Deleted by amendment, L. 95, p. 150, § 1, effective April 7, 1995.)

Source: **L. 81:** Entire article R&RE, p. 686, § 1, effective July 1. **L. 92:** (2)(a) and (2)(b) amended, p. 1610, § 157, effective May 20. **L. 95:** (1), (2)(c), (2)(e) to (2)(h), (3), and (5) amended, p. 150, § 1, effective April 7.

Editor's note: This section is similar to former § 12-13-110 as it existed prior to 1981.

Cross references: For the "Investment Company Act of 1940", see 54 Stat. 789, codified at 15 U.S.C. §§ 80a-1 to 80a-64; for the "Investment Advisors Act of 1940", see 54 Stat. 847, codified at 15 U.S.C. §§ 80b-1 to 80b-21.

12-13-108. Annual report by providers - fee. (1) Each provider shall file an annual report with the commissioner within ninety days after the end of its fiscal year that contains the certified financial statements for each facility and such other information as may be required by the commissioner. The annual report shall be made in a form prescribed by the commissioner.

(2) A provider shall amend its annual report on file with the commissioner if an amendment is necessary to prevent the report from containing a material misstatement of fact or omission of a material fact.

(3) A provider shall make its annual report available to residents upon request.

(4) The failure to file an annual report within the time prescribed in subsection (1) of this section shall constitute a violation of this article.

Source: **L. 81:** Entire article R&RE, p. 687, § 1, effective July 1. **L. 91:** (1) amended, p. 1237, § 18, effective June 5. **L. 92:** Entire section amended, p. 1610, § 158, effective May 20. **L. 2000:** (1) amended, p. 156, § 4, effective August 2. **L. 2005:** (1) and (2) amended, p. 15, § 2, effective February 23.

12-13-109. Rehabilitation of provider. (Repealed)

Source: **L. 81:** Entire article R&RE, p. 688, § 1, effective July 1. **L. 92:** Entire section repealed, p. 1615, § 174, effective May 20.

12-13-110. Examination - fees. The commissioner may conduct an examination of the affairs of any provider as often as the commissioner deems it necessary for the protection of the interests of the people of this state. Providers shall maintain copies of their books and records in Colorado to provide access for the purposes of this article. The commissioner shall assess each provider at least semiannually, to cover the annual direct and indirect costs of examinations, supervision, and administration conducted pursuant to the provisions of this section. Such assessments shall be calculated in terms of cents per thousand dollars of total escrowed entrance fees and reserves maintained. The assessment calculation, or ratio of the assessment charged to total escrowed entrance fees and reserves maintained, shall be alike in all cases. On or before the dates specified by the commissioner, each association shall pay its assessment. If deemed necessary, the commissioner may estimate a per diem rate to be charged for examinations and charge a provider for the actual cost of any examination documented by the commissioner.

Source: **L. 81:** Entire article R&RE, p. 690, § 1, effective July 1. **L. 92:** Entire section amended, p. 1611, § 159, effective May 20. **L. 2005:** Entire section amended, p. 15, § 3, effective February 23.

Editor's note: This section is similar to former § 12-13-103 as it existed prior to 1981.

12-13-111. Rules. The board may promulgate reasonable rules in accordance with article 4 of title 24, C.R.S., for effectuating any provision of this article.

Source: L. 81: Entire article R&RE, p. 690, § 1, effective July 1. L. 99: Entire section amended, p. 1015, § 10, effective August 4.

Editor's note: This section is similar to former § 12-13-103 as it existed prior to 1981.

12-13-112. Violation. Any person acting in the capacity of a provider who enters into a life care contract, or extends the term of an existing life care contract, without acting in compliance with the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Source: L. 81: Entire article R&RE, p. 690, § 1, effective July 1. L. 92: Entire section amended, p. 1611, § 160, effective May 20.

Editor's note: This section is similar to former § 12-13-115 as it existed prior to 1981.

12-13-113. Article does not apply to facilities licensed by department of public health and environment. The provisions of this article shall not apply to any hospital or other facility that the department of public health and environment is authorized to license pursuant to part 1 of article 1 and part 1 of article 3 of title 25, C.R.S.; except that nursing care facilities and assisted living residences that are part of the facility of a provider as defined in section 12-13-101 shall be subject to the provisions of this article.

Source: L. 81: Entire article R&RE, p. 690, § 1, effective July 1. L. 94: Entire section amended, p. 2725, § 323, effective July 1. L. 2004: Entire section amended, p. 147, § 47, effective July 1.

12-13-114. Life care contract - content. (1) Each life care contract shall be written in a clear and coherent manner using words with common and everyday meanings and shall:

(a) Show the value of all property transferred, including but not limited to donations, subscriptions, fees, and any other amounts initially paid or payable by or on behalf of the prospective resident;

(b) Show all the services which are to be provided by the provider to the prospective resident, including, in detail, all items which the prospective resident will receive, such as board, room, clothing, incidentals, medical care, transportation, and burial, and whether the items will be provided for a designated time period or for life and the monthly charge for such services;

(c) Be accompanied by a financial statement showing in reasonable detail the financial condition of the provider, including a statement of earnings for the previous twenty-four-month period, or such shorter period if the facility has been in operation for a lesser period, which shall be furnished to the prospective resident;

(d) Specify the monthly service fee and whether such fee is subject to adjustment;

(e) Explicitly state what rights, if any, a resident will have to participate either individually or as part of a group of residents in management and financial decisions affecting the facility.

(f) Repealed.

(2) Repealed.

Source: L. 81: Entire article R&RE, p. 690, § 1, effective July 1. L. 92: (1)(f) and (2) repealed, p. 1611, § 161, effective May 20.

Editor's note: This section is similar to former § 12-13-106 as it existed prior to 1981.

12-13-115. Register. (1) Every provider shall maintain a register setting forth the following facts concerning each person residing in the life care institution:

- (a) Name;
- (b) Last previous address;
- (c) Age;
- (d) Nearest of kin, if any;
- (e) Mother's maiden name;
- (f) The person responsible for each resident's care and maintenance;
- (g) Such other data as the commissioner may reasonably require.

Source: L. 81: Entire article R&RE, p. 691, § 1, effective July 1. L. 92: Entire section amended, p. 1612, § 162, effective May 20.

Editor's note: This section is similar to former § 12-13-107 as it existed prior to 1981.

12-13-116. Advertisements and solicitations of life care contracts - requirements. Any report, circular, public announcement, certificate, or financial statement, or any other printed matter or advertising material which is designed for or used to solicit or induce persons to enter into any life care contract, and which lists or refers to the name of any individual or organization as being interested in or connected with the person, association, or corporation to perform the contract, shall clearly state the extent of financial responsibility assumed by that individual or organization for the person, association, or corporation and the fulfillment of its contracts.

Source: L. 81: Entire article R&RE, p. 691, § 1, effective July 1.

Editor's note: This section is similar to former § 12-13-113 as it existed prior to 1981.

12-13-117. Injunction against violations - prosecution. (1) The commissioner may bring an action, through the attorney general, to enjoin the threatened violation or continued violation of the provisions of this article or of any of the rules promulgated pursuant to this article, in the district court for the county in which the violation occurred or is about to occur. Any proceeding under the provisions of this section shall be subject to the Colorado rules of civil procedure; except that the commissioner shall not be required to allege facts necessary to show or tending to show the lack of an adequate remedy at law or to show or tending to show irreparable damage or loss. The court may award the attorney general all costs incurred in bringing any action under this section.

(2) Upon application by the commissioner, the attorney general or the district attorney of any judicial district in this state shall institute and prosecute an action for the criminal violation of any provision of this article.

Source: L. 81: Entire article R&RE, p. 691, § 1, effective July 1. L. 92: (1) amended, p. 1612, § 163, effective May 20.

Editor's note: This section is similar to former § 12-13-114 as it existed prior to 1981.

12-13-118. Local regulations. The provisions of this article shall not prevent local authorities of any county, city, town, or city and county, within the reasonable exercise of the police power, from adopting rules, by ordinance or resolution, prescribing standards of sanitation, health, and hygiene for facilities which are not in conflict with the provisions of this article or the rules adopted by the commissioner pursuant thereto, and requiring a local health permit for the maintenance or conduct of any such facility within such county, city, town, or city and county.

Source: L. 81: Entire article R&RE, p. 691, § 1, effective July 1.

Editor's note: This section is similar to former § 12-13-116 as it existed prior to 1981.

12-13-119. Name change not to affect rights or obligations. (Repealed)

Source: L. 81: Entire article R&RE, p. 692, § 1, effective July 1. L. 92: Entire section repealed, p. 1612, § 164, effective May 20.

Editor’s note: This section was similar to former § 12-13-117 as it existed prior to 1981.

ARTICLE 14

Colorado Fair Debt Collection Practices Act

Editor’s note: This article was numbered as article 1 of chapter 27, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1985, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1985, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor’s notes following those sections that were relocated.

Law reviews: For article, “Fair Debt Collection: What Every Lawyer Should Know”, see 17 Colo. Law. 453 (1988); for article, “The Impact of the Fair Debt Collection Practices Act on Foreclosures”, see 17 Colo. Law. 2361 (1988); for article, “Default Judgments Against Consumers: Has the System Failed?”, see 67 Den. U. L. Rev. 357 (1990).

12-14-101.	Short title.	12-14-121.	Collection agency license - renewals.
12-14-102.	Scope of article.		
12-14-103.	Definitions.	12-14-122.	Collection agency license - notification of change and reapplication requirements.
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12-14-110.	Multiple debts.		
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12-14-117.	Powers and duties of the administrator.		
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		12-14-133.	Duty of district attorney.
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12-14-120.	License - issuance - grounds for denial - appeal - contents.	12-14-135.	Injunction - receiver.
		12-14-136.	Disposition of fees and fines.
		12-14-137.	Repeal of article.

12-14-101. Short title. This article shall be known and may be cited as the “Colorado Fair Debt Collection Practices Act”.

Source: L. 85: Entire article R&RE, p. 418, § 1, effective July 1.

12-14-102. Scope of article. (1) This article shall apply to any collection agency, solicitor, or debt collector that has a place of business located:

- (a) Within this state;
 - (b) Outside this state and collects or attempts to collect from consumers who reside within this state for a creditor with a place of business located within this state;
 - (c) Outside this state and regularly collects or attempts to collect from consumers who reside within this state for a creditor with a place of business located outside this state; or
 - (d) Outside this state and solicits or attempts to solicit debts for collection from a creditor with a place of business located within this state.
- (2) (Deleted by amendment, L. 95, p. 1224, § 1, effective July 1, 1995.)

Source: **L. 85:** Entire article R&RE, p. 418, § 1, effective July 1. **L. 90:** (2) added, p. 784, § 1, effective July 1. **L. 95:** Entire section amended, p. 1224, § 1, effective July 1. **L. 2000:** (1) amended, p. 935, § 1, effective July 1.

ANNOTATION

For purposes of the federal “Fair Debt Collection Practices Act”, 15 U.S.C. § 1692-1692o, if an attorney fits the definition of debt collectors found in the first sentence of section

1692a(6), they are debt collectors and therefore subject to the regulations contained in the federal act. *Shapiro and Meinhold v. Zartman*, 823 P.2d 120 (Colo. 1992).

12-14-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Administrator” means the administrator of the “Uniform Consumer Credit Code”, articles 1 to 9 of title 5, C.R.S., whose office is created in the department of law in section 5-6-103, C.R.S.

(1.5) “Board” means the collection agency board created in section 12-14-116.

(2) (a) “Collection agency” means any:

(I) Person who engages in a business the principal purpose of which is the collection of debts; or

(II) Person who:

(A) Regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another;

(B) Takes assignment of debts for collection purposes;

(C) Directly or indirectly solicits for collection debts owed or due or asserted to be owed or due another;

(D) Collects debt for the department of personnel, but only for the purposes specified in paragraph (d) of this subsection (2);

(b) “Collection agency” does not include:

(I) Any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(II) Any person while acting as a collection agency for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a collection agency does so only for creditors to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(III) Any officer or employee of the United States or any state to the extent that collecting or attempting to collect any debt is in the performance of such officer’s or employee’s official duties, except as otherwise provided in subsection (7) of this section;

(IV) Any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(V) Any debt-management services provider operating in compliance with or exempt from the “Uniform Debt-Management Services Act”, part 2 of article 14.5 of title 12, C.R.S.;

(VI) Repealed.

(VII) Any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent that:

(A) Such activity is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;

(B) Such activity concerns a debt which was extended by such person;

(C) Such activity concerns a debt which was not in default at the time it was obtained by such person; or

(D) Such activity concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor;

(VIII) Any person whose principal business is the making of loans or the servicing of debt not in default and who acts as a loan correspondent, or seller and servicer for the owner, or holder of a debt which is secured by a deed of trust on real property whether or not such debt is also secured by an interest in personal property;

(IX) A limited gaming or racing licensee acting pursuant to part 6 of article 35 of title 24, C.R.S.

(c) Notwithstanding the provisions of subparagraph (VII) of paragraph (b) of this subsection (2), "collection agency" includes any person who, in the process of collecting his or her own debts, uses another name which would indicate that a third person is collecting or attempting to collect such debts.

(d) For the purposes of section 12-14-108 (1) (f), "collection agency" includes any person engaged in any business the principal purpose of which is the enforcement of security interests. For purposes of sections 12-14-104, 12-14-105, 12-14-106, 12-14-107, 12-14-108, and 12-14-109 only, "collection agency" includes a debt collector for the department of personnel.

(e) Notwithstanding paragraph (b) of this subsection (2), "collection agency" includes any person who engages in any of the following activities; except that such person shall be exempt from provisions of this article that concern licensing and licensees:

(I) (Deleted by amendment, L. 2000, p. 935, § 2, effective July 1, 2000.)

(II) Is an attorney-at-law and regularly engages in the collection or attempted collection of debts in this state;

(III) Is a person located outside this state whose collection activities are limited to collecting debts not incurred in this state from consumers located in this state and whose collection activities are conducted by means of interstate communications, including telephone, mail, or facsimile transmission, and who is located in another state that regulates and licenses collection agencies but does not require Colorado collection agencies to obtain a license to collect debts in their state if such agencies' collection activities are limited in the same manner.

(3) "Communication" means conveying information regarding a debt in written or oral form, directly or indirectly, to any person through any medium.

(4) "Consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4.5) (a) "Consumer reporting agency" means any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(b) "Consumer reporting agency" shall not include any business entity that provides check verification or check guarantee services only.

(c) "Consumer reporting agency" shall include any persons defined in 15 U.S.C. sec. 1681a (f) or section 12-14.3-102 (4).

(5) "Creditor" means any person who offers or extends credit creating a debt or to which a debt is owed, but such term does not include any person to the extent such person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(6) (a) "Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment.

(b) "Debt" does not include a debt for business, investment, commercial, or agricultural purposes or a debt incurred by a business.

(7) "Debt collector" means any person employed or engaged by a collection agency to perform the collection of debts owed or due or asserted to be owed or due to another, and

includes any person employed by the department of personnel, or any division of said department, when collecting debts due to the state on behalf of another state agency.

(8) (Deleted by amendment, L. 2000, p. 935, § 2, effective July 1, 2000.)

(9) “Location information” means a consumer’s place of abode and his telephone number at such place or his place of employment.

(9.3) “Person” means a natural person, firm, corporation, limited liability company, or partnership.

(9.5) “Principal” means any individual having a position of responsibility in a collection agency, including but not limited to any manager, director, officer, partner, owner, or shareholder owning ten percent or more of the stock.

(10) “Solicitor” means any person employed or engaged by a collection agency who solicits or attempts to solicit debts for collection by such person or any other person.

(11) “State” means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of them.

Source: **L. 85:** Entire article R&RE, p. 418, § 1, effective July 1. **L. 90:** (2)(a), (2)(d), (3), and (5) amended and (2)(b)(VI) repealed, pp. 784, 797, §§ 2, 27, effective July 1. **L. 95:** (2), (4) to (7), and (10) amended and (9.3) added, p. 1225, § 2, effective July 1. **L. 96:** (2)(a)(II)(D), (2)(d), and (7) amended, p. 1468, § 7, effective June 1. **L. 2000:** (1), (2)(e)(I), and (8) amended and (1.5) and (4.5) added, p. 935, § 2, effective July 1. **L. 2003:** (2)(d), (2)(e)(II), and (2)(e)(III) amended, p. 1864, § 1, effective May 21. **L. 2007:** (2)(b)(IX) added, p. 1664, § 20, effective January 1, 2008. **L. 2011:** (2)(b)(V) amended, (HB 11-1206), ch. 113, p. 358, § 21, effective July 1.

Editor’s note: This section is similar to former § 12-14-101 as it existed prior to 1985.

ANNOTATION

Entity which originally extends credit to a debtor is not subject to the provisions of this Act but a collection agency which takes a complete assignment of such a debt which is in default is subject to the provisions of this act even though the entity which made such assignment retains no further rights. Debt is still “owed or due another” for purposes of this act. *Commercial Serv. v. Fitzgerald*, 856 P.2d 58 (Colo. App. 1993).

When an obligation arises outside the scope of a consumer transaction, the obligation is not a “debt” under this article. The regulation of metered parking is an exercise of a city’s police power not a rendering of a service to consumers. *Rector v. City & County of Denver*, 122 P.3d 1010 (Colo. App. 2005).

“Debt collector” includes a person who is regularly engaged to solicit information from

a debtor to aid a debt collector. Defendant mailed the debtor a telegram notification that invited the debtor to call a number. Upon making such call, the debtor’s phone number was electronically captured and sold to a debt collector. This practice was sufficient to qualify as a “debt collector” under the Colorado Fair Debt Collection Practices Act. *Udis v. Universal Commc’ns Co.*, 56 P.3d 1177 (Colo. App. 2002).

A person who collects a debt that is not in default is not a “collection agency”. Therefore, a person who purchases a debt before it is in default is not acting as a collection agency when attempting to collect the debt. *PurCo Fleet Servs., Inc. v. Koenig*, 240 P.3d 435 (Colo. App. 2010).

Applied in *B.C. Inv. Co. v. Thom*, 650 P.2d 1333 (Colo. App. 1982) (decided under former § 12-14-101).

12-14-104. Location information - acquisition. (1) Any debt collector or collection agency communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall:

(a) Identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(b) Not state that such consumer owes any debt;

(c) Not communicate with any such person more than once unless requested to do so by such person or unless the debt collector or collection agency reasonably believes that the

earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(d) Not communicate by postcard;

(e) Not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debtor collector or collection agency is in the debt collection business or that the communication relates to the collection of a debt; and

(f) After the debt collector or collection agency knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time, not less than thirty days, to communication from the debt collector or collection agency.

Source: L. 85: Entire article R&RE, p. 420, § 1, effective July 1.

12-14-105. Communication in connection with debt collection. (1) Without the prior consent of the consumer given directly to the debt collector or collection agency or the express permission of a court of competent jurisdiction, a debt collector or collection agency shall not communicate with a consumer in connection with the collection of any debt:

(a) At any unusual time, place, or manner known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector or collection agency shall assume that the convenient time for communicating with a consumer is after 8 a.m. and before 9 p.m. local time at the consumer's location.

(b) If the debt collector or collection agency knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or collection agency or unless the attorney consents to direct communication with the consumer; or

(c) At the consumer's place of employment if the debt collector or collection agency knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(2) Except as provided in section 12-14-104, without the prior consent of the consumer given directly to the debt collector or collection agency or the express permission of a court of competent jurisdiction or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector or collection agency shall not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the collection agency.

(3) (a) If a consumer notifies a debt collector or collection agency in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector or collection agency to cease further communication with the consumer, the debt collector or collection agency shall not communicate further with the consumer with respect to such debt, except to:

(I) Advise the consumer that the debt collector's or collection agency's further efforts are being terminated;

(II) Notify the consumer that the collection agency or creditor may invoke specified remedies that are ordinarily invoked by such collection agency or creditor; or

(III) Notify the consumer that the collection agency or creditor intends to invoke a specified remedy.

(b) If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(c) In its initial written communication to a consumer, a collection agency shall include the following statement: "FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.AGO.STATE.CO.US/CADC/CADCMAIN.CFM." If the web site address is changed, the notification shall be corrected

to contain the correct address. If the notification is placed on the back of the written communication, there shall be a statement on the front notifying the consumer of such fact.

(d) (Deleted by amendment, L. 2003, p. 1865, § 2, effective May 21, 2003.)

(e) In its initial written communication to a consumer, a collection agency shall include the following statement: "A consumer has the right to request in writing that a debt collector or collection agency cease further communication with the consumer. A written request to cease communication will not prohibit the debt collector or collection agency from taking any other action authorized by law to collect the debt." If the notification is placed on the back of the written communication, there shall be a statement on the front notifying the consumer of such fact.

(4) For the purpose of this section, "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

(5) It shall be an affirmative defense to any action based upon failure of a debt collector or collection agency to comply with this section that the debt collector or collection agency believed, in good faith, that the debtor was other than a natural person.

Source: L. 85: Entire article R&RE, p. 421, § 1, effective July 1. L. 90: (3)(c) amended and (3)(d) added, p. 785, § 3, effective July 1. L. 95: (3)(c) amended, p. 1228, § 3, effective July 1. L. 2000: (1)(a) and (3)(a) amended, p. 936, § 3, effective July 1. L. 2003: (1)(b) and (3) amended, p. 1865, § 2, effective May 21. L. 2006: (3)(c) amended, p. 1492, § 18, effective June 1. L. 2008: (3)(c) amended and (3)(e) added, p. 1728, § 3, effective July 1.

ANNOTATION

Use of automated mailing service not prohibited as third party communication. The intention of the prohibition against communicating with a third party is to protect a consumer's reputation and privacy. The highly automated

mailing system did not threaten to coerce or embarrass the consumer. *Flood v. Mercantile Adjustment Bureau, LLC*, 176 P.3d 769 (Colo. 2008).

12-14-106. Harassment or abuse. (1) A debt collector or collection agency shall not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt, including, but not limited to, the following conduct:

(a) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person;

(b) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader;

(c) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of 15 U.S.C. sec. 1681b (a) (3) and section 12-14.3-103 (1) (c);

(d) The advertisement for sale of any debt to coerce payment of the debt or agreeing to do so for the purpose of solicitation of claims;

(e) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(f) Except as provided in section 12-14-104, the placement of telephone calls without meaningful disclosure of the caller's identity within the first sixty seconds after the other party to the call is identified as the debtor.

Source: L. 85: Entire article R&RE, p. 422, § 1, effective July 1. L. 2000: (1)(c) amended, p. 937, § 4, effective July 1.

12-14-107. False or misleading representations. (1) A debt collector or collection agency shall not use any false, deceptive, or misleading representation or means in

connection with the collection of any debt, including, but not limited to, the following conduct:

(a) The false representation or implication that the debt collector or collection agency is vouched for, bonded by, or affiliated with the United States government or any state government, including the use of any misleading name, badge, uniform, or facsimile thereof;

(b) The false representation of:

(I) The character, amount, or legal status of any debt; or

(II) Any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt;

(c) The false representation or implication that any individual is an attorney or that any communication is from an attorney;

(d) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or in the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector, collection agency, or creditor intends to take such action;

(e) The threat to take any action that cannot legally be taken or that is not intended to be taken;

(f) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to:

(I) Lose any claim or defense to payment of the debt; or

(II) Become subject to any practice prohibited by this article;

(g) The false representation or implication that the consumer committed any crime;

(h) The false representation or implication that the consumer has engaged in any disgraceful conduct;

(i) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed;

(j) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any state or which creates a false or misleading impression as to its source, authorization, or approval;

(k) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer;

(l) Except as otherwise provided for communications to acquire location information under section 12-14-104, the failure to disclose clearly, in the initial written communication made to collect a debt or obtain information about a consumer and also, if the initial communication with the consumer is oral, in the initial oral communication, that the debt collector or collection agency is attempting to collect a debt and that any information obtained will be used for that purpose, and, in subsequent communications, that the communication is from a debt collector or collection agency; except that this paragraph (l) shall not apply to a formal pleading made in connection with a legal action;

(m) The false representation or implication that accounts have been turned over to innocent purchasers for value;

(n) The false representation or implication that documents are legal process;

(o) The use of any business, company, or organization name other than the true name of the collection agency's business, company, or organization;

(p) The false representation or implication that documents are not legal process forms or do not require action by the consumer;

(q) The false representation or implication that a debt collector or collection agency operates or is employed by a consumer reporting agency.

Source: L. 85: Entire article R&RE, p. 422, § 1, effective July 1. L. 95: (1)(l) amended, p. 1228, § 4, effective July 1. L. 2000: (1)(q) amended, p. 937, § 5, effective July 1. L. 2003: (1)(l) amended, p. 1866, § 3, effective May 21.

12-14-108. Unfair practices. (1) A debt collector or collection agency shall not use unfair or unconscionable means to collect or attempt to collect any debt, including, but not limited to, the following conduct:

(a) The collection of any amount, including any interest, fee, charge, or expense incidental to the principal obligation, unless such amount is expressly authorized by the agreement creating the debt or permitted by law;

(b) The acceptance by a debt collector or collection agency from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's or collection agency's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit;

(c) The solicitation by a debt collector or collection agency of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

(d) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument;

(e) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(f) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(I) There is no present right to possession of the property claimed as collateral through an enforceable security interest;

(II) There is no present intention to take possession of the property; or

(III) The property is exempt by law from such dispossession or disablement;

(g) Communicating with a consumer regarding a debt by postcard;

(h) Using any language or symbol, other than the debt collector's or collection agency's address, on any envelope when communicating with a consumer by use of the mails or by telegram; except that a debt collector or collection agency may use his business name if such name does not indicate that he is in the debt collection business;

(i) Failing to comply with the provisions of section 13-21-109, C.R.S., regarding the collection of checks, drafts, or orders not paid upon presentment;

(j) Communicating credit information to a consumer reporting agency earlier than thirty days after the initial notice to the consumer has been mailed, unless the consumer's last-known address is known to be invalid. This paragraph (j) shall not apply to checks, negotiable instruments, or credit card drafts.

Source: L. 85: Entire article R&RE, p. 424, § 1, effective July 1. L. 89: (1)(i) added, p. 756, § 2, effective July 1. L. 95: (1)(j) added, p. 1228, § 5, effective July 1. L. 2000: (1)(j) amended, p. 937, § 6, effective July 1.

12-14-109. Validation of debts. (1) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector or collection agency shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice with the disclosures specified in paragraphs (a) to (e) of this subsection (1). If such disclosures are placed on the back of the notice, the front of the notice shall contain a statement notifying consumers of that fact. Such disclosures shall state:

(a) The amount of the debt;

(b) The name of the creditor to whom the debt is owed;

(c) That, unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector or collection agency;

(d) That, if the consumer notifies the debt collector or collection agency in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector or collection agency will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector or collection agency;

(e) That upon the consumer's written request within the thirty-day period, the debt collector or collection agency will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(f) and (g) (Deleted by amendment, L. 2003, p. 1866, § 4, effective May 21, 2003.)

(2) If the consumer notifies the debt collector or collection agency in writing within the thirty-day period described in paragraph (c) of subsection (1) of this section that the debt, or any portion thereof, is disputed or that the consumer requests the name and address of the original creditor, the debt collector or collection agency shall cease collection of the debt, or any disputed portion thereof, until the debt collector or collection agency obtains verification of the debt or a copy of a judgment or the name and address of the original creditor and mails a copy of such verification or judgment or name and address of the original creditor to the consumer.

(3) The failure of a consumer to dispute the validity of a debt under this section shall not be construed by any court as an admission of liability by the consumer.

(4) It shall be an affirmative defense to any action based upon failure of a debt collector or collection agency to comply with this section that the debt collector or collection agency believed, in good faith, that the debtor was other than a natural person.

Source: L. 85: Entire article R&RE, p. 424, § 1, effective July 1. L. 90: IP(1) amended, p. 1850, § 55, effective July 1; IP(1) amended and (1)(f) added, p. 785, § 4, effective July 1. L. 95: IP(1), (1)(e), and (1)(f) amended and (1)(g) added, p. 1228, § 6, effective January 1, 1996. L. 96: (1)(f) amended, p. 1468, § 8, effective June 1. L. 2003: IP(1), (1)(f), and (1)(g) amended, p. 1866, § 4, effective May 21.

ANNOTATION

The sufficiencies of the notice are judged under the least sophisticated consumer standard. Notice insufficient because statement on

the front of the letter appeared to conflict with the required notice. Flood v. Mercantile Adjustment Bureau, LLC, 176 P.3d 769 (Colo. 2008).

12-14-110. Multiple debts. If any consumer owes multiple debts and makes any single payment to any collection agency with respect to such debts, such collection agency shall not apply such payment to any debt which is disputed by the consumer and when so informed shall apply such payment in accordance with the consumer's directions.

Source: L. 85: Entire article R&RE, p. 425, § 1, effective July 1.

12-14-111. Legal actions by collection agencies. (1) Any debt collector or collection agency who brings any legal action on a debt against any consumer shall:

(a) In the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(b) In the case of an action not described in paragraph (a) of this subsection (1), bring such action only in the judicial district or similar legal entity in which:

(I) Such consumer signed the contract sued upon;

(II) Such consumer resides at the commencement of the action; or

(III) Such action may be brought pursuant to article 13 or 13.5 of title 26, C.R.S., section 14-14-104, C.R.S., or article 4 or 6 of title 19, C.R.S., if the action is by a private collection agency acting on behalf of a delegate child support enforcement unit.

Source: L. 85: Entire article R&RE, p. 425, § 1, effective July 1. L. 2003: Entire section amended, p. 1867, § 5, effective May 21.

12-14-112. Deceptive forms. (1) It is unlawful for any person to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the

collection or in the attempted collection of a debt that such consumer allegedly owes such creditor when in fact such person is not so participating.

(2) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector or collection agency under section 12-14-113 for failure to comply with this article.

(3) This section shall apply if the person supplying or using the forms or the consumer receiving the forms is located within this state.

Source: **L. 85:** Entire article R&RE, p. 425, § 1, effective July 1. **L. 90:** Entire section amended, p. 786, § 5, effective July 1. **L. 95:** Entire section amended, p. 1229, § 7, effective July 1.

12-14-113. Civil liability. (1) In addition to administrative enforcement pursuant to section 12-14-114 and subject to section 12-14-134 and the limitations provided by subsection (9) of this section, and except as otherwise provided by this section, any debt collector or collection agency who fails to comply with any provision of this article or private child support collector, as defined in section 12-14.1-102 (9), who fails to comply with any provision of this article or article 14.1 of this title, with respect to a consumer is liable to such consumer in an amount equal to the sum of:

(a) Any actual damage sustained by such consumer as a result of such failure;

(b) (I) In the case of any action by an individual, such additional damages as the court may allow, but not to exceed one thousand dollars;

(II) In the case of a class action, such amount for each named plaintiff as could be recovered under subparagraph (I) of this paragraph (b) and such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed five hundred thousand dollars or one percent of the net worth of the debt collector or collection agency, whichever is the lesser; and

(c) In the case of any successful action to enforce such liability, the costs of the action, together with such reasonable attorney fees as may be determined by the court.

(1.5) In the case of any unsuccessful action brought under this section, the plaintiff shall be liable to each defendant in an amount equal to that defendant's cost incurred in defending the action, together with such reasonable attorney fees as may be determined by the court.

(2) In determining the amount of liability in any action under subsection (1) of this section, the court shall consider, among other relevant factors:

(a) In any individual action under subparagraph (I) of paragraph (b) of subsection (1) of this section, the frequency and persistence of noncompliance by the debt collector or collection agency, the nature of such noncompliance, and the extent to which such noncompliance was intentional;

(b) In any class action under subparagraph (II) of paragraph (b) of subsection (1) of this section, the frequency and persistence of noncompliance by the debt collector or collection agency, the nature of such noncompliance, the resources of the debt collector or collection agency, the number of persons adversely affected, and the extent to which the debt collector's or collection agency's noncompliance was intentional.

(3) A debt collector, private child support collector, as defined in section 12-14.1-102 (9), or collection agency may not be held liable in any action brought pursuant to the provisions of this article if the debt collector or collection agency shows by a preponderance of evidence that the violation was not intentional or grossly negligent and which violation resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(4) An action to enforce any liability created by the provisions of this article may be brought in any court of competent jurisdiction within one year from the date on which the violation occurs.

(5) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the administrator, notwithstanding that, after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(6) The policy of this state is not to award double damages under this article and the federal "Fair Debt Collection Practices Act", 15 U.S.C. sec. 1692 et seq. No damages under this section shall be recovered if damages are recovered for a like provision of said federal act.

(7) Notwithstanding subsection (1) of this section, harassment of the employer or the family of a consumer shall be considered an invasion of privacy and a civil action may be brought which is not subject to the damage limitations of said subsection (1).

(8) It shall be an affirmative defense to any action based upon failure of a debt collector, private child support collector, as defined in section 12-14.1-102 (9), or collection agency to comply with this section that the debt collector or collection agency believed, in good faith, that the debtor was other than a natural person.

(9) There shall be no private cause of action under this section for any alleged violation of section 12-14-128 (4) (a). Violations of section 12-14-128 (4) (a) may be prosecuted only through administrative enforcement pursuant to section 12-14-114.

(10) (a) No provision of this section imposing any liability shall apply to any efforts by a state agency or state employee to recover moneys owed to the state as provided in section 24-30-202.4, C.R.S.

(b) If the state controller, or such designee as he or she designates to recover moneys owed to the state, fails to comply with any provision of this article, the controller, or such designee, shall be subject to disciplinary action as specified in the rules promulgated by the executive director of the department of personnel pursuant to article 4 of title 24, C.R.S.

Source: L. 85: Entire article R&RE, p. 426, § 1, effective July 1. L. 90: (7) added, p. 786, § 6, effective July 1. L. 95: (1) and (7) amended and (1.5) added, p. 1230, § 8, effective July 1. L. 2000: (4) amended, p. 938, § 7, effective July 1. L. 2003: IP(1) amended and (8) and (9) added, p. 1867, § 6, effective May 21. L. 2006: (10) added, p. 1159, § 1, effective May 25; IP(1), (3), and (8) amended, p. 369, § 2, effective July 1. L. 2008: (5) amended, p. 1729, § 4, effective July 1.

ANNOTATION

Exemplary damages may be awarded under this section where the underlying claim is one which existed at common law. Pursuant to § 12-14-134, the general assembly expressly

permits parties to pursue pre-existing common law remedies under this statutory scheme. *Virdanco, Inc. v. MTS Int'l.*, 820 P.2d 352 (Colo. App. 1991).

12-14-114. Administrative enforcement - rules. Compliance with this article shall be enforced by the administrator. The administrator may make reasonable rules for the administration and enforcement of this article, including standards of conduct for licensees and collection notices and forms.

Source: L. 85: Entire article R&RE, p. 427, § 1, effective July 1. L. 95: Entire section amended, p. 1230, § 9, effective July 1. L. 2000: Entire section amended, p. 938, § 8, effective July 1. L. 2004: Entire section amended, p. 1192, § 27, effective August 4. L. 2008: Entire section amended, p. 1729, § 5, effective July 1.

12-14-115. License - registration - unlawful acts. (1) It is unlawful for any person to:

(a) Conduct the business of a collection agency or advertise or solicit, either in print, by letter, in person, or otherwise, the right to make collection or obtain payment of any debt on behalf of another without having obtained a license under this article; or

(b) Conduct the business of a collection agency under any name other than that under which licensed.

(2) and (3) Repealed.

(3.5) It is unlawful for a person to act as a collections manager without having complied with sections 12-14-119 and 12-14-122.

(4) It is unlawful for any person to employ any person as a solicitor, collections manager, or debt collector under this article without complying with this section.

Source: **L. 85:** Entire article R&RE, p. 427, § 1, effective July 1. **L. 90:** (3) amended and (4) added, p. 786, § 7, effective July 1. **L. 95:** Entire section amended, p. 1230, § 10, effective July 1. **L. 2000:** (2) and (3) repealed, p. 938, § 9, effective July 1.

Editor's note: This section is similar to former § 12-14-102 as it existed prior to 1985.

ANNOTATION

Unlicensed collection agency is not lawfully entitled to bring suit against the maker of a note. *B.C. Inv. Co. v. Throm*, 650 P.2d 1333 (Colo. App. 1982) (decided under former § 12-14-102).

A person who collects a debt that is not in default is not a "collection agency". There-

fore, a person who purchases a debt before it is in default is not required to be licensed under the Colorado Fair Debt Collection Practices Act to attempt to collect the debt or bring suit to collect a debt. *PurCo Fleet Servs., Inc. v. Koenig*, 240 P.3d 435 (Colo. App. 2010).

12-14-116. Collection agency board - created. (1) For the purpose of carrying out the provisions of this article subject to section 12-14-117 (1), the governor shall appoint five members to the collection agency board, which board is hereby created. The members of the board serving on July 1, 2003, shall continue to serve their appointed terms, and their successors shall be appointed for three-year terms. Upon the death, resignation, or removal of any member of the board, the governor shall appoint a member to fill the unexpired term. Any member of the board may be removed by the governor for misconduct, neglect of duty, or incompetence. No member may serve more than two consecutive terms without first a lapse of at least one term before being appointed to any additional terms.

(2) No person shall be appointed as a member of such board unless such person is a bona fide resident of the state of Colorado. Effective July 1, 2000, board appointments shall ensure that three members of the board have been engaged in the collection business within the state of Colorado, either as a collections manager, owner, or part owner of a licensed collection agency. Two members of the board shall be representatives of the general public and not engaged in the collection business.

(3) Each member of the board shall be allowed a per diem compensation of fifty dollars and actual expenses for each day of active service, payable from the moneys appropriated to the board.

(4) The board shall meet annually for the purpose of organization by electing a chairman, a vice-chairman, and a secretary of the board for the ensuing year.

(5) The board shall meet regularly at such times and places as the business of the board may necessitate upon full and timely notice to each of the members of the board of the time and place of such meeting. A majority of said board shall constitute a quorum of said board.

Source: **L. 85:** Entire article R&RE, p. 427, § 1, effective July 1. **L. 90:** (1) amended, p. 786, § 8, effective July 1. **L. 95:** (2) and (3) amended, p. 1231, § 11, effective July 1. **L. 2000:** (2) amended, p. 938, § 10, effective July 1. **L. 2003:** (1) amended, p. 1868, § 7, effective May 21. **L. 2008:** (1) amended, p. 1729, § 6, effective July 1.

Editor's note: This section is similar to former § 12-14-103 as it existed prior to 1985.

Cross references: For the termination date of the collection agency board, see § 12-14-137.

12-14-117. Powers and duties of the administrator. (1) Any provision of this article to the contrary notwithstanding, the board, created by section 12-14-116, is under the supervision and control of the administrator, who may exercise any of the powers granted to the board.

(2) Repealed.

(3) The administrator is authorized to approve or deny any application submitted pursuant to this article and to issue any license authorized by this article.

(4) Any complaint received by the administrator regarding violations of this article by an attorney shall be forwarded to the supreme court's attorney regulation counsel.

(5) The administrator shall enforce the provisions of article 14.1 of this title pursuant to section 12-14.1-111.

Source: **L. 85:** Entire article R&RE, p. 428, § 1, effective July 1. **L. 90:** Entire section amended, p. 787, § 9, effective July 1. **L. 95:** (2) to (4) amended, p. 1231, § 12, effective July 1. **L. 2000:** Entire section amended, p. 938, § 11, effective July 1. **L. 2004:** (4) amended, p. 1192, § 28, effective August 4. **L. 2006:** (5) added, p. 370, § 3, effective July 1. **L. 2009:** (2) repealed, (HB 09-1141), ch. 41, p. 159, § 6, effective July 1.

Editor's note: This section is similar to former § 12-14-104 as it existed prior to 1985.

12-14-118. Collection agency license - required. Any person acting as a collection agency must possess a valid license issued by the administrator in accordance with this article and any rules and regulations adopted pursuant thereto.

Source: **L. 85:** Entire article R&RE, p. 428, § 1, effective July 1. **L. 90:** Entire section R&RE, p. 787, § 10, effective July 1. **L. 95:** Entire section amended, p. 1232, § 13, effective July 1. **L. 2000:** Entire section amended, p. 939, § 12, effective July 1.

Editor's note: Sections 12-14-118 to 12-14-123, 12-14-125 to 12-14-131, and 12-14-136 were repealed and reenacted in 1990, at which time the provisions of this section were new. This section was relocated to § 12-14-119 in 1990.

ANNOTATION

Corporation which is in the business of debt collection which takes a complete assignment of a debt owed to an entity located in Colorado is subject to the licensure provisions of this section even though the corpora-

tion is located outside of Colorado and the assignor of the debt retains no further rights in such debt. Commercial Serv. v. Fitzgerald, 856 P.2d 58 (Colo. App. 1993).

12-14-119. Collection agency license - requirements - application - fee - expiration.

(1) As requisites for licensure, the applicant for a collection agency license shall:

(a) (I) Be owned by, or employ as collections manager or an executive officer of the agency, at least one individual who has been engaged in a responsible position in an established collection agency for a period of at least two years.

(II) Notwithstanding the requirements of subparagraph (I) of this paragraph (a), the administrator may substitute other business experience for such requirements where such business experience has provided comparable experience in collections.

(b) (I) Employ a collections manager who shall:

(A) (Deleted by amendment, L. 2008, p. 1729, § 7, effective July 1, 2008.)

(B) Be responsible for the actions of the debt collectors in that office.

(II) The collections manager may be the same individual specified in paragraph (a) of this subsection (1) if the collections manager also meets the qualifications of said paragraph (a).

(c) File a bond in the amount and manner specified in section 12-14-124;

(d) If a foreign corporation, comply fully with the laws of this state so as to entitle it to do business within the state.

(2) Each applicant for a collection agency license shall submit an application providing all information in the form and manner the administrator shall designate, including, but not limited to:

(a) The location, ownership, and, if applicable, the previous history of the business and

the name, address, age, and relevant debt-collection experience of each of the principals of the business;

- (b) A duly verified financial statement for the previous year;
 - (c) If a corporation, the name of the shareholder and the number of shares held by any shareholder owning ten percent or more of the stock; and
 - (d) For the principals and the collections manager of the applicant:
 - (I) The conviction of any felony or the acceptance by a court of competent jurisdiction of a plea of guilty or nolo contendere to any felony;
 - (II) The denial, revocation, or suspension of any license issued to any collection agency which employed or was owned by such persons, in whole or in part, directly or indirectly, and a statement of their position and authority at such collection agency:
 - (A) For any license issued pursuant to this article; or
 - (B) For any comparable license issued by any other jurisdiction;
 - (III) The taking of any other disciplinary or adverse action or the existence of any outstanding complaints against any collection agency which employed or was owned in whole or in part, directly or indirectly, by such persons, and a statement of their position and authority at such collection agency:
 - (A) For any license issued pursuant to this article; or
 - (B) When such action was taken by any other jurisdiction or such complaint exists in any other jurisdiction, whether or not a license was issued by that jurisdiction;
 - (IV) The suspension or termination of approval of any collections manager under this article or any other disciplinary or adverse action taken against the applicant, principal, or collections manager in any jurisdiction.
- (3) At the time the application is submitted, the applicant shall pay a nonrefundable investigation fee in an amount to be determined by the administrator.
- (4) When the administrator approves the application, the applicant shall pay a nonrefundable license fee in an amount to be determined by the administrator.
- (5) The administrator shall establish procedures for the maintenance of license lists and the establishment of initial and renewal license fees and schedules. The administrator may change the renewal date of any license issued pursuant to this article to the end that approximately the same number of licenses are scheduled for renewal in each month of the year. Where any renewal date is so changed, the fee for the license shall be proportionately increased or decreased, as the case may be. Every licensee shall pay the administrator a license fee to be determined and collected pursuant to section 12-14-121 and subsection (4) of this section, and shall obtain a license certificate for the current license period. Notwithstanding any other provision of this section, a licensee, at any time, may voluntarily surrender the license to the administrator to be cancelled, but such surrender shall not affect the licensee's liability for violations of this article that occurred prior to the date of surrender.
- (6) (Deleted by amendment, L. 2003, p. 1868, § 8, effective May 21, 2003.)
- (7) A collection agency must obtain a license for its principal place of business, but its branch offices, if any, need not obtain separate licenses. A collection agency with branch offices must notify the administrator in writing of the location of each branch office within thirty days after the branch office commences business.

Source: L. 85: Entire article R&RE, p. 429, § 1, effective July 1. L. 90: Entire section R&RE, p. 787, § 11, effective July 1. L. 95: (1)(a), IP(1)(b), (1)(b)(I)(A), (1)(c), (2)(c), IP(2)(d), IP(2)(d)(II), IP(2)(d)(III), (2)(d)(IV), (3), (4), and (6) amended and (7) added, p. 1232, § 14, effective July 1. L. 2000: (1)(b)(I)(A), IP(2), (4), (5), and (7) amended, p. 939, § 13, effective July 1. L. 2003: (4) to (6) amended, p. 1868, § 8, effective May 21. L. 2008: (1)(a)(II), (1)(b)(I)(A), (2)(d)(IV), (3), and (4) amended, p. 1729, § 7, effective July 1. L. 2009: (2)(d)(IV) amended, (SB 09-292), ch. 369, p. 1946, § 23, effective August 5.

Editor's note: This section is similar to former §§ 12-14-118 and 12-14-125 as they existed prior to 1990.

12-14-120. License - issuance - grounds for denial - appeal - contents. (1) Upon the approval of the license application by the administrator and the satisfaction of all application requirements, the administrator shall issue the applicant a license to operate as a collection agency.

(2) The administrator may deny any application for a license or its renewal if any grounds exist that would justify disciplinary action under section 12-14-130, for failure to meet the requirements of section 12-14-119, or if the applicant, the applicant's principals, or the applicant's collections manager have fraudulently obtained or attempted to obtain a license.

(3) If any application for a license or its renewal is denied, the applicant may appeal the decision pursuant to section 24-4-104, C.R.S.

(4) The license shall state the name of the licensee, location by street and number or office building and room number, city, county, and state where the licensee has his principal place of business, together with the number and date of such license and the date of expiration of the license, and shall further state that it is issued pursuant to this article and that the licensee is duly authorized under this article.

(5) Repealed.

(6) The administrator may deny any application for a license or its renewal if the collection agency has failed to perform the duties enumerated in section 12-14-123.

(7) The administrator may deny any application for a license or its renewal if the collection agency does not have a positive net worth.

Source: L. 85: Entire article R&RE, p. 430, § 1, effective July 1. L. 90: Entire section R&RE, p. 789, § 12, effective July 1. L. 95: (5) repealed, p. 1233, § 15, effective July 1. L. 2000: (1) and (2) amended and (6) and (7) added, p. 939, § 14, effective July 1. L. 2004: (2) amended, p. 1193, § 29, effective August 4.

Editor's note: This section is similar to former § 12-14-119 as it existed prior to 1990.

12-14-121. Collection agency license - renewals. Each licensee shall make an application to renew its license in the form and manner prescribed by the administrator. The application shall be accompanied by a nonrefundable renewal fee in an amount determined by the administrator.

Source: L. 85: Entire article R&RE, p. 430, § 1, effective July 1. L. 90: Entire section R&RE, p. 789, § 13, effective July 1. L. 2000: (1) and (3) amended, p. 940, § 15, effective July 1. L. 2003: Entire section amended, p. 1868, § 9, effective May 21. L. 2008: Entire section amended, p. 1730, § 8, effective July 1.

Editor's note: This section is similar to former § 12-14-120 as it existed prior to 1990.

12-14-122. Collection agency license - notification of change and reapplication requirements. (1) (a) Upon any of the following changes, the licensee shall notify the administrator in writing of such change within thirty days after its occurrence:

(I) Change of business name or address;

(II) If a corporation or limited liability company, change in ownership of ten or more percent but less than fifty percent of the corporate stock or ownership interest.

(b) If the licensee fails to provide such written notification, the license shall automatically expire on the thirtieth day following such change.

(2) (a) Upon any of the changes specified in paragraph (c) of this subsection (2), the licensee shall apply for a new license within thirty days of said change. The administrator shall have twenty-five days to review the application and issue or deny the new license. If the administrator denies the license, the administrator shall provide to the licensee a written statement stating why the application for the license was denied, and the licensee shall have fifteen days to cure any defects in said application. The administrator shall approve or deny the resubmitted application within fifteen days.

(b) If the licensee fails to file an application for a new license, the license shall expire on the thirtieth day following the change which necessitated the new license application. If the application is denied and the licensee fails to resubmit the application within fifteen days of said denial, the license shall expire on the fifteenth day following the denial.

(c) The changes which require a new license application are:

(I) In a sole proprietorship or partnership, any change in the persons owning the collection agency;

(II) In a corporation or limited liability company, any change of ownership of fifty percent or more of the stock or ownership interest in any one transaction or a cumulative change of ownership of fifty percent or more from the date of the issuance of the license or from the date of the latest renewal of the license;

(III) Any change of ownership structure, including but not limited to a change to or from a sole proprietorship, partnership, limited liability company, or corporation. No investigation fee shall be required in the event of such a change and the application required may be more abbreviated than that required for an initial license, as determined by the administrator.

(3) (a) Upon a change of collections manager, the licensee shall notify the administrator in the form and manner designated by the administrator. The licensee shall appoint a new collections manager within thirty days of such change.

(b) The administrator, within fifteen days, shall approve or disapprove the qualifications of the new collections manager.

(c) The licensee may continue to operate as a collection agency unless and until the administrator disapproves the qualifications of the new collections manager.

(4) Any licensee which has submitted an application for a new license may continue to operate as a collection agency until the final decision of the administrator.

(5) The licensee may appeal the final decision of the administrator pursuant to section 24-4-104, C.R.S.

Source: **L. 85:** Entire article R&RE, p. 431, § 1, effective July 1. **L. 90:** Entire section R&RE, p. 790, § 14, effective July 1. **L. 95:** (1)(a), (2)(c), and (3)(a) amended, p. 1234, § 16, effective July 1. **L. 2000:** IP(1)(a), (2)(a), (2)(c)(III), and (3) to (5) amended, p. 940, § 16, effective July 1. **L. 2008:** (1)(a)(II), (2)(c)(II), (2)(c)(III), and (3)(b) amended, p. 1730, § 9, effective July 1.

Editor's note: This section is similar to former § 12-14-123 as it existed prior to 1990.

12-14-123. Duties of collection agencies. (1) A licensee shall:

(a) Maintain, at all times, liquid assets in the form of deposit accounts in the total sum of not less than two thousand five hundred dollars more than all sums due and owing to all of its clients;

(b) (I) (A) Maintain, at all times, an office within this state that is open to the public during normal business hours, is staffed by at least one full-time employee, keeps a record of all moneys collected and remitted by the agency for residents of Colorado, and accepts payments physically made at the office for any debt the agency is attempting to collect.

(B) Notify, in each written communication, the consumer from whom the agency is attempting to collect a debt of the address and telephone number of the local office required by this subparagraph (I).

(II) Maintain, at all times, a toll-free telephone number that shall be available to any consumer who needs to make a toll call to reach the licensee in connection with a debt.

(c) Maintain, at all times, a trust account for the benefit of its clients which shall contain, at all times, sufficient funds to pay all sums due or owing to all of its clients. The trust account shall be maintained in a commercial bank, industrial bank, or savings and loan association account in this state or accessible in a branch in this state until disbursed to the creditor. Such account shall be clearly designated as a trust account and shall be used only for such purposes and not as an operating account. A deposit of all funds received to a trust account followed by a transfer of the agency share of the collection to an operating account is not a violation of this section.

(d) Within thirty days after the last day of the month in which any collections are made for a client, account to the client for all collections made during that month and remit to the client all moneys owed to the client pursuant to the agreement between the client and the collection agency;

(e) Upon written demand of the administrator, within five days of receipt of such demand, produce a complete set of all form notices or form letters used by the licensee in the collection of accounts;

(f) Be responsible, pursuant to this article, for violations of this article that are caused by its collections manager, debt collectors, or solicitors.

(2) (a) No collection agency shall employ any collections manager, debt collector, or solicitor who has been convicted of or who has entered a plea of guilty or nolo contendere to any crime specified in part 4 of article 4, in part 1, 2, 3, 5, 7, or 9 of article 5, or in article 5.5 of title 18, C.R.S., or any similar crime under the jurisdiction of any federal court or court of another state.

(b) No collection agency shall be owned or operated by the following persons who have been convicted of or who have entered a plea of guilty or nolo contendere to any crime specified in part 4 of article 4, in part 1, 2, 3, 5, 7, or 9 of article 5, or in article 5.5 of title 18, C.R.S., or any similar crime under the jurisdiction of any federal court or court of another state:

(I) The owner of a sole proprietorship;

(II) A partner of a partnership;

(III) A member of a limited liability company; or

(IV) An officer or director of a corporation.

(3) Paragraphs (a), (c), and (d) of subsection (1) of this section do not apply to a person collecting or attempting to collect a debt owned by the person collecting or attempting to collect such debt.

Source: **L. 85:** Entire article R&RE, p. 431, § 1, effective July 1. **L. 90:** Entire section R&RE, p. 791, § 15, effective July 1. **L. 95:** IP(1) and (1)(a) amended and (1)(f) added, p. 1234, § 17, effective July 1. **L. 2000:** (1)(a), (1)(c), and (2) amended and (3) added, p. 941, § 17, effective July 1. **L. 2008:** (1)(b), (1)(e), (2)(a), and IP(2)(b) amended, p. 1731, § 10, effective July 1. **L. 2010:** (1)(b)(I) amended, (HB 10-1222), ch. 210, p. 911, § 1, effective July 1.

Editor's note: This section is similar to former § 12-14-128 as it existed prior to 1990.

12-14-124. Bond. (1) Each licensee shall maintain at all times and each applicant shall file, prior to the issuance of any license to such applicant, a bond in the sum of twelve thousand dollars plus an additional two thousand dollars for each ten thousand dollars or part thereof by which the average monthly sums remitted or owed to all of its clients during the previous year exceed fifteen thousand dollars; or, in the alternative, an applicant or licensee shall present evidence of a savings account, deposit, or certificate of deposit of the same sum and meeting the requirements of section 11-35-101, C.R.S. The total amount of the bond shall not exceed twenty thousand dollars and shall be in favor of the attorney general of the state of Colorado for use of the people of the state of Colorado and the administrator. Such bond shall be executed by the applicant or licensee as principal and by a corporation that is licensed by the commissioner of insurance to transact the business of fidelity and surety insurance as surety. If any such surety, during the life of the bond, cancels the bond or reduces the penal sum of the bond, the surety immediately shall notify the administrator in writing. The administrator shall give notice to the licensee that the bond has been cancelled or reduced and that the licensee's license shall automatically expire unless a new or increased bond with proper sureties is filed within thirty days after the date the administrator received the notice, or on such later date as is stated in the surety's notice.

(2) The bond shall include a condition that the licensee shall, upon demand in writing made by the administrator, pay over to the administrator for the use of any client from whom any debt is taken or received for collection by the licensee the proceeds of such

collection, less the charges for collection in accordance with the terms of the agreement made between the licensee and the client.

(3) A client may file with the administrator a duly verified claim as to money due such client for money collected by a licensee. If the administrator makes a preliminary determination that a claim meets the requirements of this section, the administrator shall make a demand for the amount claimed. Such demand may be made on the licensee, the surety, or both.

(4) If a receiver has been appointed by any court of competent jurisdiction in the state of Colorado to take charge of the assets of any licensee, such receiver, upon the written consent of the administrator, may demand and receive payment on the bond from the surety and, upon order of the court, may bring suit upon the bond in the name of such receiver, without joining the administrator as a party to the action.

(5) If a client has filed a duly verified claim with the administrator, who has refused to make demand upon the licensee or surety, the client may bring suit against the licensee or surety on the bond for the recovery of money due from such licensee without assignment of such bond to the client. Nothing in this section shall preclude a client from making a demand on both the licensee and the surety.

(6) (a) Said bond shall include a condition that the licensee shall, upon written demand, turn over to the client any and all notes, valuable papers, or evidence of indebtedness which may have been deposited with said licensee by the client, but such licensee shall not be required to return any such papers, notes, or evidence of indebtedness on debts in process of collection, unless reimbursed by the client for the services performed on the debt so evidenced.

(b) "Debts in process of collection" means any debts which have been in said licensee's hands for less than nine months, debts on which payments are being made, or on which payments have been promised, debts on which suit has been brought, and claims which have been forwarded to any other collection agency or attorney.

(7) Such bond shall cover all matters placed with the licensee during the term of the license granted and any renewal, except as provided in this section. Such bond may be enforced in the manner described in this section, by a receiver appointed to take charge of the assets of any licensee, or by any client if the administrator refuses to act. The aggregate liability of the surety, for any and all claims that may arise under such bond, shall not exceed the penalty of such bond.

(8) Any licensee, at any time, may file a new bond with the administrator. Any surety may file with the administrator notice of withdrawal as surety on the bond of any licensee. Upon filing of such new bond or on expiration of thirty days after the filing of notice of withdrawal as surety by the surety, the liability of the former surety for all future acts of the licensee shall terminate, except as provided in subsection (9) of this section. The administrator shall cancel the bond given by any surety company upon being advised its license to transact the business of fidelity and surety insurance has been revoked by the commissioner of insurance and shall notify the licensee.

(9) No action shall be brought upon any bond required to be given and filed, after the expiration of two years from the surrender, revocation, or expiration of the license issued thereunder. After the expiration of said period of two years, all liability of the surety upon the said bond shall cease if no action has been commenced upon said bond before the expiration of the period.

(10) In lieu of an individual surety bond, the administrator may authorize a blanket bond covering qualifying licensees in the sum of two million dollars in favor of the attorney general of the state of Colorado for use of the people of the state of Colorado and the administrator. Each new and renewal applicant shall pay a fee in an amount determined by the administrator to offset the applicant's share of the blanket bond. Conditions and procedures regarding the bond shall be as set forth in this section for individual bonds.

(11) This section does not apply to a person collecting or attempting to collect a debt owned by the person collecting or attempting to collect such debt.

Source: L. 85: Entire article R&RE, p. 432, § 1, effective July 1. L. 90: (1) to (3), (5), (7), (8), and (10) amended, p. 791, § 16, effective July 1. L. 95: Entire section amended,

p. 1235, § 18, effective July 1. **L. 2000:** (1) and (10) amended and (11) added, p. 942, § 18, effective July 1. **L. 2008:** (1) to (5), (7), (8), and (10) amended, p. 1732, § 11, effective July 1.

Editor's note: This section is similar to former §§ 12-14-107 and 12-14-119 as they existed prior to 1985.

ANNOTATION

Annotator's note. A case material to § 12-14-124, decided prior to the earliest source of its predecessor, § 12-14-107, L. 37, p. 443, § 7, has been included in the annotations to this section.

Parties who pay money to a collection agency to be applied upon debts owing by them cannot recover on the bond of such agency given under the provisions of this section, on the ground that such money was not turned over to their creditors. *Young v. Cox*, 96 Colo. 205, 40 P.2d 621 (1935).

The bond given by a collection agency under the provisions of this section does not cover failure of the agency to pay over to an assignee funds owing by the agency to the assignor on a deposit or money made by the assignor with the agency. *Young v. Cox*, 96 Colo. 205, 40 P.2d 621 (1935).

Board's refusal to take any further action was tantamount to a denial and constituted a final order subject to judicial review. *United Fin. Credit v. Colo. Collection Agency Bd.*, 892 P.2d 446 (Colo. App. 1995).

12-14-125. Debt collectors - registration required.

(1) Repealed.

(2) (Deleted by amendment, L. 95, p. 1237, § 19, effective July 1, 1995.)

Source: **L. 85:** Entire article R&RE, p. 433, § 1, effective July 1. **L. 90:** Entire section R&RE, p. 793, § 17, effective July 1. **L. 95:** Entire section amended, p. 1237, § 19, effective July 1. **L. 2000:** (1) repealed, p. 943, § 19, effective July 1.

Editor's note: This section was similar to former § 12-14-121 as it existed prior to 1990.

12-14-126. Solicitor - registration required. (Repealed)

Source: **L. 85:** Entire article R&RE, p. 434, § 1, effective July 1. **L. 90:** Entire section amended, R&RE, p. 793, § 18, effective July 1. **L. 95:** Entire section amended, p. 1237, § 20, effective July 1. **L. 2000:** Entire section repealed, p. 943, § 20, effective July 1.

Editor's note: This section was similar to former § 12-14-122 as it existed prior to 1990.

12-14-127. Debt collectors and solicitors - certificates of registration - application - expiration - notification of change required. (Repealed)

Source: **L. 85:** Entire article R&RE, p. 434, § 1, effective July 1. **L. 87:** (6) and (8) amended, p. 944, § 28, effective March 13. **L. 90:** Entire section R&RE, p. 793, § 19, effective July 1. **L. 95:** Entire section repealed, p. 1237, § 21, effective July 1.

Editor's note: This section was similar to former §§ 12-14-121 and 12-14-122 as they existed prior to 1990.

12-14-128. Unlawful acts. (1) In addition to the unlawful acts specified in sections 12-14-112 and 12-14-115, it is unlawful and a violation of this article for any person:

(a) To refuse or fail to comply with section 12-14-104, 12-14-105, 12-14-106, 12-14-107, 12-14-108, 12-14-109, 12-14-110, 12-14-118, 12-14-119 (1), or 12-14-123 (1) (b) to (1) (e) or (2);

(b) To aid or abet any person operating or attempting to operate in violation of this article, including but not limited to section 12-14-115; except that nothing in this article

shall prevent any licensed collection agency from accepting, as forwarder, claims for collection from any collection agency or attorney whose place of business is outside this state;

(c) To recover or attempt to recover treble damages for any check, draft, or order not paid on presentment without complying with the provisions of section 13-21-109, C.R.S.

(2) It is unlawful and a violation of this article for any licensee or any attorney representing a licensee to invoke a cognovit clause in any note so as to confess judgment.

(3) It is unlawful and a violation of this article for any licensee to render or to advertise that it will render legal services; except that a licensee may solicit claims for collection and take assignments and pursue the collection thereof subject to the provisions of law concerning the unauthorized practice of law.

(4) It is unlawful and a violation of this article for any licensee, collections manager, debt collector, or solicitor:

(a) To refuse or fail to comply with a rule adopted pursuant to this article or any lawful order of the administrator; or

(b) To aid or abet any person in such refusal or failure.

(5) It is unlawful and a violation of this article for any person to falsify any information or make any misleading statements in any application authorized under this article.

(6) Any officer or agent of a corporation who personally participates in any violation of this article shall be subject to the penalties prescribed in section 12-14-129 for individuals.

Source: L. 85: Entire article R&RE, p. 435, § 1, effective July 1. L. 89: (5.5) added, p. 756, § 3, effective July 1. L. 90: Entire section R&RE, p. 794, § 20, effective July 1. L. 95: (1) and (4) amended, p. 1238, § 22, effective July 1. L. 2000: (1)(a) and (4)(a) amended, p. 943, § 21, effective July 1. L. 2008: (4)(a) amended, p. 1733, § 12, effective July 1.

Editor's note: This section is similar to former § 12-14-128 as it existed prior to 1990.

12-14-129. Criminal penalties. Any person who violates any provision of section 12-14-128 (1), (2), (3), or (4) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 85: Entire article R&RE, p. 435, § 1, effective July 1. L. 90: Entire section R&RE, p. 795, § 21, effective July 1. L. 95: Entire section amended, p. 1239, § 23, effective July 1. L. 2002: Entire section amended, p. 1474, § 54, effective October 1.

Editor's note: This section is similar to former § 12-14-131 as it existed prior to 1990.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-14-130. Complaint - investigations - powers of administrator - sanctions.
(1) Upon the filing with the administrator by any interested person of a written complaint charging any person with a violation of this article, any rule adopted pursuant to this article, or any lawful order of the administrator, the administrator shall conduct an investigation thereof.

(2) For reasonable cause, the administrator may, on its own motion, conduct an investigation of the conduct of any person concerning compliance with this article.

(3) If any licensee or one of its principals or collections managers is convicted of or enters a plea of guilty or nolo contendere to any crime specified in part 4 of article 4, in part 1, 2, 3, 5, 7, or 9 of article 5, or in article 5.5 of title 18, C.R.S., or any similar crime under the jurisdiction of any federal court or court of another state, the conviction or plea shall constitute grounds for disciplinary action under this section.

(4) In any proceeding held under this section, the administrator may accept as prima facie evidence of grounds for disciplinary or adverse action any disciplinary or adverse

action taken against a licensee, the licensee's principals, debt collector, solicitor, or collections manager by another jurisdiction that issues professional, occupational, or business licenses, if the conduct that prompted the disciplinary or adverse action by that jurisdiction would be grounds for disciplinary action under this section.

(5) For reasonable cause, the administrator or the administrator's designee has the right, during normal business hours without resort to subpoena, to examine the books, records, and files of any licensee. If the books, records, and files are located outside Colorado, the licensee shall bear all expenses in making them available.

(6) (a) For reasonable cause, the administrator may require the making and filing, by any licensee, at any time, of a written, verified statement of the licensee's assets and liabilities, including, if requested, a detailed statement of amounts due claimants. The administrator may also require an audited statement when cause has been shown that an audited statement is needed.

(b) Any financial statement of any applicant or licensee required to be filed with the administrator shall not be a public record but may be introduced in evidence in any court action or in any administrative action involving the applicant or licensee.

(7) For the purpose of any proceeding under this article, the administrator may subpoena witnesses and compel them to give testimony under oath. If any subpoenaed witness fails or refuses to appear or testify, the subpoenaing authority may petition the district court, and, upon proper showing, the court may order the witness to appear and testify. Disobedience of the order of court may be punished as a contempt of court.

(8) The administrator may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct any proceedings authorized under this article.

(9) If the administrator finds cause to believe a licensee or collections manager has violated this article, the rules adopted pursuant to this article, or any lawful order of the administrator, the administrator shall so notify the licensee or collections manager and hold a hearing. Any proceedings conducted pursuant to this section shall be in accordance with article 4 of title 24, C.R.S.

(10) (a) If the administrator or the administrative law judge finds that the licensee or collections manager has violated this article, the rules adopted pursuant to this article, or any lawful order of the administrator, or if the licensee fraudulently obtained a license, the administrator may issue letters of admonition; deny, revoke, or suspend the license of such licensee or approval of the collections manager; place such licensee or collections manager on probation; or impose administrative fines in an amount up to one thousand five hundred dollars per violation on the licensee or collections manager.

(b) The administrator may issue letters of admonition pursuant to paragraph (a) of this subsection (10) without a hearing; except that the licensee or collections manager receiving the letter of admonition may request a hearing before the administrator to appeal the issuance of the letter.

(c) A letter of admonition may be issued to a licensee or collections manager whether or not a license or approval has been surrendered prior to said issuance.

(d) No person whose license has been revoked shall be licensed again under the terms of this article for five years. No person hired as a collections manager whose approval has been terminated by the administrator for a violation of this article shall be hired again as a collections manager for five years.

(11) The court of appeals shall have jurisdiction to review all final actions and orders that are subject to judicial review of the administrator. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

(12) Members of the collection agency board, the administrator, expert witnesses, and consultants shall be immune from civil suit when they perform any duties in connection with any proceedings authorized under this section in good faith. Any person who files a complaint in good faith under this section shall be immune from civil suit.

Source: L. 85: Entire article R&RE, p. 436, § 1, effective July 1. L. 90: Entire section R&RE, p. 795, § 22, effective July 1. L. 95: (1) to (4), (9), and (10) amended, p. 1239, § 24, effective July 1. L. 2000: (4), (10)(a), (10)(b), and (10)(d) amended, p. 943, § 22,

effective July 1. **L. 2003:** (2), (5), and (6)(a) amended, p. 1869, § 10, effective May 21. **L. 2004:** (4) amended, p. 1193, § 30, effective August 4. **L. 2008:** (1) to (9), (10)(a), (10)(b), (11), and (12) amended, p. 1733, § 13, effective July 1.

Editor's note: This section is similar to former § 12-14-127 as it existed prior to 1990.

ANNOTATION

Board's refusal to take any further action was tantamount to a denial and constituted a final order subject to judicial review. *United Fin. Credit v. Colo. Collection Agency Bd.*, 892 P.2d 446 (Colo. App. 1995).

Applied in *B.C. Inv. Co. v. Throm*, 650 P.2d 1333 (Colo. App. 1982) (decided under former § 12-14-121).

12-14-130.1. Debt collectors for the department of personnel - complaint - disciplinary procedures. (1) Any interested person may file a written complaint with the executive director of the department of personnel charging a debt collector in the employ of the department of personnel with a violation of:

- (a) This article or a rule promulgated pursuant thereto;
- (b) A lawful order of the state board of ethics; or
- (c) The standards of conduct set forth in the code of conduct developed by the department of personnel for such debt collectors.

(2) Each complaint filed pursuant to this section shall be referred to the executive director of the department of personnel who shall conduct an investigation to determine if a violation of subsection (1) of this section occurred. If the executive director makes a determination that a violation did occur, the debt collector who is the subject of the complaint shall be subject to the disciplinary procedures set forth in rules adopted by the state personnel board. If a determination made pursuant to this subsection (2) is unsatisfactory to any party, an appeal may be made to the board of ethics for the executive branch of state government in the office of the governor.

(3) If the executive director of the department of personnel, or the board of ethics in the case of an appeal, makes a determination that a debt collector in the employ of the department of personnel has acted in violation of this article or a rule promulgated pursuant thereto, a lawful order of the state board of ethics, or the code of conduct described in paragraph (c) of subsection (1) of this section, such determination shall be made a part of the personnel file of the debt collector against whom the complaint was filed.

Source: **L. 95:** Entire section added, p. 1240, § 25, effective July 1. **L. 96:** Entire section amended, p. 1468, § 9, effective June 1.

12-14-131. Records. The administrator shall keep a suitable record of all license applications and bonds required to be filed. Such record shall state whether a license has been issued under such application and bond and, if revoked, the date of the filing of the order of revocation. The administrator shall keep a list of each person who has had a license revoked or has been terminated as a collections manager for a violation of this article. In such record, all licenses issued shall be indicated by their serial numbers and the names and addresses of the licensees. This section shall apply to renewal applications and renewal licenses. Such record shall be open for inspection as a public record in the office of the administrator.

Source: **L. 85:** Entire article R&RE, p. 436, § 1, effective July 1. **L. 90:** Entire section R&RE, p. 796, § 23, effective July 1. **L. 95:** Entire section amended, p. 1241, § 26, effective July 1. **L. 2000:** Entire section amended, p. 944, § 23, effective July 1.

Editor's note: This section is similar to former § 12-14-129 as it existed prior to 1990.

12-14-132. Jurisdiction of courts. County courts shall have concurrent jurisdiction with the district courts of this state in all criminal prosecutions for violations of this article.

Source: L. 85: Entire article R&RE, p. 436, § 1, effective July 1.

Editor's note: This section is similar to former § 12-14-126 as it existed prior to 1985.

12-14-133. Duty of district attorney. It is the duty of the district attorney to prosecute all violations of the provisions of this article occurring within his district.

Source: L. 85: Entire article R&RE, p. 436, § 1, effective July 1.

Editor's note: This section is similar to former § 12-14-127 as it existed prior to 1985.

12-14-134. Remedies. The remedies provided in this article are in addition to and not exclusive of any other remedies provided by law.

Source: L. 85: Entire article R&RE, p. 436, § 1, effective July 1.

Editor's note: This section is similar to former § 12-14-128 as it existed prior to 1985.

ANNOTATION

Because it apparently was not the general assembly's intention to abrogate pre-existing common law duties and remedies by the enactment of this statutory scheme, plaintiff su-

ing a collection agency under § 12-14-113 may recover exemplary damages in addition to damages provided under the statute. Virdanco, Inc. v. MTS Int'l 820 P.2d 352 (Colo. App. 1991).

12-14-135. Injunction - receiver. The district court in and for the city and county of Denver, upon application of the administrator, may issue an injunction or other appropriate order restraining any person from a violation of this article and may appoint a receiver or award other relief to effectuate the provisions of this article; order restitution for consumers or creditors for violations of this article; impose civil penalties up to one thousand five hundred dollars per violation of this article; and award reasonable costs and attorney fees to the administrator if the administrator prevails in an action brought under this article. This provision shall be in addition to any other remedy and shall not prohibit the enforcement of any other law. The administrator shall not be required to show irreparable injury or to post a bond.

Source: L. 85: Entire article R&RE, p. 436, § 1, effective July 1. L. 2008: Entire section amended, p. 1735, § 14, effective July 1. L. 2011: Entire section amended, (HB 11-1221), ch. 121, p. 382, § 5, effective July 1.

Editor's note: This section is similar to former § 12-14-134 as it existed prior to 1985.

12-14-136. Disposition of fees and fines. (1) (a) All revenue, except fines, collected pursuant to this article shall be collected by the administrator and transmitted to the state treasurer, who shall credit the same to the collection agency cash fund, which fund is hereby created. The general assembly shall make annual appropriations from such fund for the uses and purposes of this article. All revenue credited to such fund, including earned interest, shall be used for the administration and enforcement of this article.

(b) Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on March 27, 2002, the state treasurer shall deduct four hundred sixty-two thousand dollars from the collection agency cash fund and transfer such sum to the general fund.

(c) Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on March 5, 2003, the state treasurer shall deduct one hundred twenty thousand dollars from the collection agency cash fund and transfer such sum to the general fund.

(2) All fines collected pursuant to this article, including but not limited to fines collected pursuant to section 12-14-130, shall be collected by the administrator and transmitted to the state treasurer, who shall credit the same to the general fund.

Source: **L. 85:** Entire article R&RE, p. 436, § 1, effective July 1. **L. 90:** Entire section R&RE, p. 797, § 24, effective July 1. **L. 2000:** Entire section amended, p. 944, § 24, effective July 1. **L. 2002:** (1) amended, p. 151, § 5, effective March 27. **L. 2003:** (1)(c) added, p. 455, § 6, effective March 5; (2) amended, p. 1869, § 11, effective May 21.

Editor's note: This section is similar to former § 12-14-126 as it existed prior to 1990.

12-14-137. Repeal of article. This article is repealed, effective July 1, 2017.

Source: **L. 85:** Entire article R&RE, p. 437, § 1. **L. 88:** Entire section amended, p. 929, § 6, effective April 28. **L. 90:** Entire section amended, p. 797, § 25, effective July 1. **L. 2000:** Entire section amended, p. 945, § 25, effective July 1. **L. 2003:** Entire section amended, p. 1869, § 12, effective May 21. **L. 2008:** Entire section amended, p. 1735, § 15, effective July 1.

ARTICLE 14.1

Colorado Child Support Collection Consumer Protection Act

12-14.1-101.	Legislative declaration.	12-14.1-107.	Accounting for collections.
12-14.1-102.	Definitions.	12-14.1-108.	Verification of account information.
12-14.1-103.	Application of the "Colorado Fair Debt Collection Practices Act".	12-14.1-109.	Cancellation or termination of private child support enforcement service contract.
12-14.1-104.	Prohibited practices.	12-14.1-110.	Civil liability.
12-14.1-105.	Fees.	12-14.1-111.	Administrative enforcement.
12-14.1-106.	Requirements relating to private child support enforcement service contracts.	12-14.1-112.	Statute of limitations.
		12-14.1-113.	Notice - rules.

12-14.1-101. Legislative declaration. The general assembly hereby finds and determines that, to ensure that families receive the maximum amount of child support established by court or administrative order, additional consumer protections are needed for parents entitled to receive child support who contract with private collection agencies for the collection of child support.

Source: **L. 2006:** Entire article added, p. 360, § 1, effective July 1.

12-14.1-102. Definitions. As used in this article, unless the context otherwise requires: (1) "Arrears" or "arrearages" shall have the same meaning as provided in section 26-13.5-102 (2), C.R.S.

(2) "Child support" means any amount required to be paid pursuant to a judicial or administrative child support order.

(3) "Child support debt" shall have the same meaning as provided in section 26-13.5-102 (3), C.R.S.

(4) "Child support enforcement service" means a service, including related financial accounting services, performed directly or indirectly for the purpose of causing a payment required, or allegedly required, by a child support order to be made to the obligee to whom the payment is owed or to an agent of that individual.

(5) “Child support order” means any judgment, decree, order, or administrative order of support in favor of an obligee, whether temporary, permanent, final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered, requiring the payment of current child support, child support arrears, child support debt, retroactive support, or medical support, whether or not such order is combined with an order for maintenance.

(6) “Current child support” means the ongoing periodic support obligation that an obligor is required to pay pursuant to a child support order.

(7) “Obligee” means an individual who is owed child support under a child support order and who has entered or may enter into a contract with a collector.

(8) “Obligor” means any person owing or alleged to owe a duty of child support or against whom a proceeding for the establishment or enforcement of a duty to pay child support is commenced.

(9) (a) “Private child support collector” or “collector”, except as provided in paragraph (b) of this subsection (9), means a person or entity who performs, or offers to perform, a child support enforcement service for an obligee under one or more of the following conditions:

(I) The obligee lives in Colorado at the time the contract is signed;

(II) The collector has a place of business or is licensed to conduct business in Colorado; or

(III) The collector contacts more than twenty-five obligors per year who live in Colorado.

(b) The term “private child support collector” does not include:

(I) A person or entity described in section 12-14-103 (2) (b);

(II) A nonprofit organization that is exempt from taxation under section 501(c)(3) of the federal “Internal Revenue Code of 1986” and charges no more than a nominal fee for providing assistance to any obligee with regard to the collection of child support;

(III) An attorney licensed to practice law in the state of Colorado;

(IV) An entity operating as an independent contractor with a county government agency that contracts to provide services that a delegate child support enforcement unit is required by law to provide; or

(V) A delegate child support enforcement unit acting pursuant to article 13.5 of title 26, C.R.S.

(10) “Private child support enforcement service contract” or “contract” means a contract or agreement, as described in section 12-14.1-106, pursuant to which a collector agrees to perform a child support enforcement service for an obligee for a fee.

(11) “State agency” means a government agency or its contractual agent administering a state plan approved under Title IV-D of the federal “Social Security Act”, as amended.

Source: L. 2006: Entire article added, p. 360, § 1, effective July 1.

Cross references: For the federal “Internal Revenue Code of 1986”, see title 26 of the United States Code. For the federal “Social Security Act”, see 49 Stat. 620, codified at 42 U.S.C. sec. 301 et seq. For Title IV-D of the federal “Social Security Act”, see 88 Stat. 2351, codified at 42 U.S.C. sec. 651 et seq.

12-14.1-103. Application of the “Colorado Fair Debt Collection Practices Act”.

(1) Except as otherwise provided by the particular provisions of this article, this article supplements the requirements of the “Colorado Fair Debt Collection Practices Act”, article 14 of this title, including but not limited to prohibited practices, licensing, and administrative and legal enforcement as it is applied to private child support collectors.

(2) Article 14 of this title also applies to private child support collectors.

Source: L. 2006: Entire article added, p. 362, § 1, effective July 1.

12-14.1-104. Prohibited practices. (1) A collector may not engage in any fraudulent, unfair, deceptive, or misleading act or practice in soliciting an obligee to enter into a

contract for the provision of child support enforcement services or in offering or performing a service pursuant to such a contract, including but not limited to the following:

(a) Imposing a fee or charge, including costs, for any payment collected through the efforts of or as a result of actions taken by a federal, state, or county agency, including but not limited to support collected from federal or state income tax refunds, unemployment benefits, or social security benefits. If the collector discovers, or is notified by the obligee or the federal, state, or county agency, that a payment was collected through the efforts of a federal, state, or county agency, the collector shall not assess fees on the payment. Any fees improperly retained shall be refunded to the obligee within seven business days.

(b) Designating a current child support payment as arrears, interest, or other amount owed;

(c) Intercepting or redirecting from the obligor, the obligor's employer, or on the behalf of the obligor to the collector any child support paid to the obligee if payment is ordered to be made through a central payment registry;

(d) Intercepting, redirecting, or collecting any amounts owed to a government agency under an assignment of rights resulting from the payment of public assistance to the obligee or owed to a state agency;

(e) When a child support order directs that payment be made through a central payment registry, suggesting or instructing that the obligor or the obligor's employer send the payment to the collector;

(f) Making a misleading representation or omitting a material disclosure that, as a result, is misleading with respect to the identity of any entity that has performed or may perform a child support enforcement service for any obligee;

(g) Requiring an obligee to sign a private child support enforcement contract that does not conform to the provisions of section 12-14.1-106;

(h) Sending an income-withholding order to an entity, unless the collector is authorized by state law to send the income-withholding order;

(i) Accepting a settlement offer made by an obligor before:

(I) The collector has reviewed all settlement offers with the obligee; and

(II) The obligee has expressly authorized the collector to accept the settlement offer;

(j) Requesting or requiring an obligee to waive the right of the obligee to accept a settlement offer; or

(k) Collecting or attempting to collect child support after the obligor notifies the collector pursuant to the procedure provided in section 12-14.1-108 (1) (a) (III) and (1) (a) (IV) that the obligor disputes the existence or amount of the child support obligation and the collector has not obtained written verification of the existence or amount of the obligation or a copy of the judgment against the obligor and mailed the obligor a copy of the verification of judgment.

Source: L. 2006: Entire article added, p. 362, § 1, effective July 1.

12-14.1-105. Fees. (1) A private child support collector may not charge an obligee a fee unless:

(a) Before the obligee authorizes the fee, the amount of the fee, including the basis upon which the amount of the fee is calculated, is described accurately to the obligee in simple, easy-to-understand language; and

(b) Before the obligee incurs the fee, the obligee has authorized the fee in writing.

(2) A collector's contract with an obligee shall be for a specific dollar amount of child support to be collected. The contract shall explain in easy-to-understand language how the amount is to be calculated and may include any statutory interest to which the obligee is entitled and other amounts ordered by the court.

(3) A collector may charge a contingency fee for the collection of child support that is based on a percentage of the total child support collected.

(4) The maximum fee that may be charged by a collector as specified in subsection (3) of this section shall not exceed thirty-five percent of any amount collected.

(5) No other fees, charges, or costs may be assessed against the obligee, including an application fee.

Source: L. 2006: Entire article added, p. 363, § 1, effective July 1.

12-14.1-106. Requirements relating to private child support enforcement service contracts. (1) In order to perform a child support enforcement service for an obligee, a collector shall enter into a written private child support enforcement service contract that:

- (a) Meets the requirements of this section;
- (b) Has been delivered to the obligee in a form that the obligee may keep;
- (c) Is dated and signed by the obligee and an authorized representative of the collector;
- (d) Fully discloses each term of the contract, any fees that may be imposed pursuant to the contract, and any amount that the obligee would be required to pay to the collector for services performed under section 12-14.1-109 if the contract were to be canceled or terminated by the obligee; and

- (e) Includes a copy of any other document the collector requires the obligee to sign.

(2) Before a collector offers or proposes to perform a child support enforcement service for an obligee, the collector shall deliver to the obligee the notice developed pursuant to the rule-making described in section 12-14.1-113 and shall obtain signed verification from the obligee that the obligee received the notice described in section 12-14.1-113.

(3) A private child support enforcement service contract shall contain the following:

- (a) A clear and accurate explanation of the amount of child support that will be collected;

- (b) A clear description of the child support enforcement services that may be provided pursuant to the contract;

- (c) A clear and accurate explanation of the fees that will be deducted and an example of how they are deducted;

- (d) A good faith estimate of the total amount of fees that will be charged pursuant to the contract;

- (e) The full legal name, principal business address, and telephone number of the collector and any agents who assist the collector in providing a child support enforcement service and any separate name, address, and telephone number that the obligee may need for communication about the case;

- (f) A complete and accurate copy of each disclosure and notice required by this article to be provided to the obligee before the obligee signs the contract;

- (g) A conspicuous statement in bold-faced type, in immediate proximity to and on the same page as the space reserved for the signature of the obligee, which shall read as follows:

You may cancel this contract at any time within thirty days of signing the contract or after any twelve consecutive months in which the collector fails to make a collection.

- (h) An explanation that the contract may be in effect for an extended period of time because of the difficulty in estimating how long it will take to collect the full amount of child support due under the contract; and

- (i) A statement that a collector may not assess fees on collections attributable to a federal, state, or county agency. Fees improperly retained shall be refunded within seven business days.

(4) A private child support enforcement service contract shall not include:

- (a) A mandatory arbitration clause that limits the rights of a person to seek judicial relief for a claim arising under the contract or this article;

- (b) A clause that requires the obligee to change the payee or redirect child support payments that would otherwise be payable to the obligee, a state agency administering a state plan approved under title IV-D of the federal "Social Security Act", as amended, or a central payment registry, if payment is ordered to be made through a central payment registry;

- (c) A clause that requires the obligee to close, or not open, a child support case with a county delegate child support enforcement unit or state agency administering a state plan approved under title IV-D of the federal "Social Security Act", as amended; and

(d) A clause that requires the obligee to waive his or her rights to review and consent to any modification of a contract entered into by the obligee.

(5) A private child support enforcement contract may not be modified by subsequent agreement unless the obligee has signed the subsequent agreement after receiving a written copy of the modifications.

(6) A private child support enforcement service contract shall be accompanied by a form, in duplicate, that has the heading "notice of cancellation" and contains a description of, in easy-to-understand language, the cancellation and termination provisions contained in section 12-14.1-109, the cancellation rights of the consumer obligee contained in section 12-14.1-109, and the principal business address of the collector.

(7) A collector who enters into a contract with an obligee shall retain a copy of the signed contract and the statement signed by the obligee acknowledging receipt of the preliminary notice required by subsection (2) of this section for a period of five years after the completion or settlement of the collection efforts by the collector or termination of the contract, whichever event occurs first.

Source: L. 2006: Entire article added, p. 364, § 1, effective July 1.

Cross references: For the federal "Social Security Act", see 49 Stat. 620, codified at 42 U.S.C. sec. 301 et seq. For Title IV-D of such act, see 88 Stat. 2351, codified at 42 U.S.C. sec. 651 et seq.

12-14.1-107. Accounting for collections. (1) A collector shall, on a monthly basis, provide to the obligee an accurate and up-to-date accounting that meets the requirements of rules promulgated by the administrator under section 12-14.1-113. The accounting shall be provided to the obligee by mail, telephone, or secure internet connection. The obligee shall request in writing the preferred method that the collector should use to provide the accounting to the obligee.

(2) In addition to the monthly accounting required pursuant to subsection (1) of this section, on request of the obligee at any time, the collector shall provide the obligee with any information pertaining to the case of the obligee, including the information described in this section, not more than five business days after the date the collector receives the request.

Source: L. 2006: Entire article added, p. 366, § 1, effective July 1.

12-14.1-108. Verification of account information. (1) In lieu of section 12-14-109, the following verification provisions shall apply to the collection of child support by a collector:

(a) Not later than five days after a collector initially communicates with an obligor on behalf of an obligee with respect to the collection of child support due, unless the obligor has paid the child support, the collector shall send the obligor a written notice containing the following:

(I) The name of the obligee;

(II) A statement of the amount of the child support arrears, including any associated interest, late payment fee, or other charge authorized by law, and of the amount of the current child support owed by the obligor to the obligee;

(III) A statement that the collector assumes that the obligor owes child support to the obligee and that the amounts owed as described in the statement pursuant to subparagraph (II) of this paragraph (a) are correct, unless the obligor disputes the existence or amount of the child support obligation within thirty days after receipt of the notice;

(IV) A statement that if, within the thirty-day period described in subparagraph (III) of this paragraph (a), the obligor notifies the collector in writing that the obligor disputes the existence or amount of the child support obligation, the collector will cease efforts to collect the child support, subject to paragraph (b) of this subsection (1), until the collector:

(A) Obtains written verification of the existence or amount of the obligation or a copy of the judgment against the obligor; and

(B) Mails to the obligor a copy of the verification or judgment; and

(V) A statement that the arrears balance reflected does not include any amounts owed to a county delegate child support enforcement unit or state agency administering a state plan approved under title IV-D of the federal "Social Security Act", as amended.

(b) A statement made by a collector pursuant to subparagraph (IV) of paragraph (a) of this subsection (1) shall not affect the enforceability of a valid income-withholding order or assignment issued by an appropriate authority under state law for child support collection purposes.

(c) The failure of an obligor to dispute the amount or existence of child support pursuant to subparagraph (IV) of paragraph (a) of this subsection (1) shall not be construed as an admission of liability by the obligor.

Source: L. 2006: Entire article added, p. 366, § 1, effective July 1.

Cross references: For the federal "Social Security Act", see 49 Stat. 620, codified at 42 U.S.C. sec. 301 et seq. For Title IV-D of such act, see 88 Stat. 2351, codified at 42 U.S.C. sec. 651 et seq.

12-14.1-109. Cancellation or termination of private child support enforcement service contract. (1) An obligee may cancel a private child support enforcement service contract with a collector at any time within thirty days of signing the contract or after any twelve consecutive months in which the collector fails to make a collection. The notification of cancellation shall be in writing and shall be effective upon receipt of the notice by the collector. If the notification of cancellation is received by the collector subsequent to the thirty-day time period following the signing of the contract, the notification shall be valid if post-marked within the thirty-day time period.

(2) Subject to the provisions of subsection (3) of this section, a private child support enforcement service contract may provide that, notwithstanding the cancellation of the contract by the obligee, the collector shall have the right to receive a fee for arrears collected under the contract if, as a result of the efforts of the collector, the obligee subsequently receives child support arrears or interest subject to collection pursuant to the contract. No other fees or costs shall be assessed for the cancellation of the contract.

(3) An obligee shall have no obligation pursuant to the private child support enforcement service contract if:

(a) The obligee cancels the contract:

(I) At any time before midnight of the thirtieth business day after signing the contract; or

(II) After any twelve consecutive months in which the private child support collector fails to make a collection; or

(b) The collector violates this article with respect to the contract.

(4) A contract shall terminate without action by either party when the contract amount has been collected.

Source: L. 2006: Entire article added, p. 367, § 1, effective July 1.

12-14.1-110. Civil liability. The provisions of section 12-14-113, with the exception of the statute of limitations set forth in subsection (4) of said section, shall apply to any violation of this article and are in addition to and not exclusive of any other remedies provided by law.

Source: L. 2006: Entire article added, p. 368, § 1, effective July 1.

12-14.1-111. Administrative enforcement. This article shall be enforced by the administrator, as defined in section 12-14-103 (1), and may be enforced as provided in article 14 of this title. Except as otherwise provided in or limited by this article, all rules adopted pursuant to section 12-14-114 shall apply to this article.

Source: L. 2006: Entire article added, p. 368, § 1, effective July 1.

12-14.1-112. Statute of limitations. (1) An action to enforce any liability under this article may be brought before the later of:

(a) The end of the five-year period beginning on the date of the occurrence of the violation involved; or

(b) In a case in which a collector willfully misrepresents any information that the collector is required by any provision of this article to disclose to an obligee and the misrepresentation is material to the establishment of the liability of the collector to the obligee under this article, five years after the date the obligee discovers the misrepresentation.

Source: L. 2006: Entire article added, p. 368, § 1, effective July 1.

12-14.1-113. Notice - rules. (1) The administrator shall promulgate rules related to the notice required to be provided to the obligee in section 12-14.1-106 (2) and the accounting required to be provided in section 12-14.1-107.

(2) The notice required by section 12-14.1-106 (2) shall, at a minimum, address the following:

(a) The option that child support collection services are offered at minimal or no cost through government child support collection services in every county in Colorado and in every state;

(b) A statement that the collector cannot require a government child support collection service to send payments to any person but the obligee;

(c) A statement that the collector will not provide legal advice or act as legal counsel for the obligee;

(d) A statement related to the rights the obligee has pursuant to this article; and

(e) A statement that the obligee may have the private child support enforcement service contract reviewed by an attorney.

Source: L. 2006: Entire article added, p. 369, § 1, effective July 1.

ARTICLE 14.3

Colorado Consumer Credit Reporting Act

12-14.3-101.	Short title.	12-14.3-106.5.	Consumer report information block.
12-14.3-101.5.	Legislative declaration.	12-14.3-106.6.	Security freeze - timing - covered entities - cost.
12-14.3-102.	Definitions.	12-14.3-106.7.	Notice of rights.
12-14.3-103.	Permissible purposes - prohibition.	12-14.3-106.8.	Security freeze - prohibition of changing official information in credit report.
12-14.3-103.5.	Consumer reports - accuracy of information.	12-14.3-106.9.	Security freeze - exemptions.
12-14.3-104.	Disclosures to consumers.	12-14.3-107.	Consumer's right to file action in court or arbitrate disputes.
12-14.3-104.3.	Credit scoring related to the extension of credit secured by a dwelling.	12-14.3-108.	Violations.
12-14.3-105.	Charges for certain disclosures.	12-14.3-109.	Provisions of article cumulative.
12-14.3-105.3.	Reporting of information prohibited.		
12-14.3-106.	Procedure for disputed information.		

12-14.3-101. Short title. This article shall be known and may be cited as the "Colorado Consumer Credit Reporting Act".

Source: L. 95: Entire article added, p. 532, § 3, effective January 1, 1996.

ANNOTATION

Law reviews. For article, "New Limitations and Requirements in Reviewing Applicants' and Employees' Credit Records", see 27 Colo. Law. 95 (July 1998).

12-14.3-101.5. Legislative declaration. The general assembly finds and declares that the use of consumer reporting agencies is increasing rapidly as consumer credit transactions become the rule rather than the exception in every-day consumer purchasing. Consumer credit reports by consumer reporting agencies may report on a consumer's credit worthiness, credit standing, credit capacity, debts, character, general reputation, personal characteristics, or mode of living as factors to establish a consumer's eligibility for credit insurance or employment. When a consumer reporting agency undertakes a business that has the potential to profoundly affect an individual consumer's life, whether for good or ill, it is incumbent upon such agencies to ensure that the information they are providing is accurate. Inaccurate consumer credit reports directly impair the efficiency of the banking system and unfair credit reporting methods undermine the public confidence in the banking system. There is a need to ensure that consumer reporting agencies exercise their responsibilities with fairness, impartiality, and respect for the consumer's rights. The general assembly further finds and declares that, in the event the information provided by a consumer reporting agency in a consumer credit report is inaccurate, the consumer has the right to have that information corrected in a swift and uncomplicated way.

Source: L. 97: Entire section added, p. 385, § 1, effective August 1.

12-14.3-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Adverse action" includes:

- (a) The denial of, increase in any charge for, or reduction in the amount of insurance for personal, family, or household purposes;
- (b) The denial of employment or any other decision for employment purposes that adversely affects a current or prospective employee; and
- (c) An action or determination with respect to a consumer's application for credit under a credit arrangement that is adverse to the consumer's interests.

(2) "Consumer" means a natural person residing in the state of Colorado.

(3) (a) "Consumer report" means any written, oral, or other communication or any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, debts, character, general reputation, personal characteristics, or mode of living, which is used or expected to be used or collected, in whole or in part, as a factor to establish a consumer's eligibility for credit or insurance to be used for personal, family, or household purposes, employment purposes, or any other purpose authorized pursuant to applicable provisions of the federal "Fair Credit Reporting Act", 15 U.S.C. secs. 1681a and 1681b, as amended.

(b) "Consumer report" does not include:

(I) Any report containing information solely as to a transaction between the consumer and the person making the report;

(II) Any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(III) Any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys a decision with respect to the request, if the third party advises the consumer of the name and address of the person to whom the request was made and the person makes the disclosures that must be made to the consumer pursuant to the provisions of the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681m, as amended, in the event of adverse action.

(4) "Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties. "Consumer reporting

agency” shall not include any business entity that provides check verification or check guarantee services only.

(4.3) “Credit scoring” means the practice of quantifying the credit risk a person presents using such person’s history, characteristics, or attributes in a formula designed to objectively rate credit risk or insurance risk of loss.

(4.5) “Creditworthiness” means any entry in a consumer’s credit file that impacts the ability of a consumer to obtain and retain credit, employment, business or professional licenses, investment opportunities, or insurance. Entries contained in a consumer file or in a consumer report that affect creditworthiness shall include, but not be limited to, payment information, defaults, judgments, liens, bankruptcies, collections, records of arrest and indictments, and multiple-credit inquiries.

(4.7) “Dwelling” means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes any individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence.

(5) “Employment purposes”, when used in connection with a consumer report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

(6) “File” means all of the information on the consumer which is recorded and retained by a consumer reporting agency regardless of how the information is stored.

(7) “Investigative consumer report” means a consumer report or portion thereof in which information on a consumer’s character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer, reported on or with others with whom the consumer is acquainted or who may have knowledge concerning any such items of information. The term does not include specific factual information on a consumer’s credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(7.5) “Key factors” means all relevant elements or reasons adversely affecting a specific credit score assigned to a consumer, listed in the order of their importance, based on their respective effects on the credit score.

(8) “Person” means any natural person, firm, corporation, or partnership.

(9) “Proper identification” means information generally deemed sufficient to identify a person. If the consumer is unable to reasonably identify himself or herself with the information described above, a consumer reporting agency may require additional information concerning the consumer’s employment and personal or family history in order to verify his or her identity.

(10) “Reviewing the account” means activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(11) “Security freeze” or “freeze” means a notice placed in a consumer report, at the request of a consumer and subject to certain exemptions, that prohibits the consumer reporting agency from releasing the consumer report or any information from it without the express authorization of the consumer.

Source: L. 95: Entire article added, p. 532, § 3, effective January 1, 1996. L. 2000: (4.3) added, p. 180, § 1, effective January 1, 2001. L. 2002: (4.7) and (7.5) added, p. 645, § 1, effective July 1, 2003. L. 2005: (9) to (11) added, p. 839, § 1, effective July 1, 2006.

12-14.3-103. Permissible purposes - prohibition. (1) A consumer reporting agency may furnish a consumer report only under the following circumstances:

(a) In response to an order of a court having jurisdiction to issue such an order;

(b) In accordance with the written instructions of the consumer to whom it relates; and

(c) To a person which the consumer reporting agency has reason to believe:

(I) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving an extension of credit to, or review or collection of an account of, the consumer and if the consumer chooses to provide their social security number to the user, the user shall include the social security number with, or as a supplement to, a request for a consumer report, and include the social

security number when transmitting subsequent credit information to a consumer reporting agency; or

(II) Intends to use the information for employment purposes only if an applicant or employee is first informed that a credit report may be requested in connection with his or her application for employment and the consumer consents in writing to the same; or

(III) Intends to use credit scoring information in connection with the underwriting or rating of insurance involving the consumer and such person establishes that the consumer has received written notification, or notification in the same medium as the application for insurance, that a credit report may be requested in connection with his or her application for insurance, and that credit scoring information may be used to determine either the consumer's eligibility for insurance or the premium to be charged to the consumer; or

(IV) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(V) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer; or

(VI) Intends to use the information for any purpose allowed under the federal "Fair Credit Reporting Act" and rules promulgated pursuant to such act.

(2) A consumer reporting agency may not, by contract or otherwise, prohibit a user of any consumer report or investigative consumer report from, upon request of the consumer, disclosing and explaining the contents of such report or providing a copy of the report to the consumer to whom it relates if adverse action against the consumer has been taken or is contemplated by the user of the consumer report or investigative consumer report, based in whole or in part on such report. No user or consumer reporting agency shall be held liable or otherwise responsible for a disclosed or copied report when acting pursuant to this subsection (2) nor shall such disclosure or provision of a copy of the report, by themselves, make the user a consumer reporting agency.

Source: **L. 95:** Entire article added, p. 533, § 3, effective January 1, 1996; (1)(c) amended, p. 1247, § 28, effective January 1, 1996. **L. 97:** (1)(c)(I) to (1)(c)(III) and (2) amended, p. 386, § 3, effective August 1. **L. 2000:** (1)(c)(III) amended, p. 180, § 2, effective January 1, 2001.

Cross references: For the federal "Fair Credit Reporting Act", see Pub.L. 90-321, codified at 15 U.S.C. sec. 1681 et seq., as amended.

12-14.3-103.5. Consumer reports - accuracy of information. Whenever a consumer reporting agency prepares a consumer report, the agency shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the consumer about whom the report relates, including the use of the consumer's social security number if, in accordance with section 12-14.3-103 (1) (c) (I), the consumer's social security number is provided to the consumer reporting agency by a person intending to use the information contained in a consumer report in connection with a credit transaction involving the consumer and the social security number was initially provided to the user by the consumer in connection with such transaction.

Source: **L. 2002:** Entire section added, p. 381, § 1, effective April 25.

12-14.3-104. Disclosures to consumers. (1) A consumer reporting agency shall, upon written or verbal request and proper identification of any consumer, clearly, accurately, and in a manner that is understandable to the consumer, disclose to the consumer, in writing, all information in its files at the time of the request pertaining to the consumer, including but not limited to:

(a) The names of all persons requesting credit information pertaining to the consumer during the prior twelve-month period and the date of each request;

(b) A set of instructions, presented in a manner that is understandable to the consumer, describing how information is presented on its written disclosure of the file; and

(c) A toll-free number for use in resolving the dispute if the consumer submitted a written dispute to the consumer reporting agency, which operates on a nationwide basis.

(2) (a) A consumer reporting agency shall notify a consumer, by letter sent by first-class mail, that the consumer reporting agency will provide the consumer with a disclosure copy of his or her consumer file at no charge and a toll-free telephone number to call to provide the consumer reporting agency with the information necessary to request such copy, when one of the following events occurs within a twelve-month period:

(I) The consumer reporting agency has received eight credit inquiries pertaining to the consumer; or

(II) The consumer reporting agency has received a report that would add negative information to a consumer's file.

(b) A consumer reporting agency need only send one letter to a consumer per twelve-month period pursuant to paragraph (a) of this subsection (2) even if more than one such event occurs in that period.

(c) Any letter mailed to a consumer pursuant to paragraph (a) of this subsection (2) shall not contain any identifying information particular to that consumer including, but not limited to, social security number, place of employment, date of birth, or mother's maiden name.

(d) Any letter mailed to a consumer pursuant to paragraph (a) of this subsection (2) may be a form letter; except that each letter shall advise the consumer of the number and type of events that occurred relating to the consumer that initiated the letter. Such letter shall also include a notice or separate form the consumer may complete and return to the consumer reporting agency to request a free copy of such consumer's credit report.

(e) Each consumer reporting agency shall, upon request of a consumer, provide the consumer with one disclosure copy of his or her file per year at no charge whether or not the consumer has made the request in response to the notification required in paragraph (a) of this subsection (2). If the consumer requests more than one disclosure copy of his or her file per year pursuant to this paragraph (e), the consumer reporting agency may charge the consumer up to eight dollars for each additional disclosure copy.

Source: L. 95: Entire article added, p. 534, § 3, effective January 1, 1996. **L. 97:** IP(1) and (1)(b) amended and (2) added, p. 387, § 4, effective August 1. **L. 2000:** (1)(a), IP(2)(a), (2)(a)(I), and (2)(d) amended, p. 999, § 1, effective January 1, 2001.

12-14.3-104.3. Credit scoring related to the extension of credit secured by a dwelling. (1) In connection with an application for an extension of credit for a consumer purpose that is to be secured by a dwelling, the consumer reporting agency shall, upon the written request of the consumer, contained either in the application for an extension of credit or in a separate document, disclose to the consumer the following:

(a) The consumer's current credit score or the most recent credit score of the consumer that was previously calculated by the consumer reporting agency;

(b) The range of possible credit scores under the model used;

(c) The key factors, if any, not to exceed four, that adversely affected the credit score of the consumer in the model used;

(d) The date on which the credit score was created; and

(e) The name of the person or entity that provided the credit score or the credit file on the basis of which the credit score was created.

(2) (a) Nothing in subsection (1) of this section shall be construed to compel a consumer reporting agency to develop or disclose a credit score if the agency does not:

(I) Distribute scores that are used in connection with extensions of credit secured by residential real estate; or

(II) Develop credit scores that assist creditors in understanding the general credit behavior of the consumer and predicting future credit behavior.

(b) Nothing in subsection (1) of this section shall be construed to require a consumer reporting agency that distributes credit scores developed by another person or entity to

provide further explanation of those scores or to process a dispute that may arise about information; except that the consumer reporting agency shall be required to provide to the consumer the name of, and current contact information for, the person or entity that developed the score or developed the methodology for the score.

(c) Nothing in subsection (1) of this section shall be construed to require a consumer reporting agency to maintain credit scores in its files.

(d) Nothing in subsection (3) of this section shall be construed to compel disclosures of a credit score except upon specific request of a consumer. If a consumer requests a credit file and not the credit score, then the consumer shall be provided with the credit file together with a statement that the consumer may request and obtain a credit score.

(3) Pursuant to subsection (1) of this section, a consumer reporting agency shall supply to a consumer:

(a) A credit score that is derived from a credit scoring model that is widely distributed to users of credit scores by that consumer reporting agency in connection with any extension of credit secured by a dwelling; or

(b) A credit score accompanied by information specifically required to be disclosed pursuant to subsection (1) of this section that assists the consumer in understanding the credit scoring assessment of the credit behavior of the consumer and predictions about future credit behavior.

(4) For purposes of this section, "credit score" means a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default. The numerical value or the categorization derived from this analysis may also be referred to as a "risk predictor" or "risk score". "Credit score" does not include any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including, but not limited to, the loan value ratio, the amount of down payment, or a consumer's financial assets. "Credit score" does not include other elements of the underwriting process or underwriting decision.

(5) Notwithstanding any other provision of this article to the contrary, a consumer reporting agency may charge a reasonable fee for disclosing a credit score.

Source: L. 2002: Entire section added, p. 645, § 2, effective July 1, 2003.

12-14.3-105. Charges for certain disclosures. (1) A consumer reporting agency shall not impose a charge for:

(a) A request for a copy of the consumer's file made within sixty days after adverse action is taken; or

(b) Notifying any person designated by the consumer, pursuant to the applicable provisions of the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681i, as amended, of the deletion of information which is found to be inaccurate or which can no longer be verified; or

(c) A set of instructions for understanding the information presented on the consumer report and a toll free telephone number that consumers may utilize to obtain additional assistance concerning the consumer report; or

(d) The first copy of a consumer disclosure provided to a consumer each calendar year pursuant to section 12-14.3-104 (2) (a).

(2) For all other disclosures to consumers of information pertaining to the consumer, the consumer reporting agency may impose a reasonable charge, not to exceed the retail price of a written report rendered in the normal course of business to the customers of such agency for each request for information.

Source: L. 95: Entire article added, p. 535, § 3, effective January 1, 1996. **L. 97:** (1)(d) added, p. 388, § 5, effective August 1.

12-14.3-105.3. Reporting of information prohibited. (1) Except as authorized under subsection (2) of this section, no consumer reporting agency shall make any consumer report containing any of the following items of information:

(a) Cases under title 11 of the United States Code, or under the federal bankruptcy act that, from the date of entry of the order for relief or the date of adjudication, predate the report by more than ten years;

(b) Suits and judgments that, from the date of entry, predate the report by more than seven years or by more than the governing statute of limitations, whichever is the longer period;

(c) Paid tax liens that, from the date of payment, predate the report by more than seven years;

(d) Accounts placed for collection or charged to profit and loss that predate the report by more than seven years;

(e) Records of arrest, indictment, or conviction of a crime that, from the date of disposition, release, or parole, predate the report by more than seven years;

(f) Any other adverse item of information that predates the report by more than seven years.

(2) The provisions of subsection (1) of this section do not apply to the case of any consumer report to be used in connection with:

(a) A credit transaction involving, or that may reasonably be expected to involve, a principal amount of one hundred fifty thousand dollars or more;

(b) The underwriting of life insurance involving, or that may reasonably be expected to involve, a face amount of one hundred fifty thousand dollars or more; or

(c) The employment of an individual at an annual salary that equals or is reasonably expected to equal seventy-five thousand dollars or more.

(3) A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction or a direct marketing transaction, a consumer report that contains medical information about a consumer unless the consumer consents to the furnishing of the report.

(4) A consumer reporting agency shall not include, in a consumer report made to a person requesting credit information pertaining to a consumer, the names of any other persons who have requested credit information pertaining to that consumer or the number of such inquiries made more than one year preceding the date of the consumer report; except that such information shall be retained for two years and provided to the consumer as provided in this article.

(5) Notwithstanding the provisions of subsection (4) of this section, a consumer reporting agency shall not furnish to any person, including a developer of credit scoring, a record of inquiries in connection with a credit or insurance transaction that is not initiated by the consumer. The term "credit or insurance transaction that is not initiated by the consumer" does not include inquiries resulting from the collection of an account or for purposes of reviewing an account.

Source: L. 97: Entire section added, p. 388, § 6, effective August 1. L. 2002: (5) added, p. 381, § 2, effective April 25.

12-14.3-106. Procedure for disputed information. (1) If the completeness or accuracy of any item of information contained in the consumer's file is disputed by the consumer and the consumer notifies the consumer reporting agency directly of such dispute, the agency shall reinvestigate the item free of charge and record the current status of the disputed information on or before thirty business days after the date the agency receives notice conveyed by the consumer. The consumer reporting agency shall provide the consumer with the option of speaking directly to a representative of the agency to notify the agency of disputed information contained in the consumer's file.

(2) On or before five business days after the date a consumer reporting agency receives notice of a dispute from a consumer in accordance with subsection (1) of this section, the agency shall provide notice of the dispute to all persons who provided any item of information in dispute.

(3) Notwithstanding subsection (1) of this section, a consumer reporting agency may terminate a reinvestigation of information disputed by a consumer under such subsection (1) if the agency reasonably determines that such dispute by the consumer is frivolous or

irrelevant. Upon making such a determination, a consumer reporting agency shall promptly notify the consumer of such determination and the reasons therefor, by mail, or if authorized by the consumer for that purpose, by telephone. The presence of contradictory information in the consumer's file does not in and of itself constitute reasonable grounds for determining the dispute is frivolous or irrelevant.

(4) If, after a reinvestigation under subsection (1) of this section of any information disputed by a consumer, the information is found to be inaccurate or cannot be verified, the consumer reporting agency shall promptly delete such information from the consumer's file, revise the file, provide the consumer and, at the request of the consumer, any person that, within the last twelve months, requested the disputed information with a revised consumer report indicating that it is a revised consumer report, and refrain from reporting the information in subsequent reports. The consumer reporting agency shall advise the consumer that he or she has the right to have a copy of the revised consumer report sent by the consumer reporting agency to any person that requested the disputed information within the last twelve months.

(5) Information deleted pursuant to subsection (4) of this section may not be reinserted in the consumer's file unless the person who furnishes the information reinvestigates and states in writing or by electronic record to the consumer reporting agency that the information is complete and accurate.

(6) A consumer reporting agency shall provide written notice of the results of any reinvestigation or reinsertion made pursuant to this section within five business days of the completion of the reinvestigation or reinsertion. Such notice shall include:

- (a) A statement that the reinvestigation is complete;
- (b) A statement of the determination of the consumer reporting agency on the completeness or accuracy of the disputed information;
- (c) A copy of the consumer's file or consumer report and a description of the results of the reinvestigation;

(d) A notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the consumer reporting agency, including the name, business address, and, if available, the telephone number of any person contacted in connection with such information;

(e) A notification that the consumer has the right, pursuant to the applicable provisions of the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681i, as amended, to add a statement to the consumer's file disputing the accuracy or completeness of the information; and

(f) A notification of the consumer's rights to dispute resolution under section 12-14.3-107, which are available after the consumer has followed all dispute procedures described in this section and has received the notice specified under this subsection (6).

(7) Nothing in this section shall be construed to require a person who obtains a consumer report for resale to alter or correct any inaccuracy in such consumer report if the consumer report was not assembled or prepared by such person.

(8) The consumer reporting agency shall provide a person who provides credit information to the agency with the option to speak directly with a representative of the agency or to submit corrections to previously reported information by facsimile or other automated means when inaccurate information that was reported by such credit information provider appears on a consumer's file. The consumer reporting agency shall, in a period not to exceed five business days from the receipt of such faxed or automated information regarding such corrections, correct such inaccuracies on the consumer's file and, upon request, communicate such corrections to the person who submitted the initial request for corrections. The credit information provider's communication shall include information established by the consumer reporting agency that identifies him or her as the credit information provider who provided the original inaccurate information. Nothing in this subsection (8) shall be construed to prohibit a consumer reporting agency from correcting inaccurate information in a consumer's file or a consumer report at any time.

Source: L. 95: Entire article added, p. 535, § 3, effective January 1, 1996. L. 97: (1) and (4) amended and (7) and (8) added, p. 389, § 7, effective August 1.

12-14.3-106.5. Consumer report information block. (1) (a) A consumer reporting agency shall, within thirty days after the receipt of a police report or order pursuant to this paragraph (a), permanently block the reporting of any information that a consumer identifies on his or her consumer report as being subject to either a police report or a court order referenced in subparagraph (I) or (II) of this paragraph (a) if the consumer provides a consumer reporting agency with proof of the consumer's identification and a copy of:

(I) A police report that alleges that a person other than the consumer obtained or recorded, by means of fraud, theft, or other violation of the "Colorado Criminal Code", personal identifying information of the consumer without authorization from the consumer and that the person used the information to obtain, or attempt to obtain, credit, goods, services, or moneys in the name of the consumer without the consumer's consent; or

(II) A certified court order issued pursuant to section 18-1.3-603 (7), C.R.S.

(b) The consumer reporting agency shall promptly notify the person who furnished the information that a police report or court order has been filed, that a block has been requested, and of the effective date of the block.

(2) (a) A consumer reporting agency may decline to block or may rescind any block of consumer information if, in the exercise of good faith and reasonable judgment, the consumer reporting agency believes:

(I) The information was blocked due to a misrepresentation of fact by the consumer relevant to the request to block under this section;

(II) The consumer agrees that the blocked information or portions of the blocked information were blocked in error;

(III) The consumer knowingly obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions or the consumer should have known that he or she obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions; or

(IV) The consumer so requests in writing and presents proof of the consumer's identity.

(b) A consumer reporting agency shall decline to block or shall rescind any block of consumer information if, in the case of a block or block request based upon the filing of an order, the sentencing court amends, dismisses, or withdraws its prior order to correct records issued pursuant to section 18-1.3-603 (7), C.R.S., and the consumer provides such documentation from the court and proof of the consumer's identity.

(3) If a block of credit information is declined or rescinded pursuant to this section, the consumer reporting agency shall promptly notify the consumer in the same manner as consumers are notified of the reinsertion of information pursuant to section 12-14.3-106. The prior presence of the blocked information in the consumer reporting agency's file on the consumer is not evidence of whether the consumer knew or should have known that he or she obtained possession of any goods, services, or moneys.

(4) This section does not apply to a consumer reporting agency that acts as a reseller of information by assembling and merging information contained in the data base of one or more other consumer reporting agencies and that does not maintain a data base of the assembled or merged information from which new consumer reports are produced.

Source: L. 2002: Entire section added, p. 419, § 1, effective July 1; (1)(a)(II) and (2)(b) amended, p. 1566, § 389, effective October 1.

Cross references: (1) For the legislative declaration contained in the 2002 act amending subsections (1)(a)(II) and (2)(b), see section 1 of chapter 318, Session Laws of Colorado 2002.

(2) For the "Colorado Criminal Code", referenced in subsection (1)(a)(I), see title 18.

12-14.3-106.6. Security freeze - timing - covered entities - cost. (1) (a) A consumer may elect to place a security freeze on his or her consumer report by making a request in writing by certified mail to a consumer reporting agency.

(b) Except as provided in subsection (11) and paragraph (b) of subsection (6) of this section, if a security freeze is in place, information from a consumer report may not be released to a third party without prior, express authorization from the consumer.

(c) This section does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer report.

(2) (a) A consumer reporting agency shall place a security freeze on a consumer report no later than five business days after receiving the request from the consumer.

(b) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within ten business days and, with the confirmation, shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his or her consumer report to a specific party or for a specific period of time.

(3) If a consumer wishes to allow his or her consumer report to be accessed by a specific party or for a specific period of time while a freeze is in place, he or she shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:

(a) Proper identification;

(b) The unique personal identification number or password provided by the consumer reporting agency pursuant to paragraph (b) of subsection (2) of this section; and

(c) The proper information regarding the third party who is to receive the consumer report or the time period that the report shall be available to users of the consumer report.

(4) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a consumer report pursuant to subsection (3) of this section, shall comply with the request no later than three business days after receiving the request.

(5) A consumer reporting agency may develop procedures involving the use of telephone, fax, internet, or other electronic media to receive and process a request from a consumer to place a freeze or to temporarily lift a freeze on a consumer report pursuant to subsection (3) of this section in an expedited manner.

(6) A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer report only in the following cases:

(a) Upon consumer request, pursuant to subsection (3) or (9) of this section; or

(b) If the consumer report was frozen due to a material misrepresentation of fact by the consumer or somebody purporting to be the consumer. If a consumer reporting agency intends to remove a freeze on a consumer report pursuant to this paragraph (b), the consumer reporting agency shall notify the consumer in writing prior to removing the freeze placed on the consumer report.

(7) If a third party requests access to a consumer report on which a security freeze is in effect, and the request is in connection with an application for credit or other use, and the consumer does not allow his or her consumer report to be accessed by that specific party or during that period of time, the third party may treat the application as incomplete.

(8) If a consumer requests a security freeze, the consumer reporting agency shall disclose the process of placing and temporarily lifting a freeze and the process for allowing access to information from the consumer report to a specific party or for a specific period of time while the freeze is in place.

(9) Except as otherwise provided pursuant to paragraph (b) of subsection (6) of this section, a security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides both of the following:

(a) Proper identification; and

(b) The unique personal identification number or password provided by the consumer reporting agency pursuant to paragraph (b) of subsection (2) of this section.

(10) A consumer reporting agency shall require proper identification of the person making a request to place a security freeze in a manner consistent with the requirements of this section.

(11) The provisions of this section shall not apply to the use of a consumer report by or for any of the following:

(a) A person or entity, or a subsidiary, affiliate, or agent of that person or entity that owns a financial obligation owing by the consumer to that person or entity, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the

purposes of reviewing the account or collecting the financial obligation owing for the account, contract, debt, or negotiable instrument, and lawful associated costs;

(b) An assignee or a prospective assignee of a financial obligation owing by the consumer to a person or entity in paragraph (a) of this subsection (11);

(c) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (3) of this section for purposes of facilitating the extension of credit or other permissible use;

(d) A state or local agency, law enforcement agency, trial court, private collection agency, or person acting pursuant to a court order, warrant, or subpoena authorizing the use of the consumer report;

(e) A child support enforcement agency acting to enforce child support obligations;

(f) The department of health care policy and financing or its agents or assigns acting to investigate fraud;

(g) The department of human services or its agents or assignees acting to investigate fraud;

(h) The department of revenue or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities or exercise any of its statutory authority;

(i) The use of credit information for the purposes of prescreening as provided for by the "Fair Credit Reporting Act", 15 U.S.C. sec. 1681 et seq.;

(j) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed;

(k) Any person or entity for the purpose of providing a consumer with a copy of his or her consumer report upon the consumer's request;

(l) Any person or entity for use in setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes;

(m) A pension plan acting to determine the consumer's eligibility for plan benefits or payments authorized by law or to investigate fraud;

(n) A person conducting a pre-sentence investigation in a criminal matter or a probation officer using this information for supervision of an offender;

(o) A collections investigator or other person engaged in the collecting of fees, fines, or restitution assessed in a court proceeding;

(p) A licensed hospital with which the consumer has or had a contract, or a debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the contract, account, or debt;

(q) A law enforcement agency or its agents acting to investigate a crime or conducting a criminal background check.

(12) (a) Fees for requesting a security freeze, temporarily lifting a security freeze, and permanently removing a security freeze from consumer reports may be charged only in accordance with this subsection (12).

(b) A consumer reporting agency may not charge a fee for a consumer's first request to place a security freeze on his or her consumer report.

(c) Except as provided for in paragraphs (a) and (b) of this subsection (12), a consumer reporting agency may charge a consumer a reasonable fee of no more than ten dollars for:

(I) A temporary lift for a period of time or permanent removal of a security freeze from the consumer report; or

(II) A subsequent request for a security freeze of the consumer report after the consumer's first request for a security freeze has been permanently removed from his or her consumer report.

(d) Except as provided for in paragraphs (a) and (b) of this subsection (12), a consumer reporting agency may charge a fee not to exceed twelve dollars for temporarily lifting a security freeze on the consumer report for a specific party.

12-14.3-106.7. Notice of rights. (1) At any time that a consumer is required to receive a summary of rights required under section 609 of the "Fair Credit Reporting Act" or under state law, the following notice shall be included:

State Consumers Have the Right to Obtain a Security Freeze

You may obtain a security freeze on your consumer report to protect your privacy and ensure that credit is not granted in your name without your knowledge, except as provided by law. You have a right to place a security freeze on your consumer report to prohibit a consumer reporting agency from releasing any information in your consumer report without your express authorization or approval, except as the law allows.

You will not be initially charged to place a security freeze on your consumer report. However, you will be charged a fee of no more than ten dollars to temporarily lift the freeze for a period of time, to permanently remove the freeze from your consumer report, or when you make a subsequent request for a freeze to be placed on your consumer report. As well, you may be charged a fee of no more than twelve dollars to temporarily lift the freeze for a specific party.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your consumer report, within five business days you will be provided procedures for the temporary release of your consumer report to a specific party or parties or for a period of time after the security freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide the proper information regarding the third party or parties who are to receive the consumer report or the period of time for which the report shall be available to users of the consumer report.

A consumer reporting agency that receives a request from a consumer to temporarily lift a security freeze on a consumer report shall comply with the request no later than three business days after receiving the request.

A security freeze does not apply to circumstances where you have an existing account relationship, and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

You should be aware that using a security freeze to take control over who gains access to the personal and financial information in your consumer report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding new loans, credit, mortgage, insurance, government services or payments, rental housing, employment, investment, license, cellular phone, utilities, digital signature, internet credit card transaction, or other services, including an extension of credit at the point of sale. You should plan ahead and lift a security freeze either completely if you are shopping around, or specifically for a certain creditor a few days before actually applying for new credit.

You have the right to bring a civil action or submit to binding arbitration against a consumer reporting agency to enforce an obligation under the security freeze law after following specified dispute procedures and having received the necessary notice.

Source: L. 2005: Entire section added, p. 843, § 2, effective July 1, 2006.

12-14.3-106.8. Security freeze - prohibition of changing official information in credit report. If a security freeze is in place, a consumer reporting agency shall not change

any of the following official information in a consumer report without sending a written notice of the change to the consumer within thirty days of the change being posted to the consumer's file: Name, date of birth, social security number, and address. Written notice is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written notice shall be sent to both the new address and the former address.

Source: L. 2005: Entire section added, p. 844, § 2, effective July 1, 2006.

12-14.3-106.9. Security freeze - exemptions. (1) Sections 12-14.3-106.6 to 12-14.3-106.8 shall not apply to a consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer reporting agencies, and that does not maintain a permanent database of credit information from which new consumer reports are produced. However, a consumer reporting agency shall honor any security freeze placed on a consumer report by another consumer reporting agency.

(2) The following entities are not required to place in a consumer report a security freeze:

(a) A check service or company or fraud prevention service or company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments;

(b) A deposit account information service or company that issues reports regarding account closures due to fraud, substantial overdrafts, or automatic teller machine abuse or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution;

(c) A fraud prevention service or company issuing reports to prevent or investigate fraud.

Source: L. 2005: Entire section added, p. 845, § 2, effective July 1, 2006.

12-14.3-107. Consumer's right to file action in court or arbitrate disputes. An action to enforce any obligation of a consumer reporting agency to a consumer under this article may be brought in any court of competent jurisdiction as provided by the federal "Fair Credit Reporting Act" or submitted to binding arbitration after the consumer has followed all dispute procedures in section 12-14.3-106 and has received the notice specified in subsection (6) of said section, or has followed all of the block procedures in section 12-14.3-106.5, or has followed all of the freeze procedures in section 12-14.3-106.6, in the manner set forth in the rules of the American arbitration association to determine whether the consumer reporting agency met its obligations under this article. No decision by an arbitrator pursuant to this section shall affect the validity of any obligations or debts owed to any party. A successful party to any such arbitration proceeding shall be compensated for the costs and attorney fees of the proceeding as determined by the court or arbitration. No consumer may submit more than one action to arbitration against any consumer reporting agency during any one-hundred-twenty-day period. The results of an arbitration action brought against a consumer reporting agency doing business in this state shall be communicated in a timely manner with all other consumer reporting agencies doing business in this state. If, as a result of an arbitration a determination is made in favor of the consumer, any adverse information in such consumer's file or record shall be blocked, removed, or stricken in a timely manner, or the consumer report shall be frozen within five days of receipt of such determination by the consumer reporting agency. If such adverse information is not so blocked, removed, or stricken, or the file is not frozen, the consumer may bring an action against the noncomplying agency pursuant to this section notwithstanding the one-hundred-twenty-day waiting period.

Source: **L. 95:** Entire article added, p. 536, § 3, effective January 1, 1996. **L. 2002:** Entire section amended, p. 420, § 2, effective July 1. **L. 2005:** Entire section amended, p. 845, § 3, effective July 1, 2006.

Cross references: For the federal “Fair Credit Reporting Act”, see Pub.L. 90-321, codified at 15 U.S.C. sec. 1681 et seq., as amended.

12-14.3-108. Violations. (1) Any consumer reporting agency that willfully violates any provision of this article, or the federal “Fair Credit Reporting Act”, 15 U.S.C. sec. 1681c, as amended, shall be liable for three times the amount of actual damages or one thousand dollars for a violation of section 12-14.3-106.6, or for each inaccurate or unblocked entry in the consumer’s file that was disputed or alleged to be unauthorized in accordance with section 12-14.3-106.5 by the consumer, whichever is greater, reasonable attorney fees, and costs.

(2) (a) Any consumer reporting agency that negligently violates this article, or the federal “Fair Credit Reporting Act”, 15 U.S.C. sec. 1681c, as amended, shall be liable for the greater of actual damages or one thousand dollars for each violation of section 12-14.3-106.6, or for each inaccurate or unblocked entry in the consumer’s file that was disputed or alleged to be unauthorized in accordance with section 12-14.3-106.5 by the consumer that affects the consumer’s creditworthiness, as defined in section 12-14.3-102 (4.5), plus reasonable attorney fees, and costs, if within thirty days after receiving notice of dispute from a consumer, in accordance with section 12-14.3-106, the consumer reporting agency does not correct the complained of items or activities and does not send the consumer and, upon request of the consumer, any person who has requested the consumer information, written notification of such corrective action, in accordance with section 12-14.3-106 (6), or section 12-14.3-106.6 or if, within thirty days after receiving a copy of a police report alleging, or a certified court order finding, unauthorized activity, the consumer reporting agency does not block the information in accordance with section 12-14.3-106.5.

(b) Any consumer reporting agency that negligently violates this article, or the federal “Fair Credit Reporting Act”, 15 U.S.C. sec. 1681c, as amended, shall be liable for the greater of actual damages or one thousand dollars for all violations of section 12-14.3-106.6 or all inaccurate or unblocked entries in the consumer’s file that were disputed or alleged to be unauthorized in accordance with section 12-14.3-106.5 or section 12-14.3-106.6 by the consumer that did not affect the consumer’s creditworthiness, plus reasonable attorney fees, and costs, if within thirty days after receiving notice of dispute from a consumer, in accordance with section 12-14.3-106, the consumer reporting agency does not correct the complained of items or activities and does not send the consumer and, if requested by the consumer, any person who has requested the consumer information, written notification of such corrective action, in accordance with section 12-14.3-106 (6) or section 12-14.3-106.6 or if, within thirty days after receiving a copy of a police report alleging, or a certified court order finding, unauthorized activity, the consumer reporting agency does not block the information in accordance with section 12-14.3-106.5.

(3) In addition to the damages assessed under subsections (1) and (2) of this section, if, ten days after the entry of any judgment for damages, the consumer’s file is still not corrected, blocked, or frozen by the consumer reporting agency, such assessed damages shall be increased to one thousand dollars per day per unfrozen consumer report or inaccurate or unblocked entry that remains in the consumer’s file until the inaccurate entry is corrected or blocked, or the consumer report is frozen.

Source: **L. 95:** Entire article added, p. 537, § 3, effective January 1, 1996. **L. 97:** Entire section amended, p. 390, § 8, effective August 1. **L. 2002:** Entire section amended, p. 421, § 3, effective July 1. **L. 2005:** Entire section amended, p. 846, § 4, effective July 1, 2006.

12-14.3-109. Provisions of article cumulative. The provisions of this article are cumulative, and any action taken under the provisions of this article shall not constitute an

election to take any such action to the exclusion of any other action authorized by law; except that a credit reporting agency shall not be subject to suit with respect to any issue that was the subject of an arbitration proceeding brought pursuant to section 12-14.3-107.

Source: L. 95: Entire article added, p. 537, § 3, effective January 1, 1996.

ARTICLE 14.5

Debt-management Services

PART 1

COLORADO CREDIT SERVICES ORGANIZATION ACT

- 12-14.5-101. Short title.
- 12-14.5-102. Legislative declaration.
- 12-14.5-103. Definitions.
- 12-14.5-104. Prohibited acts.
- 12-14.5-105. Surety bond. (Repealed)
- 12-14.5-106. Written disclosure required.
- 12-14.5-107. Content of written disclosure.
- 12-14.5-108. Written contracts required.
- 12-14.5-109. Waivers and exemptions.
- 12-14.5-110. Criminal penalties and injunctive relief.
- 12-14.5-110.5. Powers of administrator of the uniform consumer credit code and district attorney - subpoenas - hearings.
- 12-14.5-111. Damages.
- 12-14.5-112. Aiding or assisting violation.
- 12-14.5-113. Remedies cumulative.
- 12-14.5-114. Relation between parts of article.

PART 2

UNIFORM DEBT-MANAGEMENT SERVICES ACT

- 12-14.5-201. Short title.
- 12-14.5-202. Definitions.
- 12-14.5-203. Exempt agreements and persons.
- 12-14.5-204. Registration required.
- 12-14.5-205. Application for registration - form, fee, and accompanying documents.
- 12-14.5-206. Application for registration - required information.
- 12-14.5-207. Application for registration - obligation to update information.
- 12-14.5-208. Application for registration - public information.
- 12-14.5-209. Certificate of registration - issuance or denial.

- 12-14.5-210. Certificate of registration - timing.
- 12-14.5-211. Renewal of registration.
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- 12-14.5-235. Private enforcement.
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PART 1

COLORADO CREDIT SERVICES ORGANIZATION ACT

12-14.5-101. Short title. This part 1 shall be known and may be cited as the “Colorado Credit Services Organization Act”.

Source: L. 90: Entire article added, p. 798, § 1, effective July 1. **L. 2007:** Entire section amended, p. 1964, § 3, effective January 1, 2008.

12-14.5-102. Legislative declaration. (1) The general assembly finds and declares that:

(a) The ability to obtain and use credit has become of great importance to consumers, who have a vital interest in establishing and maintaining their creditworthiness and credit standing. The extension or receipt of credit has value and should be protected. As a result, consumers who have experienced credit problems may seek assistance from credit services organizations which offer to obtain credit or improve the credit standing of such consumers.

(b) Certain advertising and business practices of some credit services organizations have worked a financial hardship upon the people of this state, often those who are of limited economic means and inexperienced in credit matters. Credit services organizations have significant impact upon the economy and well-being of this state and its people.

(c) The purposes of this part 1 are to provide prospective buyers of services of credit services organizations with the information necessary to make an intelligent decision regarding the purchase of those services and to protect the public from unfair or deceptive advertising and business practices;

(d) This part 1 shall be construed liberally to achieve these purposes; and

(e) It is the intent of the general assembly to further regulate the conduct of persons who provide credit services in accordance with this part 1 by adopting the regulatory requirements contained in part 2 of this article.

Source: L. 90: Entire article added, p. 798, § 1, effective July 1. **L. 2007:** (1)(c) and (1)(d) amended and (1)(e) added, p. 1964, § 4, effective January 1, 2008.

12-14.5-103. Definitions. As used in this part 1, unless the context otherwise requires:

(1) “Buyer” means any individual who is solicited to purchase or who purchases the services of a credit services organization.

(2) “Credit services organization” means any person, including a nonprofit organization exempt from taxation under section 501 (c) (3) of the federal “Internal Revenue Code of 1986”, who, with respect to the extension of credit by others, represents that such person can or will, in return for the payment of money or other valuable consideration by the buyer, improve or attempt to improve a buyer’s credit record, history, or rating. The term “credit services organization” does not include the following:

(a) (Deleted by amendment, L. 2009, (HB 09-1141), ch. 41, p. 159, § 7, effective July 1, 2009.)

(b) Any person licensed to practice law in this state if such person renders such credit services within the course and scope of said person’s practice as an attorney.

(3) “Extension of credit” means the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family, or household purposes.

(4) “Person” includes any individual, corporation, partnership, joint venture, or any business entity.

(5) Repealed.

Source: L. 90: Entire article added, p. 799, § 1, effective July 1. **L. 2003:** (5) repealed, p. 1896, § 15, effective July 1. **L. 2007:** IP amended, p. 1964, § 5, effective January 1, 2008. **L. 2009:** IP(2) and (2)(a) amended, (HB 09-1141), ch. 41, p. 159, § 7, effective July 1.

Cross references: For the federal “Internal Revenue Code of 1986”, see title 26 of the United States Code.

12-14.5-104. Prohibited acts. (1) A credit services organization; its salespersons, agents, and representatives; and independent contractors who sell or attempt to sell the services of a credit services organization shall not:

(a) Charge or receive any money or other valuable consideration prior to full and complete performance of the services the credit services organization has agreed to perform for the buyer;

(b) Make, counsel, or advise any buyer to make any statement that is untrue or misleading to a credit reporting agency or to any person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit with respect to a buyer’s creditworthiness, credit standing, or credit capacity;

(c) Make or use any untrue or misleading representations in the offer or sale of the services of a credit services organization or engage, directly or indirectly, in any act, practice, or course of business that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a credit services organization; or

(d) Make, counsel, or advise any buyer to make a request to a credit reporting agency to verify information contained in a consumer credit report, unless the buyer states in writing to the credit services organization that the buyer believes the information to be verified is incorrect or inaccurate, and states specifically the basis of the inaccuracy or incorrectness of each disputed item of information.

Source: L. 90: Entire article added, p. 799, § 1, effective July 1. L. 2003: (1)(a) amended, p. 1896, § 16, effective July 1.

12-14.5-105. Surety bond. (Repealed)

Source: L. 90: Entire article added, p. 800, § 1, effective July 1. L. 2003: Entire section repealed, p. 1897, § 17, effective July 1.

12-14.5-106. Written disclosure required. Before the execution of a contract or agreement between the buyer and a credit services organization or before the receipt by the credit services organization of any money or other valuable consideration, whichever occurs first, the credit services organization shall provide the buyer with a statement in writing containing all the information required by section 12-14.5-107. The credit services organization shall maintain on file for a period of two years an exact copy of the statement, personally signed by the buyer, acknowledging receipt of a copy of the statement.

Source: L. 90: Entire article added, p. 800, § 1, effective July 1.

12-14.5-107. Content of written disclosure. (1) The information statement required pursuant to section 12-14.5-106 shall be printed in at least ten-point type and shall include:

(a) The following statements concerning consumer credit reports and consumer credit agencies:

RIGHTS UNDER COLORADO AND FEDERAL LAW

You have a right to obtain a copy of your credit report from a credit bureau at no charge once per year with additional copies available for a small fee. You have a right to dispute inaccurate information by contacting the credit bureau directly. However, you have no right to have accurate information removed from your credit bureau report. Under the federal “Fair Credit Reporting Act”, the credit bureau must remove accurate negative information from your report only if it is

over 7 years old. Bankruptcy can be reported for 10 years. Even when a debt has been completely repaid, your report can show that it was paid late if that is accurate. You have a right to sue a credit repair company that violates the "Colorado Credit Services Organization Act". This law prohibits deceptive practices by repair companies. The "Colorado Credit Services Organization Act" also gives you a right to cancel your contract for any reason within 5 working days from the date you sign it.

The Federal Trade Commission enforces the federal "Fair Credit Reporting Act". For more information, call or write the Federal Trade Commission. The administrator of the "Uniform Consumer Credit Code" enforces the "Colorado Credit Services Organization Act". For more information, call or write the Colorado attorney general's office.

(b) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total amount the buyer will have to pay, or become obligated to pay, for the services.

(c) and (d) (Deleted by amendment, L. 2003, p. 1897, § 18, effective July 1, 2003.)

Source: L. 90: Entire article added, p. 800, § 1, effective July 1. L. 93: (1)(a) amended, p. 1797, § 105, effective June 6. L. 2003: (1)(a), (1)(c), and (1)(d) amended, p. 1897, § 18, effective July 1. L. 2009: (1)(a) amended, (HB 09-1141), ch. 41, p. 160, § 8, effective July 1.

12-14.5-108. Written contracts required. (1) Each contract between the buyer and a credit services organization for the purchase of the services of the credit services organization shall be in writing, dated, signed by the buyer, and include the following:

(a) A conspicuous statement in bold-faced type, in immediate proximity to the space reserved for the signature of the buyer, as follows: "You, the buyer, may cancel this contract at any time prior to midnight of the fifth working day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right."

(b) The terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to some other person;

(c) A full and detailed description of the services to be performed by the credit services organization for the buyer, including:

(I) All guarantees and all promises of full or partial refunds;

(II) The estimated date by which the services are to be performed, or the estimated length of time for performing the services;

(III) A list of the adverse information appearing on the buyer's credit report that is to be modified and a description of the precise nature of each modification. A copy of the consumer's current credit report issued by a consumer credit reporting agency shall be annexed to the contract with the adverse entries and proposed modifications clearly marked.

(d) The credit services organization's principal business address which shall be the actual office location of the organization and the name and address of its agent in the state authorized to receive service of process.

(2) The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation", that shall be attached to the contract, shall be easily detachable, and shall contain in bold-faced type the following statement written in the same language as used in the contract:

Notice of Cancellation

You may cancel this contract, without any penalty or obligation, within five (5) working days from the date the contract is signed.

If you cancel any payment made by you under this contract, it will be returned within ten (10) days following receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed, dated copy of this cancellation notice, or any other written notice to _____ (name of seller) at

____ (address of seller) (place of business) not later than midnight
____ (date) .

I hereby cancel this transaction,

____ (date) _____

____ (purchaser's signature) _____

(3) The credit services organization shall give to the buyer a copy of the completed contract and all other documents the credit services organization requires the buyer to sign at the time they are signed.

Source: L. 90: Entire article added, p. 801, § 1, effective July 1.

12-14.5-109. Waivers and exemptions. (1) Any waiver by a buyer of any part of this part 1 is void as against public policy. Any attempt by a credit services organization to have a buyer waive rights given by this part 1 is a violation of this part 1.

(2) In any proceeding involving this part 1, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

Source: L. 90: Entire article added, p. 802, § 1, effective July 1. **L. 2007:** Entire section amended, p. 1964, § 6, effective January 1, 2008.

12-14.5-110. Criminal penalties and injunctive relief. (1) Any person who violates any provision of this part 1 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. Violating any provision of this part 1 with respect to any buyer shall constitute a class 1 public nuisance subject to the provisions of part 3 of article 13 of title 16, C.R.S.

(2) The administrator of the uniform consumer credit code, designated pursuant to section 5-6-103, C.R.S., or the district attorney of any judicial district may maintain an action to enjoin violations of this part 1 and for restitution and penalties in an amount not to exceed one thousand five hundred dollars per violation. The state treasurer shall transfer the penalties collected pursuant to this subsection (2) to the general fund.

(3) Costs and reasonable attorney fees shall be awarded to the administrator of the uniform consumer credit code or a district attorney in all injunctive actions where the administrator of the uniform consumer credit code or district attorney successfully enforces this part 1.

Source: L. 90: Entire article added, p. 802, § 1, effective July 1. **L. 2002:** (1) amended, p. 1474, § 55, effective October 1. **L. 2007:** Entire section amended, p. 1964, § 7, effective January 1, 2008. **L. 2011:** (2) amended, (HB 11-1221), ch. 121, p. 382, § 6, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-14.5-110.5. Powers of administrator of the uniform consumer credit code and district attorney - subpoenas - hearings. (1) When the administrator of the uniform consumer credit code or district attorney has cause to believe that any person has violated or is violating any provision of this part 1, the administrator or district attorney may, in addition to the other powers conferred upon the administrator or district attorney by this part 1:

(a) Request such person to file a statement or report in writing under oath or otherwise, on forms prescribed by him, as to all facts and circumstances concerning the sale or advertisement of goods, property, or services by any credit services organization and any other data and information he deems necessary;

(b) Prior to the filing of a complaint, issue subpoenas to require the attendance of witnesses or the production of documents, conduct hearings in aid of any investigation or inquiry, administer oaths, and examine under oath any person in connection with the sale or advertisement of goods, property, or services by any credit services organization.

(2) Service of any notice or subpoena may be made in the manner prescribed by law or under the Colorado rules of civil procedure.

Source: **L. 90:** Entire article added, p. 802, § 1, effective July 1. **L. 2007:** IP(1) amended, p. 1965, § 8, effective January 1, 2008.

12-14.5-111. Damages. (1) Any buyer injured by a violation of this part 1 or by a credit services organization's breach of contract subject to this part 1 may maintain an action in a court of competent jurisdiction for recovery of actual damages, plus cost of suit and reasonable attorney fees. In case of an action brought by a buyer, actual damages shall not be less than the amount paid by the buyer to the credit services organization.

(2) In the event of a willful violation by a credit services organization of this part 1 or of a contract subject to this part 1, a person who is injured thereby shall be awarded, in addition to the damages allowable under subsection (1) of this section, an additional amount equal to twice the actual damages awarded under subsection (1) of this section.

(3) Repealed.

Source: **L. 90:** Entire article added, p. 803, § 1, effective July 1. **L. 2003:** (3) repealed, p. 1898, § 19, effective July 1. **L. 2007:** (1) and (2) amended, p. 1965, § 9, effective January 1, 2008.

ANNOTATION

The availability of double damages in subsection (2) serves punitive and deterrent functions. In re Jensen, 395 B.R. 472 (Bankr. D. Colo. 2008).

Double damages are not dischargeable under 11 U.S.C. § 523(a)(7). In re Jensen, 395 B.R. 472 (Bankr. D. Colo. 2008).

12-14.5-112. Aiding or assisting violation. Any individual who, as a director, officer, partner, member, salesperson, agent, or representative of a credit services organization that violates this part 1, assists or aids, directly or indirectly, in such violation shall be responsible therefor and subject to the criminal penalties, injunctive relief, and damages provided for in section 12-14.5-111 and this section.

Source: **L. 90:** Entire article added, p. 803, § 1, effective July 1. **L. 2007:** Entire section amended, p. 1965, § 10, effective January 1, 2008.

12-14.5-113. Remedies cumulative. The remedies provided for in this part 1 are cumulative and in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

Source: **L. 90:** Entire article added, p. 803, § 1, effective July 1. **L. 2007:** Entire section amended, p. 1965, § 11, effective January 1, 2008.

12-14.5-114. Relation between parts of article. In the event of a conflict between part 2 of this article and this part 1, the provisions of part 2 of this article shall control. A credit service organization that also performs debt-management services shall comply with the requirements of part 2 of this article.

Source: **L. 2007:** Entire section added, p. 1966, § 12, effective January 1, 2008.

PART 2

UNIFORM DEBT-MANAGEMENT SERVICES ACT

12-14.5-201. Short title. This part 2 shall be known and may be cited as the “Uniform Debt-Management Services Act”.

Source: L. 2007: Entire part added, p. 1929, § 1, effective January 1, 2008.

12-14.5-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) “Administrator” means the assistant attorney general designated by the attorney general pursuant to section 5-6-103, C.R.S.

(2) “Affiliate”:

(A) With respect to an individual, means:

- (i) The spouse of the individual;
- (ii) A sibling of the individual or the spouse of a sibling;
- (iii) An individual or the spouse of an individual who is a lineal ancestor or lineal descendant of the individual or the individual’s spouse;

(iv) An aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew, whether related by the whole or the half blood or adoption, or the spouse of any of them; or

(v) Any other individual occupying the residence of the individual; and

(B) With respect to an entity, means:

(i) A person that directly or indirectly controls, is controlled by, or is under common control with, the entity;

(ii) An officer of, or an individual performing similar functions with respect to, the entity;

(iii) A director of, or an individual performing similar functions with respect to, the entity;

(iv) A person that receives or received more than twenty-five thousand dollars from the entity in either the current year or the preceding year or a person that owns more than ten percent of, or an individual who is employed by or is a director of, a person that receives or received more than twenty-five thousand dollars from the entity in either the current year or the preceding year;

(v) An officer or director of, or an individual performing similar functions with respect to, a person described in sub-subparagraph (i) of this subparagraph (B);

(vi) The spouse of, or an individual occupying the residence of, an individual described in sub-subparagraphs (i) to (v) of this subparagraph (B); or

(vii) An individual who has the relationship specified in sub-subparagraph (iv) of subparagraph (A) of this paragraph (2) to an individual or the spouse of an individual described in sub-subparagraphs (i) to (v) of this subparagraph (B).

(3) “Agreement” means an agreement between a provider and an individual for the performance of debt-management services.

(4) “Bank” means a financial institution, including a commercial bank, savings bank, savings and loan association, credit union, mortgage bank, and trust company, engaged in the business of banking, chartered under federal or state law, and regulated by a federal or state banking regulatory authority.

(5) “Business address” means the physical location of a business, including the name and number of a street.

(6) and (7) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p. 348, § 1, effective July 1, 2011.)

(8) “Concessions” means assent to repayment of a debt on terms more favorable to an individual than the terms of the contract between the individual and a creditor.

(9) “Day” means calendar day.

(10) (A) “Debt-management services” means services as an intermediary between an individual and one or more creditors of the individual for the purpose of obtaining concessions, but does not include:

(i) Legal services provided in an attorney-client relationship by an attorney licensed to practice law in this state; or

(ii) Accounting services provided in an accountant-client relationship by a certified public accountant certified or authorized by the state board of accountancy to provide accounting services in this state.

(B) The exemptions in subparagraph (A) of this paragraph (10) do not apply to any person who directly or indirectly provides any debt management services on behalf of a licensed attorney or certified public accountant if that person is not an employee of the licensed attorney or certified public accountant.

(11) "Entity" means a person other than an individual.

(12) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing.

(12.5) "Individual" means a natural person.

(13) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not include a public corporation, government, or governmental subdivision, agency, or instrumentality.

(14) "Plan" means a program or strategy in which a provider furnishes debt-management services to an individual and that includes a schedule of payments to be made by or on behalf of the individual and used to pay debts owed by the individual.

(15) "Principal amount of the debt" means the amount of a debt at the time of an agreement.

(16) "Provider" means a person that provides, offers to provide, or agrees to provide debt-management services directly or through others.

(17) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(18) "Settlement fee" means a charge imposed on or paid by an individual in connection with a creditor's assent to accept in full satisfaction of a debt an amount less than the principal amount of the debt.

(19) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic sound, symbol, or process.

(20) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(21) (A) "Trust account" means an account held by a provider that is:

(i) Established in an insured bank;

(ii) Separate from other accounts of the provider or its designee;

(iii) Designated as a trust account or other account designated to indicate that the money in the account is not the money of the provider; and

(iv) Used to hold money of one or more individuals for disbursement to creditors of the individuals.

(B) For a plan under which creditors will settle debts for less than the principal amount of the debt, nothing in this act prohibits a provider from requesting or requiring an individual to place funds in an account, separate from the individual's then-existing bank account, to be used for the provider's fees and for payments to creditors or debt collectors in connection with the debt management services, if:

(i) The funds are held in an account at an insured financial institution;

(ii) The individual owns the funds held in the account and is paid accrued interest on the account, if any;

(iii) The entity administering the account is not owned, controlled by, or in any way affiliated with the provider;

(iv) The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business involving the debt management provider or plan; and

(v) The individual may withdraw from the debt management plan at any time without penalty, and immediately receives all funds in the account, other than fees earned in compliance with section 12-14.5-223, as required by section 12-14.5-226.

Source: L. 2007: Entire part added, p. 1929, § 1, effective January 1, 2008. **L. 2011:** (2)(B)(iv), (6), (7), (10), and (21) amended and (12.5) added, (HB 11-1206), ch. 113, p. 348, § 1, effective July 1.

12-14.5-203. Exempt agreements and persons. (a) This part 2 does not apply to an agreement with an individual who the provider has no reason to know resides in this state at the time of the agreement.

(b) This part 2 does not apply to a provider to the extent that the provider:

(1) Provides or agrees to provide debt-management, educational, or counseling services to an individual who the provider has no reason to know resides in this state at the time the provider agrees to provide the services;

(2) Receives no compensation for debt-management services from or on behalf of the individuals to whom it provides the services or from their creditors;

(3) Provides debt-management services only to persons that have incurred debt in the conduct of business; or

(4) Is subject to the “Colorado Foreclosure Protection Act”, part 11 of article 1 of title 6, C.R.S.

(c) This part 2 does not apply to the following persons or their employees when the person or the employee is engaged in the regular course of the person’s business or profession:

(1) A judicial officer, a person acting under an order of a court or an administrative agency, or an assignee for the benefit of creditors;

(2) A bank;

(3) An affiliate, as defined in section 12-14.5-202 (2) (B) (i), of a bank if the affiliate is regulated by a federal or state banking regulatory authority; or

(4) A title insurer, escrow company, or other person that provides bill-paying services if the provision of debt-management services is incidental to the bill-paying services.

Source: L. 2007: Entire part added, p. 1933, § 1, effective January 1, 2008. **L. 2009:** (b)(4) added, (HB 09-1141), ch. 41, p. 160, § 9, effective July 1.

12-14.5-204. Registration required. (a) Except as otherwise provided in subsection (b) of this section, on or after July 1, 2008, a provider may not provide debt-management services to an individual who it reasonably should know resides in this state at the time it agrees to provide the services, unless the provider is registered under this part 2.

(b) If a provider is registered under this part 2, subsection (a) of this section does not apply to an employee or agent of the provider.

(c) The administrator shall maintain and publicize a list of the names of all registered providers.

Source: L. 2007: Entire part added, p. 1933, § 1, effective January 1, 2008.

12-14.5-205. Application for registration - form, fee, and accompanying documents. (a) An application for registration as a provider shall be in a form prescribed by the administrator.

(b) An application for registration as a provider shall be accompanied by:

(1) The fee established by the administrator. The administrator shall transmit the fee to the state treasurer, who shall deposit it in the uniform consumer credit code cash fund, created in section 5-6-204 (1), C.R.S.

(2) The bond required by section 12-14.5-213;

(3) Identification of all trust accounts required by section 12-14.5-222 and an irrevocable consent authorizing the administrator to review and examine the trust accounts;

(4) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p. 350, § 2, effective July 1, 2011.)

(5) Proof of compliance with the requirements of title 7, C.R.S., that specify the prerequisites for an entity to do business in this state; and

(6) If the applicant is organized as a not-for-profit entity or is exempt from taxation, evidence of not-for-profit and tax-exempt status applicable to the applicant under the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501, as amended.

Source: L. 2007: Entire part added, p. 1934, § 1, effective January 1, 2008. L. 2011: IP(b) and (b)(4) amended, (HB 11-1206), ch. 113, p. 350, § 2, effective July 1.

12-14.5-206. Application for registration - required information. An application for registration shall be signed under penalty of false statement and include:

(1) The applicant's name, principal business address and telephone number, and all other business addresses in this state, electronic-mail addresses, and internet web site addresses;

(2) All names under which the applicant conducts business;

(3) The address of each location in this state at which the applicant will provide debt-management services or a statement that the applicant will have no such location;

(4) The name and home address of each officer and director of the applicant and each person that owns at least ten percent of the applicant;

(5) Identification of every jurisdiction in which, during the five years immediately preceding the application:

(A) The applicant or any of its officers or directors has been licensed or registered to provide debt-management services; or

(B) Individuals have resided when they received debt-management services from the applicant;

(6) A statement describing, to the extent it is known or should be known by the applicant, any material civil or criminal judgment or litigation and any material administrative or enforcement action by a governmental agency in any jurisdiction against the applicant, any of its officers, directors, owners, or agents, or any person who is authorized to initiate transactions to the trust account required by section 12-14.5-222;

(7) The applicant's financial statements, audited by an accountant licensed to conduct audits, for each of the two years immediately preceding the application or, if it has not been in operation for the two years preceding the application, for the period of its existence;

(8) and (9) Repealed.

(10) A description of the three most commonly used educational programs that the applicant provides or intends to provide to individuals who reside in this state and a copy of any materials used or to be used in those programs;

(11) A description of the applicant's financial analysis and initial plan, including any form or electronic model, used to evaluate the financial condition of individuals. The description shall be deemed to be confidential commercial data under section 24-72-204 (3) (a) (IV), C.R.S.

(12) A copy of each form of agreement that the applicant will use with individuals who reside in this state;

(13) The schedule of fees and charges that the applicant will use with individuals who reside in this state;

(14) At the applicant's expense, the results of a state and national fingerprint-based criminal history records check, conducted within the immediately preceding twelve months, covering every officer of the applicant and every employee or agent of the applicant who is authorized to initiate transactions to the trust account required by section 12-14.5-222. The administrator shall be the authorized agency to receive information regarding the result of the national criminal history records check.

(15) The names and addresses of all employers of each director during the five years immediately preceding the application; except that if a director receives no compensation from the provider, the applicable period shall be two years. The names and addresses shall be deemed to be confidential.

(16) A description of any ownership interest of at least ten percent by a director, owner, or employee of the applicant in:

(A) Any affiliate of the applicant; or

(B) Any entity that provides products or services to the applicant or any individual relating to the applicant's debt-management services;

(17) For not-for-profit providers, a statement of the amount of compensation of the applicant's five most highly compensated employees for each of the three years immediately preceding the application or, if it has not been in operation for the three years immediately preceding the application, for the period of its existence;

(18) The identity of each director who is an affiliate, as defined in section 12-14.5-202 (2) (A) or (2) (B) (i), (2) (B) (ii), (2) (B) (iv), (2) (B) (v), (2) (B) (vi), or (2) (B) (vii), of the applicant; and

(19) Any other information that the administrator reasonably requires to perform the administrator's duties under section 12-14.5-209.

Source: L. 2007: Entire part added, p. 1934, § 1, effective January 1, 2008. L. 2011: (8) and (9) repealed, (HB 11-1206), ch. 113, p. 350, § 3, effective July 1.

12-14.5-207. Application for registration - obligation to update information. An applicant or registered provider shall notify the administrator within fifteen days after a change in the information specified in section 12-14.5-205 (b) (6) or section 12-14.5-206 (1), (3), (6), (12), or (13).

Source: L. 2007: Entire part added, p. 1936, § 1, effective January 1, 2008. L. 2011: Entire section amended, (HB 11-1206), ch. 113, p. 351, § 4, effective July 1.

12-14.5-208. Application for registration - public information. Except for the information required by section 12-14.5-206 (7), (11), (14), (15), and (17) and the addresses required by section 12-14.5-206 (4), the administrator shall make the information in an application for registration as a provider available to the public.

Source: L. 2007: Entire part added, p. 1936, § 1, effective January 1, 2008.

12-14.5-209. Certificate of registration - issuance or denial. (a) Except as otherwise provided in subsections (b) and (c) of this section, the administrator shall issue a certificate of registration as a provider to a person that complies with sections 12-14.5-205 and 12-14.5-206.

(b) The administrator may deny registration if:

(1) The application contains information that is materially erroneous or incomplete;

(2) An officer, director, or owner of the applicant has been convicted of a crime, or suffered a civil judgment, involving dishonesty or the violation of state or federal securities laws;

(3) The applicant or any of its officers, directors, or owners has defaulted in the payment of money collected for others; or

(4) The administrator upon reasonable belief finds that the financial responsibility, experience, character, or general fitness of the applicant or its owners, directors, employees, or agents does not warrant belief that the business will be operated in compliance with this part 2.

(c) The administrator shall deny registration if:

(1) The application is not accompanied by the fee established by the administrator; or

(2) With respect to an applicant that is organized as a not-for-profit entity or has obtained tax-exempt status under the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501, as amended, the applicant's board of directors is not independent of the applicant's employees and agents.

(d) A board of directors is not independent for purposes of subsection (c) of this section if more than one-fourth of its members:

(1) Are affiliates of the applicant, as defined in section 12-14.5-202 (2) (A), (2) (B) (i), (2) (B) (ii), (2) (B) (iv), (2) (B) (v), (2) (B) (vi), or (2) (B) (vii); or

(2) After the date ten years before first becoming a director of the applicant, were employed by or directors of a person that received from the applicant more than twenty-five thousand dollars in either the current year or the preceding year.

(e) The administrator may temporarily approve a certificate of registration in the event an applicant has made a timely effort to obtain a criminal records check as required in section 12-14.5-206 (14), but for which a timely return of information has not occurred, for a reasonable period of time but no longer than one hundred twenty days, provided that the applicant has provided all other required information in the application for registration and the administrator finds no reason to believe from the information that has been provided that the applicant may not provide fair and honest services to debtors under this part 2.

Source: L. 2007: Entire part added, p. 1936, § 1, effective January 1, 2008. L. 2011: IP(d) amended, (HB 11-1206), ch. 113, p. 351, § 5, effective July 1.

12-14.5-210. Certificate of registration - timing. (a) The administrator shall approve or deny an initial registration as a provider within ninety days after an application is filed. In connection with a request pursuant to section 12-14.5-206 (19) for additional information, the administrator may extend the ninety-day period for not more than thirty days. Within seven days after denying an application, the administrator, in a record, shall inform the applicant of the reasons for the denial.

(b) If the administrator denies an application for registration as a provider or does not act on an application within the time prescribed in subsection (a) of this section, the applicant may appeal and request a hearing pursuant to article 4 of title 24, C.R.S.

(c) Repealed.

Source: L. 2007: Entire part added, p. 1938, § 1, effective January 1, 2008. L. 2011: (c) repealed, (HB 11-1206), ch. 113, p. 351, § 6, effective July 1.

12-14.5-211. Renewal of registration. (a) A provider shall obtain a renewal of its registration annually before the expiration date of the registration to be renewed, as specified in this section.

(b) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p. 351, § 7, effective July 1, 2011.)

(c) An application for renewal of registration as a provider shall be in a form prescribed by the administrator, signed under penalty of false statement, and:

(1) Be filed before the registration expires;

(2) Be accompanied by the fee established by the administrator and the bond required by section 12-14.5-213;

(3) Contain a financial statement, reviewed by an accountant licensed to conduct audits, for the applicant's fiscal year immediately preceding the application; except that the third renewal after initial registration and every fourth renewal thereafter shall be audited rather than reviewed;

(4) Disclose any changes in the information contained in the applicant's application for registration or its immediately previous application for renewal, as applicable;

(5) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p. 351, § 7, effective July 1, 2011.)

(6) Disclose the total amount of money received by the applicant pursuant to plans during the preceding twelve months from or on behalf of individuals who reside in this state and the total amount of money distributed to creditors of those individuals during that period;

(7) If the applicant does not hold money on behalf of any debtor, disclose for business done with debtors in the state of Colorado during the preceding twelve months, the number of debtors with whom the applicant has had agreements, the number of fully settled debt

agreements with creditors that applicant concluded for debtors, and an estimate of the total amount of debt under contract between applicant and debtors; and

(8) Provide any other information that the administrator reasonably requires to perform the administrator's duties under this section.

(d) Except for the information required by section 12-14.5-206 (7), (11), (14), (15), and (17) and the addresses required by section 12-14.5-206 (4), the administrator shall make the information in an application for renewal of registration as a provider available to the public.

(e) If a registered provider files a timely and complete application for renewal of registration, the registration remains effective until the administrator, in a record, notifies the applicant of a denial and states the reasons for the denial.

(f) If the administrator denies an application for renewal of registration as a provider, the applicant, within thirty days after receiving notice of the denial, may appeal and request a hearing pursuant to article 4 of title 24, C.R.S. Subject to section 12-14.5-234, while the appeal is pending, the applicant shall continue to provide debt-management services to individuals with whom it has agreements. If the denial is affirmed, subject to the administrator's order and section 12-14.5-234, the applicant shall continue to provide debt-management services to individuals with whom it has agreements until, with the approval of the administrator, it transfers the agreements to another registered provider or returns to the individuals all unexpended money that is under the applicant's control.

(g) If a registered provider fails to file by July 1 a complete application for renewal of registration and the required renewal fee, the registration shall automatically expire on that date.

Source: L. 2007: Entire part added, p. 1938, § 1, effective January 1, 2008. L. 2011: (b), (c)(1), (c)(3), and (c)(5) amended, (HB 11-1206), ch. 113, p. 351, § 7, effective July 1.

12-14.5-212. Registration in another state. If a provider holds a license or certificate of registration in another state authorizing it to provide debt-management services, the provider may submit a copy of that license or certificate and the application for it instead of an application in the form prescribed by section 12-14.5-205 (a), 12-14.5-206, or 12-14.5-211 (c). The administrator shall accept the application and the license or certificate from the other state as an application for registration as a provider or for renewal of registration as a provider, as appropriate, in this state if:

(1) The application in the other state contains information substantially similar to, or more comprehensive than, that required in an application submitted in this state;

(2) The applicant provides the information required by section 12-14.5-206 (1), (3), (10), (12), and (13);

(3) The applicant, under penalty of false statement, certifies that the information contained in the application is current or, to the extent it is not current, supplements the application to make the information current; and

(4) The application is accompanied by the items required in section 12-14.5-205 (b).

Source: L. 2007: Entire part added, p. 1940, § 1, effective January 1, 2008.

12-14.5-213. Bond required. (a) Except as otherwise provided in section 12-14.5-214, a provider that is required to be registered under this part 2 shall file a surety bond with the administrator, which shall:

(1) Be in effect during the period of registration and for two years after the provider ceases providing debt-management services to individuals in this state; and

(2) Run to this state for the benefit of this state and of individuals who reside in this state when they agree to receive debt-management services from the provider, as their interests may appear.

(b) A surety bond filed pursuant to subsection (a) of this section shall:

(1) Be in the amount of fifty thousand dollars or other larger or smaller amount that the administrator determines is warranted by the financial condition and business experience of

the provider, the history of the provider in performing debt-management services, the risk to individuals, and any other factor the administrator considers appropriate;

(2) Be issued by a bonding, surety, or insurance company authorized to do business in this state and rated at least A by a nationally recognized rating organization; and

(3) Have payment conditioned upon noncompliance of the provider or its agent with this part 2.

(c) If the principal amount of a surety bond is reduced by payment of a claim or a judgment, the provider and the surety shall notify the administrator immediately and, within thirty days after notice by the administrator, the provider shall file a new or additional surety bond in an amount set by the administrator. The amount of the new or additional bond shall be at least the amount of the bond immediately before payment of the claim or judgment. If for any reason a surety terminates a bond, the surety shall provide written notice of the termination to the administrator immediately, and the provider shall immediately file a new surety bond in the amount of fifty thousand dollars or other amount determined pursuant to subsection (b) of this section.

(d) The administrator or an individual may obtain satisfaction out of the surety bond procured pursuant to this section if:

(1) The administrator assesses expenses under section 12-14.5-232 (b) (1), issues a final order under section 12-14.5-233 (a) (2), or recovers a final judgment under section 12-14.5-233 (a) (4), (a) (5), or (d); or

(2) An individual recovers a final judgment pursuant to section 12-14.5-235 (a), (b), (c) (1), (c) (2), or (c) (4).

(e) If claims against a surety bond exceed or are reasonably expected to exceed the amount of the bond, the administrator, on the initiative of the administrator or on petition of the surety, shall, unless the proceeds are adequate to pay all costs, judgments, and claims, distribute the proceeds in the following order:

(1) To satisfaction of a final order or judgment under section 12-14.5-233 (a) (2), (a) (4), (a) (5), or (d);

(2) To final judgments recovered by individuals pursuant to section 12-14.5-235 (a), (b), (c) (1), (c) (2), or (c) (4), pro rata;

(3) To claims of individuals established to the satisfaction of the administrator, pro rata; and

(4) If a final order or judgment is issued under section 12-14.5-233 (a), to the expenses charged pursuant to section 12-14.5-232 (b) (1).

Source: L. 2007: Entire part added, p. 1940, § 1, effective January 1, 2008. L. 2011: IP(b) and (c) amended, (HB 11-1206), ch. 113, p. 352, § 8, effective July 1.

12-14.5-214. Bond required - substitute. (a) Instead of the surety bond required by section 12-14.5-213, a provider may deliver to the administrator, in the amount required by section 12-14.5-213 (b), and, except as otherwise provided in paragraph (2) of this subsection (a), payable or available to this state and to individuals who reside in this state when they agree to receive debt-management services from the provider, as their interests may appear, if the provider or its agent does not comply with this part 2:

(1) Repealed.

(2) With the approval of the administrator, an irrevocable letter of credit, issued or confirmed by a bank approved by the administrator, payable upon presentation of a certificate by the administrator stating that the provider or its agent has not complied with this part 2.

(b) If a provider furnishes a substitute pursuant to subsection (a) of this section, the provisions of section 12-14.5-213 (a), (c), (d), and (e) apply to the substitute.

Source: L. 2007: Entire part added, p. 1942, § 1, effective January 1, 2008. L. 2011: (a)(1) repealed, (HB 11-1206), ch. 113, p. 352, § 9, effective July 1.

12-14.5-215. Requirement of good faith. A provider shall act in good faith in all matters under this part 2.

Source: L. 2007: Entire part added, p. 1942, § 1, effective January 1, 2008.

12-14.5-216. Customer service. A provider that is required to be registered under this part 2 shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a counselor, debt specialist, or customer-service representative, as appropriate, during ordinary business hours.

Source: L. 2007: Entire part added, p. 1942, § 1, effective January 1, 2008. **L. 2011:** Entire section amended, (HB 11-1206), ch. 113, p. 352, § 10, effective July 1.

12-14.5-217. Prerequisites for providing debt-management services. (a) Before providing or contracting to provide debt-management services, a registered provider shall give the individual an itemized list of goods and services and the charges for each. The list shall be clear and conspicuous, be in a record the individual may keep whether or not the individual assents to an agreement, and describe the goods and services the provider offers:

- (1) Free of additional charge if the individual enters into an agreement;
- (2) For a charge if the individual does not enter into an agreement; and
- (3) For a charge if the individual enters into an agreement, using the following terminology, as applicable, and format:

Set-up fee _____ *dollar amount of fee*

Monthly service fee _____ *dollar amount of fee or method of determining amount*

Settlement fee _____ *dollar amount of fee or method of determining amount*

Goods and services in addition to those provided in connection with a plan:

(item) dollar amount or method of determining amount

(item) dollar amount or method of determining amount.

(b) A provider may not furnish or contract to furnish debt-management services unless the provider, through the services of a counselor or debt specialist:

- (1) Provides the individual with reasonable education about the management of personal finance;
- (2) Has prepared a financial analysis; and
- (3) If the individual is to make regular, periodic payments:
 - (A) Has prepared a plan for the individual;
 - (B) Has made a determination, based on the provider's analysis of the information provided by the individual and otherwise available to it, that the plan is suitable for the individual and the individual will be able to meet the payment obligations under the plan; and
 - (C) Believes that each creditor of the individual listed as a participating creditor in the plan will accept payment of the individual's debts as provided in the plan.
- (c) Before an individual assents to an agreement to engage in a plan, a provider shall:
 - (1) Provide the individual with a copy of the analysis and plan required by subsection (b) of this section in a record that identifies the provider and that the individual may keep whether or not the individual assents to the agreement;
 - (2) Inform the individual of the availability, at the individual's option, of assistance by a toll-free communication system or in person to discuss the financial analysis and plan required by subsection (b) of this section; and

(3) With respect to all creditors identified by the individual or otherwise known by the provider to be creditors of the individual, provide the individual with a list of:

(A) Creditors that the provider expects to participate in the plan and grant concessions;
(B) Creditors that the provider expects to participate in the plan but not grant concessions;

(C) Creditors that the provider expects not to participate in the plan; and

(D) All other creditors.

(d) Before an individual assents to an agreement to engage in a plan, the provider shall inform the individual, in a record that contains nothing else, that is given separately, and that the individual may keep whether or not the individual assents to the agreement:

(1) Of the name and business address of the provider;

(2) That plans are not suitable for all individuals and the individual may ask the provider about other ways, including bankruptcy, to deal with indebtedness;

(3) That establishment of a plan may adversely affect the individual's credit rating or credit scores;

(4) That nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including litigation;

(5) Unless it is not true, that the provider may receive compensation from the creditors of the individual; and

(6) That, unless the individual is insolvent, if a creditor settles for less than the full amount of the debt, the plan may result in the creation of taxable income to the individual, even though the individual does not receive any money.

(e) If a provider may receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may comply with subsection (d) of this section by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

(2) Using a debt-management plan may hurt your credit rating or credit scores.

(3) We may receive compensation for our services from your creditors.

Name and business address of provider

(f) If a provider will not receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default, or delinquency, a provider may comply with subsection (d) of this section by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

(2) Using a debt-management plan may hurt your credit rating or credit scores.

Name and business address of provider

(g) If a plan contemplates that creditors will settle debts for less than the full principal amount of debt owed, a provider may comply with subsection (d) of this section by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Our program is not right for all individuals, and you may ask us to provide information about bankruptcy and other ways to deal with your debts.

(2) Nonpayment of your debts under our program may:

Hurt your credit rating or credit scores;

Lead your creditors to increase finance and other charges; and

Lead your creditors to undertake activity, including lawsuits, to collect the debts.

(3) Reduction of debt under our program may result in taxable income to you, even though you will not actually receive any money.

Name and business address of provider

Source: L. 2007: Entire part added, p. 1942, § 1, effective January 1, 2008. L. 2011: IP(a) and IP(b) amended, (HB 11-1206), ch. 113, p. 353, § 11, effective July 1.

12-14.5-218. Communication by electronic or other means. (a) As used in this section, unless the context otherwise requires:

(1) “Consumer” means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes.

(2) “Federal act” means the federal “Electronic Signatures in Global and National Commerce Act”, 15 U.S.C. sec. 7001 et seq., as amended.

(b) A provider may satisfy the requirements of section 12-14.5-217, 12-14.5-219, or 12-14.5-227 by means of the internet or other electronic means if the provider obtains a consumer’s consent in the manner provided by section 101 (c) (1) of the federal act.

(c) The disclosures and materials required by sections 12-14.5-217, 12-14.5-219, and 12-14.5-227 shall be presented in a form that is capable of being accurately reproduced for later reference.

(d) With respect to disclosure by means of an internet web site, the disclosure of the information required by section 12-14.5-217 (d) shall appear on one or more screens that:

(1) Contain no other information; and

(2) The individual must see before proceeding to assent to formation of a plan.

(e) At the time of providing the materials and agreement required by sections 12-14.5-217 (c) and (d), 12-14.5-219, and 12-14.5-227, a provider shall inform the individual that upon electronic, telephonic, or written request, it will send the individual a written copy of the materials, and shall comply with a request as provided in subsection (f) of this section.

(f) If a provider is requested, before the expiration of ninety days after a plan is completed or terminated, to send a written copy of the materials required by section 12-14.5-217 (c) and (d), 12-14.5-219, or 12-14.5-227, the provider shall send them at no charge within three business days after the request, but the provider need not comply with a request more than once per calendar month or if it reasonably believes the request is made for purposes of harassment. If a request is made more than ninety days after a plan is completed or terminated, the provider shall send within a reasonable time a written copy of the materials requested.

(g) A provider that maintains an internet web site shall disclose on the home page of its web site or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals its contents:

(1) Its name and all names under which it does business;

(2) Its principal business address, telephone number, and electronic mail address, if any; and

(3) The names of its principal officers.

(h) Subject to subsection (i) of this section, if a consumer who has consented to electronic communication in the manner provided by section 101 of the federal act

withdraws consent as provided in the federal act, a provider may terminate its agreement with the consumer.

(i) If a provider wishes to terminate an agreement with a consumer pursuant to subsection (h) of this section, it shall notify the consumer that it will terminate the agreement unless the consumer, within thirty days after receiving the notification, consents to electronic communication in the manner provided in section 101 (c) of the federal act. If the consumer consents, the provider may terminate the agreement only as permitted by section 12-14.5-219 (a) (6) (G).

Source: L. 2007: Entire part added, p. 1945, § 1, effective January 1, 2008.

12-14.5-219. Form and contents of agreement. (a) An agreement shall:

- (1) Be in a record;
 - (2) Be dated and signed by the provider and the individual;
 - (3) Include the name of the individual and the address where the individual resides;
 - (4) Include the name, business address, and telephone number of the provider;
 - (5) Be delivered to the individual immediately upon formation of the agreement; and
 - (6) Disclose:
 - (A) The services to be provided;
 - (B) In a clear and conspicuous manner, the amount, percentage, or method of determining the amount, of all fees, individually itemized, to be paid by the individual, using only the terminology contained in section 12-14.5-223;
 - (C) The schedule of payments to be made by or on behalf of the individual, including the amount of each payment, the date on which each payment is due, an estimate of the date of the final payment, and an estimate of the total of all payments to be made under the plan;
- (C.5) In a clear and conspicuous manner, the following information:
- (i) The amount of time necessary to achieve the represented results;
 - (ii) If the plan includes a settlement offer to any of the individual's creditors or debt collectors, the time by which the provider will make a bona fide settlement offer to each of them and the amount of money or the percentage of each outstanding debt that the individual must accumulate before the provider will make a bona fide settlement offer to each of them; and
 - (iii) If the provider requests or requires the individual to place funds in an account at an insured financial institution, that the individual owns the funds held in the account, the individual may withdraw from the plan at any time without penalty, and, if the individual withdraws, the individual must receive all funds in the account, other than funds earned by the provider in compliance with section 12-14.5-222 (h);
- (D) If a plan provides for regular periodic payments to creditors:
- (i) Each creditor of the individual to which payment will be made, the amount owed to each creditor, and any concessions the provider reasonably believes each creditor will offer; and
 - (ii) The schedule of expected payments to each creditor, including the amount of each payment and the date on which it will be made;
- (E) If the provider holds money on behalf of the individual, each creditor that the provider believes will not participate in the plan and to which the provider will not direct payment;
- (F) How the provider will comply with its obligations under section 12-14.5-227 (a);
- (G) If the provider holds money on behalf of the individual, that the provider may terminate the agreement for good cause, upon return of unexpended money of the individual;
- (H) That the individual may cancel the agreement as provided in section 12-14.5-220;
- (I) That the individual may contact the administrator with any questions or complaints regarding the provider; and
- (J) The address, telephone number, and internet address or web site of the administrator.

(b) For purposes of paragraph (5) of subsection (a) of this section, delivery of an electronic record occurs when it is made available in a format in which the individual may retrieve, save, and print it, and the individual is notified that it is available.

(c) If the administrator supplies the provider with any information required under subparagraph (J) of paragraph (6) of subsection (a) of this section, the provider may comply with that requirement only by disclosing the information supplied by the administrator.

(d) An agreement shall provide that:

(1) The individual has a right to terminate the agreement at any time, without penalty or obligation, by giving the provider written or electronic notice, in which event:

(A) The provider will refund all unexpended money that the provider or its agent has received from or on behalf of the individual for the reduction or satisfaction of the individual's debt; and

(B) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p. 353, § 12, effective July 1, 2011.)

(C) All powers of attorney granted by the individual to the provider are revoked and ineffective;

(2) The individual authorizes any bank in which the provider or its agent has established a trust account to disclose to the administrator any financial records relating to the trust account; and

(3) The provider will notify the individual within five days after learning of a creditor's decision to reject or withdraw from a plan and that this notice will include:

(A) The identity of the creditor; and

(B) The right of the individual to modify or terminate the agreement.

(e) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p. 353, § 12, effective July 1, 2011.)

(f) An agreement may not:

(1) Provide for application of the law of any jurisdiction other than the United States and this state;

(2) Except as permitted by the uniform arbitration act, part 2 of article 22 of title 13, C.R.S., contain a provision that modifies or limits otherwise available forums or procedural rights, including the right to trial by jury, that are generally available to the individual under law other than this part 2;

(3) Contain a provision that restricts the individual's remedies under this part 2 or law other than this part 2; or

(4) Contain a provision that:

(A) Limits or releases the liability of any person for not performing the agreement or for violating this part 2; or

(B) Indemnifies any person for liability arising under the agreement or this part 2.

(g) All rights and obligations specified in subsection (d) of this section and section 12-14.5-220 exist even if not provided in the agreement. A provision in an agreement that violates subsection (d), (e), or (f) of this section is void.

Source: L. 2007: Entire part added, p. 1947, § 1, effective January 1, 2008. L. 2011: (a)(6)(B), (a)(6)(C), (a)(6)(E), (a)(6)(G), (d)(1)(A), (d)(1)(B), and (e) amended and (a)(6)(C.5) added, (HB 11-1206), ch. 113, p. 353, § 12, effective July 1.

12-14.5-220. Cancellation of agreement - waiver. (a) An individual may cancel an agreement before midnight of the third business day after the individual assents to it, unless the agreement does not comply with subsection (b) of this section or section 12-14.5-219 or 12-14.5-228, in which event the individual may cancel the agreement within thirty days after the individual assents to it. To exercise the right to cancel, the individual shall give notice in a record to the provider. Notice by mail is given when mailed.

(b) An agreement shall be accompanied by a separate form that contains in bold-faced type, surrounded by bold black lines:

Notice of Right to Cancel

You may cancel this agreement, without any penalty or obligation, at any time before midnight of the third business day that begins the day after you agree to it by electronic communication or by signing it.

To cancel this agreement during this period, send an e-mail to (E-mail address of provider) or mail or deliver a signed, dated copy of this notice, or any other written notice to (Name of provider) at (Address of provider) before midnight on (Date).

If you cancel this agreement within the 3-day period, we will refund all money you already have paid us.

You also may terminate this agreement at any later time, but we are not required to refund fees you have paid us.

I cancel this agreement,

Print your name

Signature

Date

(c) If a personal financial emergency necessitates the disbursement of an individual's money to one or more of the individual's creditors before the expiration of three days after an agreement is signed, an individual may waive the right to cancel. To waive the right, the individual shall send or deliver a signed, dated statement in the individual's own words describing the circumstances that necessitate a waiver. The waiver shall explicitly waive the right to cancel. A waiver by means of a standard form record is void.

Source: L. 2007: Entire part added, p. 1949, § 1, effective January 1, 2008. **L. 2011:** IP(b) amended, (HB 11-1206), ch. 113, p. 354, § 13, effective July 1.

12-14.5-221. Required language. Unless the administrator, by rule, provides otherwise, the disclosures and documents required by this part 2 shall be in English. If a provider communicates with an individual primarily in a language other than English, the provider shall furnish a translation into the other language of the disclosures and documents required by this part 2.

Source: L. 2007: Entire part added, p. 1950, § 1, effective January 1, 2008.

12-14.5-222. Trust account. (a) All money paid to a provider by or on behalf of an individual pursuant to a plan for distribution to creditors is held in trust. Within two business days after receipt, the provider shall deposit the money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services.

(b) Money held in trust by a provider is not property of the provider or its designee. The money is not available to creditors of the provider or designee, except an individual from whom or on whose behalf the provider received money, to the extent that the money has not been disbursed to creditors of the individual.

(c) A provider shall:

(1) Maintain separate records of account for each individual to whom the provider is furnishing debt-management services;

(2) Disburse money paid by or on behalf of the individual to creditors of the individual as disclosed in the agreement; except that:

(A) The provider may delay payment to the extent that a payment by the individual is not final; and

(B) If a plan provides for regular periodic payments to creditors, the disbursement shall comply with the due dates established by each creditor; and

(3) Promptly correct any payments that are not made or that are misdirected as a result of an error by the provider or other person in control of the trust account and reimburse the individual for any costs or fees imposed by a creditor as a result of the failure to pay or misdirection.

(d) A provider may not commingle money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services with money of other persons.

(e) A trust account shall at all times have a cash balance equal to the sum of the balances of each individual's account.

(f) If a provider has established a trust account pursuant to subsection (a) of this section, the provider shall reconcile the trust account at least once a month. The reconciliation shall compare the cash balance in the trust account with the sum of the balances in each individual's account. If the provider or its designee has more than one trust account, each trust account shall be individually reconciled.

(g) If a provider discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the provider immediately shall notify the administrator by a method approved by the administrator. Unless the administrator by rule provides otherwise, within five days thereafter, the provider shall give notice to the administrator describing the remedial action taken or to be taken.

(h) If an individual terminates an agreement or it becomes reasonably apparent to a provider that a plan has failed, the provider shall promptly refund to the individual all money paid by or on behalf of the individual that has not been paid to creditors, less fees that are payable to the provider under section 12-14.5-223.

(i) Before relocating a trust account from one bank to another, a provider shall inform the administrator of the name, business address, and telephone number of the new bank. As soon as practicable, the provider shall inform the administrator of the account number of the trust account at the new bank.

Source: L. 2007: Entire part added, p. 1950, § 1, effective January 1, 2008.

12-14.5-223. Fees and other charges. (a) A provider may not impose directly or indirectly a fee or other charge on an individual or receive money from or on behalf of an individual for debt-management services except as permitted by this section.

(b) A provider may not impose charges or receive payment for debt-management services until the provider and the individual have signed an agreement that complies with sections 12-14.5-219 and 12-14.5-228.

(c) If an individual assents to an agreement, a provider may not impose a fee or other charge for educational or counseling services, or the like, except as otherwise provided in this subsection (c) and section 12-14.5-228 (d). The administrator may authorize a provider to charge a fee based on the nature and extent of the educational or counseling services furnished by the provider.

(d) The following rules apply:

(1) If an individual assents to a plan that contemplates that creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may charge:

(A) A fee not exceeding fifty dollars for consultation, obtaining a credit report, and setting up an account; and

(B) A monthly service fee, not to exceed ten dollars times the number of creditors remaining in a plan at the time the fee is assessed, but not more than fifty dollars in any month.

(2) If an individual assents to a plan that contemplates that creditors or debt collectors will settle debts for less than the principal amount of the debt:

(A) A provider may not request or receive payment of any fee or consideration until and unless:

(i) The provider has settled the terms of at least one debt pursuant to a settlement agreement or other valid contractual agreement executed by the individual;

(ii) The individual has made at least one payment pursuant to that settlement agreement or other valid contractual agreement between the individual and the creditor or debt collector; and

(iii) The fee or consideration either: Bears the same proportional relationship to the total fee for settling the terms of the entire debt balance as the individual debt amount bears to the entire debt amount, in which case the individual debt amount and the entire debt amount are those owed at the time the debt was enrolled in the service; or is a percentage of the amount saved as a result of the settlement. The percentage charged cannot change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the plan and the amount actually paid to satisfy the debt.

(B) and (C) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p. 354, § 14, effective July 1, 2011.)

(D) Notwithstanding subparagraph (A) of this paragraph (2), no individual who completes all of his or her obligations under the agreement may be charged fees such that those fees, when added to the aggregate of offers of settlement obtained by the provider for the debtor, exceeds the principal amount of the debt.

(3) A provider may not impose or receive fees under both paragraphs (1) and (2) of this subsection (d).

(4) Except as otherwise provided in section 12-14.5-228 (d), if an individual does not assent to an agreement, a provider may receive for educational and counseling services it provides to the individual a fee not exceeding one hundred dollars or, with the approval of the administrator, a larger fee. The administrator may approve a fee larger than one hundred dollars if the nature and extent of the educational and counseling services warrant the larger fee.

(5) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p. 354, § 14, effective July 1, 2011.)

(e) If, before the expiration of ninety days after the completion or termination of educational or counseling services, an individual assents to an agreement, the provider shall refund to the individual any fee paid pursuant to paragraph (4) of subsection (d) of this section.

(f) If a payment to a provider by an individual under this part 2 is dishonored, a provider may impose a reasonable charge on the individual, not to exceed the lesser of twenty-five dollars and the amount permitted by law other than this part 2.

Source: L. 2007: Entire part added, p. 1952, § 1, effective January 1, 2008. L. 2011: IP(d), (d)(1)(A), (d)(2), (d)(5), and (f) amended, (HB 11-1206), ch. 113, p. 354, § 14, effective July 1.

12-14.5-224. Voluntary contributions. A provider may not solicit a voluntary contribution from an individual or an affiliate of the individual for any service provided to the individual. A provider may accept voluntary contributions from an individual but, until thirty days after completion or termination of a plan, the aggregate amount of money received from or on behalf of the individual may not exceed the total amount the provider may charge the individual under section 12-14.5-223.

Source: L. 2007: Entire part added, p. 1953, § 1, effective January 1, 2008.

12-14.5-225. Voidable agreements. (a) If a provider imposes a fee or other charge or receives money or other payments not authorized by section 12-14.5-223 or 12-14.5-224, the individual may void the agreement and recover as provided in section 12-14.5-235.

(b) If a provider is not registered as required by this part 2 when an individual assents to an agreement, the agreement is voidable by the individual.

(c) If an individual voids an agreement under subsection (b) of this section, the provider does not have a claim against the individual for breach of contract or for restitution.

Source: L. 2007: Entire part added, p. 1953, § 1, effective January 1, 2008.

12-14.5-226. Termination of agreements. (a) If an individual who has entered into an agreement fails for sixty days to make payments required by the agreement, a provider may terminate the agreement.

(b) If a provider or an individual terminates an agreement, the provider shall immediately return to the individual:

(1) Any money of the individual held in trust for the benefit of the individual.

(2) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p. 356, § 15, effective July 1, 2011.)

Source: L. 2007: Entire part added, p. 1954, § 1, effective January 1, 2008. **L. 2011:** (b)(1) and (b)(2) amended, (HB 11-1206), ch. 113, p. 356, § 15, effective July 1.

12-14.5-227. Periodic reports - retention of records. (a) A provider shall provide the accounting required by subsection (b) of this section:

(1) Upon cancellation or termination of an agreement; and

(2) Before cancellation or termination of any agreement:

(A) At least once each month; and

(B) Within five business days after a request by an individual, but the provider need not comply with more than one request from an individual in any calendar month.

(b) A provider, in a record, shall provide each individual for whom it has established a plan an accounting of the following information:

(1) The amount of money received from the individual since the last report;

(2) The amounts and dates of disbursement made on the individual's behalf, or by the individual upon the direction of the provider, since the last report to each creditor listed in the plan;

(3) The amounts deducted from the amount received from the individual;

(4) The amount held in reserve; and

(5) If, since the last report, a creditor has agreed to accept as payment in full an amount less than the principal amount of the debt owed by the individual:

(A) The total amount and terms of the settlement;

(B) The amount of the debt when the individual assented to the plan;

(C) The amount of the debt when the creditor agreed to the settlement; and

(D) The calculation of a settlement fee.

(c) A provider shall maintain records for each individual for whom it provides debt-management services for five years after the final payment made by the individual and produce a copy of them to the individual within a reasonable time after a request for them. The provider may use electronic or other means of storage of the records.

Source: L. 2007: Entire part added, p. 1954, § 1, effective January 1, 2008.

12-14.5-228. Prohibited acts and practices. (a) A provider may not, directly or indirectly:

(1) Misappropriate or misapply money held in trust;

(2) Settle a debt on behalf of an individual without the individual's agreement to the settlement terms pursuant to a settlement agreement or other valid contractual agreement executed by the individual;

(3) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p. 356, § 16, effective July 1, 2011.)

(4) Exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;

(5) Initiate a transfer from an individual's account at a bank or with another person unless the transfer is:

(A) A return of money to the individual; or

(B) Before termination of an agreement, properly authorized by the agreement and this part 2, and for:

(i) Payment to one or more creditors pursuant to a plan; or

(ii) Payment of a fee;

(6) Offer a gift or bonus, premium, reward, or other compensation to an individual for executing an agreement;

(7) Offer, pay, or give a gift or bonus, premium, reward, or other compensation to a person for referring a prospective customer, except for a sales lead, if the person making the referral has a financial interest in the outcome of debt-management services provided to the customer, unless neither the provider nor the person making the referral communicates to the prospective customer the identity of the source of the referral;

(8) Receive a bonus, commission, or other benefit for referring an individual to a person;

(9) Structure a plan in a manner that would result in a negative amortization of any of an individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt;

(10) Compensate its employees on the basis of a formula that incorporates the number of individuals the employee induces to enter into agreements;

(11) Settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification by the creditor that the payment is in full settlement of the debt;

(12) Make a representation that:

(A) The provider will furnish money to pay bills or prevent attachments;

(B) Payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness; or

(C) Participation in a plan will or may prevent litigation, collection activity, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment;

(13) Misrepresent that it is authorized or competent to furnish legal advice or perform legal services;

(14) Represent that it is a not-for-profit entity unless it is organized and properly operating as a not-for-profit under the law of the state in which it was formed or that it is a tax-exempt entity unless it has received certification of tax-exempt status from the federal internal revenue service; except that, if the provider represents that it is a not-for-profit entity and the provider does not have tax-exempt status under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, the provider shall state, in a clear and conspicuous manner and in close proximity to the representation: "We are not an educational, charitable, or religious organization granted tax-exempt status by the Internal Revenue Service."

(15) Take a confession of judgment or power of attorney to confess judgment against an individual;

(16) Employ an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information; or

(17) Advise, encourage, or suggest to the individual not to make a payment to creditors under the plan.

(b) If a provider furnishes debt-management services to an individual, the provider may not, directly or indirectly:

(1) Purchase a debt or obligation of the individual;

(2) Receive from or on behalf of the individual:

(A) A promissory note or other negotiable instrument other than a check or a demand draft; or

(B) A post-dated check or demand draft;

(3) Lend money or provide credit to the individual, except as a deferral of a settlement fee at no additional expense to the individual;

(4) Obtain a mortgage or other security interest from any person in connection with the services provided to the individual;

(5) Except as permitted by federal law, disclose the identity or identifying information of the individual or the identity of the individual's creditors, except to:

(A) The administrator, upon proper demand;

(B) A creditor of the individual, to the extent necessary to secure the cooperation of the creditor in a plan; or

(C) The extent necessary to administer the plan;

(6) Except as otherwise provided in section 12-14.5-223 (d) (2), provide the individual less than the full benefit of a compromise of a debt arranged by the provider;

(7) Charge the individual for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the internet, or any other matter not directly related to debt-management services or educational services concerning personal finance; or

(8) Furnish legal advice or perform legal services, unless the person furnishing that advice to or performing those services for the individual is licensed to practice law.

(c) This part 2 does not authorize any person to engage in the practice of law.

(d) A provider may not receive a gift or bonus, premium, reward, or other compensation, directly or indirectly, for advising, arranging, or assisting an individual in connection with obtaining an extension of credit or other service from a lender or service provider, except for educational or counseling services required in connection with a government-sponsored program.

(e) Unless a person supplies goods, services, or facilities generally and supplies them to the provider at a cost no greater than the cost the person generally charges to others, a provider may not purchase goods, services, or facilities from the person if an employee or a person that the provider should reasonably know is an affiliate of the provider:

(1) Owns more than ten percent of the person; or

(2) Is an employee or affiliate of the person.

Source: L. 2007: Entire part added, p. 1955, § 1, effective January 1, 2008. **L. 2011:** (a)(2), (a)(3), and (a)(14) amended, (HB 11-1206), ch. 113, p. 356, § 16, effective July 1.

12-14.5-229. Notice of litigation. No later than thirty days after a provider has been served with notice of a civil action for violation of this part 2 by or on behalf of an individual who resides in this state at either the time of an agreement or the time the notice is served, the provider shall notify the administrator in a record that it has been sued.

Source: L. 2007: Entire part added, p. 1958, § 1, effective January 1, 2008.

12-14.5-230. Advertising. A provider that advertises debt-management services shall disclose, in an easily comprehensible manner, the information specified in section 12-14.5-217 (d) (3) and (d) (4).

Source: L. 2007: Entire part added, p. 1958, § 1, effective January 1, 2008.

12-14.5-231. Liability for the conduct of other persons. If a provider delegates any of its duties or obligations under an agreement or this part 2 to another person, including an independent contractor, the provider is liable for conduct of the person that, if done by the provider, would violate the agreement or this part 2.

Source: L. 2007: Entire part added, p. 1958, § 1, effective January 1, 2008.

12-14.5-232. Powers of administrator - rules. (a) The administrator may act on its own initiative or in response to complaints and may receive complaints, take action to obtain voluntary compliance with this part 2, and seek or provide remedies as provided in this part 2.

(b) The administrator may investigate and examine, in this state or elsewhere, by subpoena or otherwise, the activities, books, accounts, and records of a person that provides or offers to provide debt-management services, or a person to which a provider has delegated its obligations under an agreement or this part 2, to determine compliance with this part 2. Information that identifies individuals who have agreements with the provider shall not be disclosed to the public. In connection with the investigation, the administrator may:

(1) Charge the person the reasonable expenses necessarily incurred to conduct the examination;

(2) Require or permit a person to file a statement under oath as to all the facts and circumstances of a matter to be investigated; and

(3) Seek a court order authorizing seizure from a bank at which the person maintains a trust account required by section 12-14.5-222, any or all money, books, records, accounts, and other property of the provider that is in the control of the bank and relates to individuals who reside in this state.

(c) The administrator may adopt rules to implement the provisions of this part 2 in accordance with section 24-4-103, C.R.S.

(d) The administrator may enter into cooperative arrangements with any other federal or state agency having authority over providers and may exchange with any of those agencies information about a provider, including information obtained during an examination of the provider.

(e) The administrator, by rule, shall establish reasonable fees to be paid by providers for the expense of administering this part 2.

(f) and (g) Repealed.

Source: L. 2007: Entire part added, p. 1958, § 1, effective January 1, 2008. **L. 2011:** (f) and (g) repealed, (HB 11-1206), ch. 113, p. 356, § 17, effective July 1.

12-14.5-233. Administrative and legal remedies. (a) The administrator may enforce this part 2 and rules adopted under this part 2 by taking one or more of the following actions:

(1) Ordering a provider or a director, employee, or other agent of a provider to cease and desist from any violations;

(2) Ordering a provider or a person that has caused a violation to correct the violation, including making restitution of money or property to a person aggrieved by a violation;

(3) Imposing on a provider or a person that has caused a violation a civil penalty not exceeding ten thousand dollars for each violation;

(4) Prosecuting a civil action to:

(A) Enforce an order; or

(B) Obtain restitution, a civil penalty not to exceed ten thousand dollars per violation, an injunction, or other equitable relief;

(5) Intervening in an action brought under section 12-14.5-235.

(b) If a person violates or knowingly authorizes, directs, or aids in the violation of a final order issued under paragraph (1) or (2) of subsection (a) of this section, the administrator or court may impose a civil penalty not exceeding twenty thousand dollars for each violation.

(c) The administrator may maintain an action to enforce this part 2 in any county.

(d) The administrator may recover the reasonable costs of enforcing this part 2 under subsections (a) to (c) of this section, including attorney fees based on the hours reasonably expended and the hourly rates for attorneys of comparable experience in the community.

(e) In determining the amount of a civil penalty to impose under subsection (a) or (b) of this section, the administrator or the court shall consider the seriousness of the violation, the good faith of the violator, any previous violations by the violator, the deleterious effect of the violation on the public, the net worth of the violator, and any other factor the administrator or the court considers relevant to the determination of the civil penalty.

Source: L. 2007: Entire part added, p. 1959, § 1, effective January 1, 2008. L. 2011: (a)(3), (a)(4)(B), (b), and (e) amended, (HB 11-1206), ch. 113, p. 357, § 18, effective July 1.

12-14.5-234. Suspension, revocation, or nonrenewal of registration. (a) In this section, “insolvent” means:

(1) Having generally ceased to pay debts in the ordinary course of business other than as a result of good-faith dispute;

(2) Being unable to pay debts as they become due; or

(3) Being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C. sec. 101 et seq., as amended.

(b) In addition to the remedies otherwise available under this article, the administrator may suspend, revoke, or deny renewal of a provider’s registration if:

(1) A fact or condition exists that, if it had existed when the registrant applied for registration as a provider, would have been a reason for denying registration;

(2) The provider has committed a material violation of this part 2 or a rule or order of the administrator under this part 2;

(3) The provider is insolvent;

(4) The provider or an employee or affiliate of the provider has refused to permit the administrator to make an examination authorized by this part 2, failed to comply with section 12-14.5-232 (b) (2) within fifteen days after request, or made a material misrepresentation or omission in complying with section 12-14.5-232 (b) (2); or

(5) The provider has not responded within a reasonable time and in an appropriate manner to communications from the administrator.

(c) If a provider does not comply with section 12-14.5-222 (f) or if the administrator otherwise finds that the public health, safety, or general welfare requires emergency action, the administrator may order a summary suspension of the provider’s registration, effective on the date specified in the order.

(d) If the administrator suspends, revokes, or denies renewal of the registration of a provider, the administrator may seek a court order authorizing seizure of any or all of the money in a trust account required by section 12-14.5-222, books, records, accounts, and other property of the provider that are located in this state.

(e) If the administrator suspends or revokes a provider’s registration, the provider may appeal and request a hearing pursuant to section 24-4-105, C.R.S.

Source: L. 2007: Entire part added, p. 1960, § 1, effective January 1, 2008. L. 2011: IP(b) amended, (HB 11-1206), ch. 113, p. 357, § 19, effective July 1.

12-14.5-235. Private enforcement. (a) If an individual voids an agreement pursuant to section 12-14.5-225 (b), the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except amounts paid to creditors, in addition to the recovery under paragraphs (3) and (4) of subsection (c) of this section.

(b) If an individual voids an agreement pursuant to section 12-14.5-225 (a), the individual may recover in a civil action three times the total amount of the fees, charges, money, and payments made by the individual to the provider, in addition to the recovery under paragraph (4) of subsection (c) of this section.

(c) Subject to subsection (d) of this section, an individual with respect to whom a provider violates this part 2 may recover in a civil action from the provider and any person that caused the violation:

(1) Compensatory damages for injury, including noneconomic injury, caused by the violation;

(2) Except as otherwise provided in subsection (d) of this section, with respect to a violation of section 12-14.5-217, 12-14.5-219 to 12-14.5-224, 12-14.5-227, or 12-14.5-228 (a), (b), or (d), the greater of the amount recoverable under paragraph (1) of this subsection (c) or five thousand dollars;

- (3) Punitive damages; and
- (4) Reasonable attorney fees and costs.
- (d) In a class action, except for a violation of section 12-14.5-228 (a) (5), the minimum damages provided in paragraph (2) of subsection (c) of this section do not apply.
- (e) In addition to the remedy available under subsection (c) of this section, if a provider violates an individual's rights under section 12-14.5-220, the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except for amounts paid to creditors.
- (f) A provider is not liable under this section for a violation of this part 2 if the provider proves that the violation was not intentional and resulted from a good-faith error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. An error of legal judgment with respect to a provider's obligations under this part 2 is not a good-faith error. If, in connection with a violation, the provider has received more money than authorized by an agreement or this part 2, the defense provided by this subsection (f) is not available unless the provider refunds the excess within two business days after learning of the violation.
- (g) The administrator shall assist an individual in enforcing a judgment against the surety bond or other security provided under section 12-14.5-213 or 12-14.5-214.

Source: L. 2007: Entire part added, p. 1961, § 1, effective January 1, 2008. L. 2011: (c)(2) amended, (HB 11-1206), ch. 113, p. 357, § 20, effective July 1.

12-14.5-236. Violation of unfair or deceptive practices statute. If an act or practice of a provider violates both this part 2 and section 6-1-105, C.R.S., an individual may not recover under both for the same act or practice.

Source: L. 2007: Entire part added, p. 1962, § 1, effective January 1, 2008.

12-14.5-237. Statute of limitations. (a) An action or proceeding brought pursuant to section 12-14.5-233 (a), (b), or (c) shall be commenced within four years after the conduct that is the basis of the administrator's complaint.

(b) An action brought pursuant to section 12-14.5-235 shall be commenced within two years after the latest of:

- (1) The individual's last transmission of money to a provider;
- (2) The individual's last transmission of money to a creditor at the direction of the provider;
- (3) The provider's last disbursement to a creditor of the individual;
- (4) The provider's last accounting to the individual pursuant to section 12-14.5-227 (a);
- (5) The date on which the individual discovered or reasonably should have discovered the facts giving rise to the individual's claim; or
- (6) Termination of actions or proceedings by the administrator with respect to a violation of this part 2.

(c) The period prescribed in paragraph (5) of subsection (b) of this section is tolled during any period during which the provider or, if different, the defendant has materially and willfully misrepresented information required by this part 2 to be disclosed to the individual, if the information so misrepresented is material to the establishment of the liability of the defendant under this part 2.

Source: L. 2007: Entire part added, p. 1962, § 1, effective January 1, 2008.

12-14.5-238. Uniformity of application and construction. In applying and construing this part 2, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: L. 2007: Entire part added, p. 1963, § 1, effective January 1, 2008.

12-14.5-239. Relation to federal “Electronic Signatures in Global and National Commerce Act”. This part 2 modifies, limits, and supersedes the federal “Electronic Signatures in Global and National Commerce Act”, 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or supersede section 101 (c) of that act, 15 U.S.C. sec. 7001 (c), or authorize electronic delivery of any of the notices described in section 103 (b) of that act, 15 U.S.C. sec. 7003 (b).

Source: L. 2007: Entire part added, p. 1963, § 1, effective January 1, 2008.

12-14.5-240. Transitional provisions - application to existing transactions. Transactions entered into before January 1, 2008, and the rights, duties, and interests resulting from them may be completed, terminated, or enforced as required or permitted by a law amended, repealed, or modified by this part 2 as though the amendment, repeal, or modification had not occurred.

Source: L. 2007: Entire part added, p. 1963, § 1, effective January 1, 2008.

12-14.5-241. Severability. If any provision of this part 2 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this part 2 that can be given effect without the invalid provision or application, and to this end the provisions of this part 2 are severable.

Source: L. 2007: Entire part added, p. 1963, § 1, effective January 1, 2008.

12-14.5-242. Repeal of part. This part 2 is repealed, effective July 1, 2015. Prior to such repeal, the functions of the administrator pursuant to this part 2 and the registration of providers shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 2007: Entire part added, p. 1963, § 1, effective January 1, 2008.

ARTICLE 15
Commercial Driving Schools

Editor’s note: Section 12-15-121 provided for the repeal of §§ 12-15-102 to 12-15-113, 12-15-115, and 12-15-117 to 12-15-119, effective July 1, 1994. (See L. 91, p. 680.)

12-15-101.	Definitions.	12-15-113.	Expiration of license - re- newal - fee. (Repealed)
12-15-102.	License required. (Repealed)	12-15-114.	Equipment of vehicles.
12-15-103.	Application - fee. (Repealed)	12-15-115.	Registration and inspection. (Repealed)
12-15-104.	Qualifications for commercial driving schools. (Repealed)	12-15-115.1.	Registration and inspection. (Repealed)
12-15-105.	Issuance of license. (Re- pealed)	12-15-116.	Rules and regulations.
12-15-106.	Expiration of license - re- newal - fee. (Repealed)	12-15-117.	Refusal to issue or renew or suspension or revocation of licenses - grounds. (Re- pealed)
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12-15-111.	License issues. (Repealed)		
12-15-112.	Possession and display re- quirements. (Repealed)		

12-15-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Clock hour" means a full hour consisting of sixty minutes.

(2) "Commercial driving instructor" means an individual who has been employed by a commercial driving school.

(3) "Commercial driving school" means any business or any person who, for compensation, provides or offers to provide instruction in the operation of a motor vehicle, with the exceptions of secondary schools and institutions of higher education offering programs approved by the department of education and private occupational schools offering programs approved by the private occupational school division. Such term shall not include any motorcycle operator safety training program established pursuant to section 43-5-502, C.R.S.

(4) "Department" means the department of revenue.

(5) "Laboratory instruction" means an extension of classroom instruction which provides students with opportunities for traffic experiences under real and simulated conditions.

(6) Repealed.

Source: L. 69: p. 163, § 1. C.R.S. 1963: § 13-24-1. L. 83: (3) amended, p. 523, § 1, effective May 4. L. 90: (3) amended, p. 1161, § 8, effective July 1; (3) amended, p. 1817, § 3, effective July 1. L. 94: (3) amended, p. 2547, § 24, effective January 1, 1995. L. 2003: (6) repealed, p. 862, § 1, effective August 6.

Editor's note: Amendments to subsection (3) by House Bill 90-1155 and House Bill 90-1058 were harmonized.

12-15-102. License required. (Repealed)

Source: L. 69: p. 163, § 2. C.R.S. 1963: § 13-24-2. L. 92: Entire section amended, p. 2006, § 1, effective July 1.

12-15-103. Application - fee. (Repealed)

Source: L. 69: p. 163, § 3. C.R.S. 1963: § 13-24-3. L. 92: (3) added, p. 2006, § 2, effective July 1.

12-15-104. Qualifications for commercial driving schools. (Repealed)

Source: L. 69: p. 164, § 4. C.R.S. 1963: § 13-24-4.

12-15-105. Issuance of license. (Repealed)

Source: L. 69: p. 164, § 5. C.R.S. 1963: § 13-24-5.

12-15-106. Expiration of license - renewal - fee. (Repealed)

Source: L. 69: p. 164, § 6. C.R.S. 1963: § 13-24-6.

12-15-107. Commercial driving instructor license required. (Repealed)

Source: L. 69: p. 164, § 7. C.R.S. 1963: § 13-24-7.

12-15-108. Qualifications of commercial driving instructors. (Repealed)

Source: L. 69: p. 165, § 8. C.R.S. 1963: § 13-24-8. L. 73: p. 516, § 14. L. 75: (1)(c) amended and (2) repealed, p. 208, §§ 13, 14, effective July 16.

12-15-109. Application for license - fee. (Repealed)

Source: L. 69: p. 165, § 9. C.R.S. 1963: § 13-24-9.

12-15-110. Examinations required. (Repealed)

Source: L. 69: p. 165, § 10. C.R.S. 1963: § 13-24-10.

12-15-111. License issues. (Repealed)

Source: L. 69: p. 165, § 11. C.R.S. 1963: § 13-24-11.

12-15-112. Possession and display requirements. (Repealed)

Source: L. 69: p. 165, § 12. C.R.S. 1963: § 13-24-12.

12-15-113. Expiration of license - renewal - fee. (Repealed)

Source: L. 69: p. 166, § 13. C.R.S. 1963: § 13-24-13.

12-15-114. Equipment of vehicles. (1) Every motor vehicle used by a commercial driving school in the conduct of its course of driver training shall be equipped as follows:

- (a) The vehicle shall be equipped as provided in article 4 of title 42, C.R.S.
- (b) The vehicle shall be equipped with dual controls on the foot brake that will enable the commercial driving instructor to bring the car under control in case of emergency.
- (c) The vehicle shall have an outside rear vision mirror on the commercial driving instructor's side of the vehicle.
- (d) The vehicle shall be equipped with four-way emergency flashers.
- (e) (Deleted by amendment, L. 2003, p. 862, § 2, effective August 6, 2003.)
- (f) The vehicle shall be equipped with seat belts for the operator of the vehicle and for the commercial driving instructor.

Source: L. 69: p. 166, § 14. C.R.S. 1963: § 13-24-14. L. 2003: (1)(b) and (1)(e) amended, p. 862, § 2, effective August 6.

12-15-115. Registration and inspection. (Repealed)

Source: L. 69: p. 166, § 15. C.R.S. 1963: § 13-24-15. L. 81: Entire section amended, p. 1943, § 3, effective July 1; (2) added by revision, p. 1964, §§ 34, 35. L. 84: (2) repealed, p. 1080, § 1, effective July 1.

12-15-115.1. Registration and inspection. (Repealed)

Source: L. 81: Entire section added, p. 1950, § 17, effective July 1, 1984; (2) added by revision, p. 1964, § 35. L. 84: Entire section repealed, p. 1080, § 1, effective July 1.

12-15-116. Rules and regulations. (1) The department is authorized to promulgate such rules and regulations necessary to carry out the provisions of this article.

(2) Specifically, the department shall have power to adopt rules and regulations upon the following matters:

- (a) Prescribe the content of courses of instruction;
- (b) Prescribe the type of equipment to be used in said courses of instruction;
- (c) Prescribe records to be kept by a commercial driving school;
- (d) Prescribe the form of contracts and agreements used by commercial driving schools.

(3) In adopting such rules and regulations the department shall use the guidelines concerning commercial driving schools promulgated by the United States department of transportation.

(4) Rules and regulations adopted pursuant to this section shall be adopted in accordance with section 24-4-103, C.R.S.

Source: L. 69: p. 166, § 16. C.R.S. 1963: § 13-24-16.

12-15-117. Refusal to issue or renew or suspension or revocation of licenses - grounds. (Repealed)

Source: L. 69: p. 167, § 17. C.R.S. 1963: § 13-24-17. L. 73: p. 516, § 15. L. 74: (2)(a) amended, p. 406, § 17, effective April 11.

12-15-118. Procedure - judicial review. (Repealed)

Source: L. 69: p. 167, § 18. C.R.S. 1963: § 13-24-18.

12-15-119. Department to be informed of cancellation of insurance. (Repealed)

Source: L. 69: p. 167, § 19. C.R.S. 1963: § 13-24-19.

12-15-120. Violations - penalty. Any person who violates any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.

Source: L. 69: p. 168, § 20. C.R.S. 1963: § 13-24-20.

12-15-121. Repeal - review of functions. (Repealed)

Source: L. 88: Entire section added, p. 929, § 7, effective April 28. L. 91: Entire section amended, p. 680, § 14, effective April 20. L. 97: Entire section repealed, p. 1007, § 6, effective August 6.

ARTICLE 16

**Farm Products and
Farm Commodity Warehouses**

Editor's note: This article was numbered as article 4 of chapter 7, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1985, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1985, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Cross references: For warehouse receipts, bills of lading, and other documents as contained in the "Uniform Commercial Code - Documents of Title", see article 7 of title 4.

PART 1		12-16-103.	Definitions - rules.
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		12-16-106.	Bonds and irrevocable letters of credit - exemptions.
12-16-101.	Short title.	12-16-107.	Investigations, hearings, and
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	examinations.	12-16-206.	Licenses - requirements - rules.
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12-16-112.	Daily reports and settlements.	12-16-212.	Use of scale tickets and nego- tiable warehouse receipts.
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12-16-116.	Penalties.	12-16-217.	Inspection fees.
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12-16-118.	Penalties for theft of farm prod- ucts.	12-16-219.	Cease-and-desist order - re- straining order.
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		12-16-222.	Penalties.
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PART 2

COMMODITY WAREHOUSES

12-16-201.	Short title.	12-16-217.	Inspection fees.
12-16-202.	Definitions - rules.	12-16-218.	Bonds or irrevocable letters of credit - exemptions.
12-16-203.	Licenses - commodity handler - rules.	12-16-219.	Cease-and-desist order - re- straining order.
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		12-16-221.	Unlawful acts.
		12-16-222.	Penalties.
		12-16-223.	Repeal of article.

PART 1

FARM PRODUCTS

12-16-101. Short title. This part 1 shall be known and may be cited as the "Farm Products Act".

Source: L. 85: Entire article R&RE, p. 438, § 1, effective July 1.

12-16-102. Legislative declaration. The general assembly hereby declares that farm products are commodities affected with a public interest and thus should be regulated for the protection of both the producer and the consumer.

Source: L. 85: Entire article R&RE, p. 438, § 1, effective July 1.

ANNOTATION

Annotator's note. The case annotated below was decided under CSA, C. 15, § 12(1), the subject matter of which was similar to this section.

This article is a valid exercise of the police power and is constitutional. *Zeigler v. People*, 109 Colo. 252, 124 P.2d 593 (1942).

It does not violate the provision of the federal constitution guaranteeing equal pro-

tection of the laws to citizens of a state. *Zeigler v. People*, 109 Colo. 252, 124 P.2d 593 (1942).

It also does not violate "due process of law" in that it abridges the right of freedom to contract between parties in matters personal to themselves, and deprives them of power to fix mode by which compensation shall be ascertained. *Zeigler v. People*, 109 Colo. 252, 124 P.2d 593 (1942).

12-16-103. Definitions - rules. As used in this part 1, unless the context otherwise requires:

(1) "Agent" means any person who, on behalf of any dealer or small-volume dealer, buys, receives, contracts for, or solicits any farm products from or sells farm products for the owner thereof or who negotiates the consignment or purchase of any farm products on behalf of any dealer or small-volume dealer.

(1.5) "Commercial feeding" means the feeding of livestock by a person who receives compensation from the owner of the livestock for such feeding.

(2) "Commissioner" means the commissioner of agriculture or his designee.

(2.5) "Commodity" means unprocessed small, hard seeds or fruits such as wheat, corn, oats, barley, rye, sunflower seeds, soybeans, beans, grain sorghums, and such other seeds or fruits as may be determined by the commissioner.

(3) "Consignor" includes any person who ships or delivers to any dealer or small-volume dealer any farm products for handling, sale, or resale.

(3.5) "Credit sale contract" means a contract for the sale of a farm product when the sale price is to be paid on a date later than sixty days after delivery of the farm product to the buyer and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, and price later contracts.

(4) (a) "Dealer" means:

(I) Any person engaged in buying any farm products from the owner for processing or resale;

(II) Any person engaged in receiving and taking possession of any farm products from the owner for storage or safekeeping;

(III) Any person engaged in soliciting or negotiating sales of farm products between the vendor and purchaser respectively;

(IV) Any person who receives on consignment or solicits from the owner thereof any kind of farm product for sale on commission on behalf of such owner, or who accepts any farm product in trust from the owner thereof for the purpose of resale, or who sells or offers for sale on commission any farm product or in any way handles any farm product for the account of, or as an agent of, the owner thereof; or

(V) Any person engaged in buying any farm products from the owner thereof for the commercial feeding of livestock that are owned wholly or in part by another, at an animal feeding operation with a capacity of more than two thousand five hundred head of livestock. The commissioner shall establish rules to determine the capacity of animal feeding operations for purposes of this article.

(b) "Dealer" does not include bona fide retail grocery merchants or restaurateurs having a fixed or established place of business in Colorado as long as the use of farm products by any such person is directly related to the operation of the person's retail grocery or restaurant.

(5) (a) (I) "Farm products" includes the following unprocessed products produced in Colorado or owned by any Colorado resident, dealer, or small-volume dealer:

(A) Agricultural, horticultural, viticultural, fruit, and vegetable products of the soil;

(B) Livestock and livestock products, except livestock held by the purchaser and not resold or processed within ninety days after the purchase date;

(C) Milk; and

(D) Honey.

(II) The term also includes ensiled corn and baled, cubed, or ground hay.

(b) "Farm products" does not include poultry and poultry products, timber products, nursery stock, or commodities.

(5.5) "Livestock" has the same meaning as set forth in section 35-1-102 (6), C.R.S.

(6) "Owner" means any person in whom legal title to any farm product is vested, whether produced by him or acquired by purchase.

(7) "Person" includes an individual, a firm, an association, a partnership, a corporation, or the commissioner.

(8) "Processing" means the operation of drying, canning, fermenting, distilling, extracting, preserving, grinding, crushing, flaking, mixing, or otherwise changing the form of a farm product for the purpose of reselling the product.

(9) “Producer” means any person engaged in growing or producing any farm product.

(10) “Retail grocery merchant” means any person whose sales are more than fifty percent non-farm product grocery household merchandise.

(10.5) “Small-volume dealer” means any person who:

(a) Does not qualify as a “dealer” under subparagraph (II), (III), (IV), or (V) of paragraph (a) of subsection (4) of this section;

(b) Has a fixed or established place of business in Colorado;

(c) Buys less than twenty thousand dollars’ worth of farm products or commodities, in aggregate, per year from the owners for processing or resale;

(d) Does not purchase in a single transaction two thousand five hundred dollars’ worth or more of farm products or commodities, in aggregate; and

(e) Does not purchase farm products for commercial feeding of livestock.

(11) (Deleted by amendment, L. 95, p. 693, § 1, effective May 23, 1995.)

Source: **L. 85:** Entire article R&RE, p. 438, § 1, effective July 1. **L. 87:** (2.5) and (3.5) added, p. 496, § 1, effective July 1. **L. 88:** (5)(a) amended, p. 1430, § 5, effective June 11; (11) amended, p. 488, § 1, effective February 28, 1989. **L. 91:** (11) amended, p. 172, § 1, effective February 28. **L. 92:** (4)(a)(V) amended, p. 2076, § 1, effective June 1. **L. 93:** (4)(a)(V) amended, p. 1035, § 1, effective June 2. **L. 94:** (1), (3), (4)(b), and IP(5)(a)(I) amended and (10.5) added, p. 321, § 1, effective March 1, 1995. **L. 95:** (3.5) and (11) amended and (5.5) added, p. 693, § 1, effective May 23. **L. 2007:** (4)(a)(V) amended, p. 844, § 1, effective August 3. **L. 2009:** (10.5)(c) and (10.5)(d) amended, (SB 09-114), ch. 111, p. 462, § 6, effective April 9.

Editor’s note: This section is similar to former § 12-16-101 as it existed prior to 1985.

ANNOTATION

Annotator’s note. The case annotated below was decided under CSA, C. 15, § 12(1), the subject matter of which was similar to this section, even though the definition of “cash buyer” was not included in the 1985 recodification.

The act of 1937, the origin of this article, enlarged the type of person brought under it, namely, dealers as well as commission merchants, brokers, and agents. Zeigler v. People, 109 Colo. 252, 124 P.2d 593 (1942).

The act of 1937 also added livestock and livestock products in its classification of farm produce coming under the subject matter of the act. Zeigler v. People, 109 Colo. 252, 124 P.2d 593 (1942).

It also added and defined the term, “cash buyer”. Zeigler v. People, 109 Colo. 252, 124 P.2d 593 (1942).

The definition of “cash buyer” does not include a person who pays by check. Zeigler v. People, 109 Colo. 252, 124 P.2d 593 (1942).

The definition itself does not include payment by check, and the history of the development of the act indicates a definite intent to exclude payment by check. Zeigler v. People, 109 Colo. 252, 124 P.2d 593 (1942).

The omission of the words “or its equivalent” after “lawful money of the United States” in the 1937 act would indicate a definite legislative intent to narrow the term “cash buyer” to one who actually pays for farm produce solely in lawful money of the United States or by exchange of farm products. Zeigler v. People, 109 Colo. 252, 124 P.2d 593 (1942).

12-16-104. Application for license - rules. (1) No person shall act as a dealer, small-volume dealer, or agent without having obtained a license as provided in this part 1. Every person acting as a dealer, small-volume dealer, or agent shall file an application in writing with the commissioner for a license to transact the business of dealer, small-volume dealer, or agent, and such application shall be accompanied by the license fee provided for in section 12-16-105 for each specified class of business.

(2) The application in each case shall state the class or classes of farm products the applicant proposes to handle, the full name of the person applying for such license, and, if the applicant is a firm, exchange, association, or corporation, the full name of each member of the firm or the names of the officers of the exchange, association, or corporation. Such application shall further state the principal business address of the applicant in the state of Colorado and elsewhere and the names of the persons authorized to receive and accept

service of summons and legal notices of all kinds for the applicant. The applicant shall further satisfy the commissioner of his character, responsibility, and good faith in seeking to carry on the business stated in the application. In determining a person's character, the commissioner shall be governed by the provisions of section 24-5-101, C.R.S.

(3) In addition to the general requirements applicable to all classes of applications, as set forth in this section, each application for an agent's license shall include such information as the commissioner may consider proper or necessary, and such application shall include the name and address of the applicant and the name and address of each dealer or small-volume dealer represented or sought to be represented by said agent and the written endorsement or nomination of such dealer or small-volume dealer. No person shall be licensed as an agent unless all of such agent's principals are licensed under this part 1.

(4) Upon the applicant's filing of the proper application with the commissioner, accompanied by the proper fee, and when the commissioner is satisfied that the convenience and necessity of the industry and the public will be served thereby, the commissioner shall issue to such applicant a license entitling the applicant to conduct the business described in the application at the place named in the application until the date specified by the commissioner by rule or until the license has been suspended or revoked. The license of an agent shall expire upon the date of expiration of the license of the principal for whom the agent acts. The commissioner may also issue a license to each agent, with a separate agent's license being required for each principal. Any dealer, small-volume dealer, or agent shall show said license upon the request of any interested person. Each licensed dealer, small-volume dealer, or agent shall post such person's license or a copy thereof in the person's office or salesroom in plain view of the public.

(5) Fraud or misrepresentation in making any application shall ipso facto work a revocation of any license granted pursuant thereto. All indicia of the possession of a license shall be at all times the property of the state of Colorado, and each licensee is entitled to the possession thereof only for the duration of said license.

(6) Any person licensed under part 2 of this article may apply for a license as a dealer or small-volume dealer without paying the license fee otherwise required by section 12-16-105.

Source: **L. 85:** Entire article R&RE, p. 439, § 1, effective July 1. **L. 87:** (4) amended, p. 496, § 2, effective July 1. **L. 94:** (1), (3), and (4) amended and (6) added, p. 322, § 2, effective March 1, 1995. **L. 95:** (1) and (4) amended, p. 693, § 2, effective May 23. **L. 2007:** (4) amended, p. 844, § 2, effective August 3.

Editor's note: This section is similar to former § 12-16-102 as it existed prior to 1985.

ANNOTATION

Annotator's note. The case cited below was decided under CSA, C. § 15, 12(3), the subject matter of which was similar to this section.

The provision of this section that requires the commissioner, when he is satisfied that the convenience and necessity of the industry and the public will be served thereby, to issue a license entitling the applicant to conduct the business described does not render the act violative of "due process of law" on the grounds that the commissioner of agriculture is given

arbitrary power to determine whether or not a license shall be granted. *Zeigler v. People*, 109 Colo. 252, 124 P.2d 593 (1942).

A survey of the entire article gives no intimation that it shall or can be administered and licenses issued in accordance with the personal or arbitrary whim of the commissioner of agriculture, but rather it appears that it shall be administered for the welfare of the public. *Zeigler v. People*, 109 Colo. 252, 124 P.2d 593 (1942).

12-16-105. License fee - renewal - rules. (1) (a) For filing the application described in section 12-16-104, each applicant for a license in each of the following categories shall pay to the commissioner a fee as determined by the agricultural commission, which fee shall be transmitted to the state treasurer for credit to the inspection and consumer services cash fund created in section 35-1-106.5, C.R.S.:

(I) Dealers; except that a dealer who signs an affidavit stating that such dealer shall

make payment in cash or by one of the other means specified in section 12-16-106 (1) (f) for each transaction for farm products shall pay the same application fee as a small-volume dealer;

(II) Agents; and

(III) Small-volume dealers.

(b) (I) Except as provided in subparagraph (II) of this paragraph (b), for each fiscal year, commencing on July 1, twenty-five percent of the direct and indirect costs of administering and enforcing this article shall be funded from the general fund. The agricultural commission shall establish a fee schedule to cover any direct and indirect costs not funded from the general fund.

(II) Repealed.

(2) If any licensee fails for any reason to apply for the renewal of a license before an annual date specified by the commissioner by rule, such licensee shall, upon application for a renewal license and before such license is issued, pay a penalty as established by the agricultural commission, which shall be in addition to the license fee.

(3) Any person against whose surety a claim has been collected or any person against whom an irrevocable letter of credit has been drawn by the commissioner in accordance with the provisions of this part 1 shall not be licensed by the commissioner during the period of three years from the date of such collection; except that the commissioner may, in his discretion and consistent with the purpose of this part 1, issue a temporary license to such person for such period, subject to such restrictions as the commissioner deems reasonable and necessary.

(4) Any licensee who has a verified complaint pending against him with the commissioner shall not be issued a renewal license until the complaint has been settled to the satisfaction of the commissioner.

(5) Upon the failure of an applicant to file a bond or an irrevocable letter of credit meeting the requirements of section 11-35-101.5, C.R.S., within ninety days of the date of application, the application will be rendered void, and the license fee will not be refunded. Any subsequent application for a license shall require a new license fee.

(6) Whenever the commissioner deems it appropriate, the commissioner may require of any applicant for an initial license, any applicant for a renewal of a license, or any licensee the submission of a financial statement or an audit, prepared by a certified public accountant, or any other information to determine whether such person is in an adequate financial position to carry out his or her duties as a licensee.

Source: L. 85: Entire article R&RE, p. 439, § 1, effective July 1. L. 87: (2) amended, p. 497, § 3, effective July 1; (3) and (5) amended, p. 475, § 12, effective July 1. L. 94: (1)(d) added, p. 323, § 3, effective March 1, 1995. L. 95: (1)(c) repealed, p. 694, § 3, effective May 23. L. 2002: (1)(a) amended, p. 18, § 1, effective August 7. L. 2003: (1) amended, p. 1737, § 21, effective May 14. L. 2005: IP(1)(a)(I), (1)(a)(II), IP(1)(b), and (2) amended, p. 1277, § 21, effective July 1. L. 2007: (1) amended, p. 1913, § 19, effective July 1; (1)(a)(I)(A) and (6) amended, p. 845, § 3, effective August 3. L. 2009: (1)(a)(I) and (2) amended, (SB 09-114), ch. 111, p. 462, §§ 5, 3, effective April 9. L. 2010: (1)(b) amended, (HB 10-1377), ch. 212, p. 923, § 7, effective May 6.

Editor's note: (1) This section is similar to former § 12-16-103 as it existed prior to 1985.

(2) Amendments to subsections (1) and (1)(a)(I)(A) by House Bill 07-1198 and House Bill 07-1337 were harmonized.

(3) Subsection (1)(b)(II)(B) provided for the repeal of subsection (1)(b)(II), effective July 1, 2012. (See L. 2010, p. 923.)

12-16-106. Bonds and irrevocable letters of credit - exemptions. (1) (a) Before any license is issued to any dealer, the applicant shall file with the commissioner a bond executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as a surety or an irrevocable letter of credit meeting the requirements of section 11-35-101.5, C.R.S., in the sum of not less than two thousand dollars nor more than two hundred thousand dollars, at the discretion of the commissioner.

(b) Repealed.

(c) The bond or irrevocable letter of credit shall be conditioned upon compliance with the provisions of this part 1 and upon the faithful and honest handling of farm products in accordance with the terms of this part 1 and shall cover any and all fees due the people of the state of Colorado by the dealer and all costs and reasonable attorney fees incident to any suit upon the bond or irrevocable letter of credit. The bond or irrevocable letter of credit shall be to the state in favor of every producer, dealer, small-volume dealer, or owner and, in the instance of a bond, shall remain in full force and effect until cancelled by the surety upon thirty days' prior written notice to the commissioner.

(d) (I) Any producer, owner, small-volume dealer, or other dealer within the state of Colorado claiming to be injured by the fraud, deceit, willful negligence, or failure to comply with the provisions of this part 1 of any dealer may seek to recover the damages caused by such fraud, deceit, willful negligence, or failure to comply with the provisions of this part 1. If the licensee has elected to file a bond pursuant to this section, the injured party may bring an action, with the prior written consent of the commissioner, for collection against both principal and surety in any court of competent jurisdiction. If the licensee has elected to file an irrevocable letter of credit pursuant to this section, the injured party may request the department of agriculture, as beneficiary, to demand payment on the irrevocable letter of credit.

(II) The surety on the bond or the person who filed the letter of credit shall not be liable to pay any claim pursuant to any action brought under the provisions of this part 1 if such action is not commenced within twenty-four months after the date of the transaction on which the claim is based.

(e) When any action is commenced on said bond or irrevocable letter of credit, the commissioner may require the filing of a new bond or irrevocable letter of credit, and failure of the licensee to file the new bond or irrevocable letter of credit within ten days after the commencement of said action constitutes grounds for the suspension or revocation of his license.

(f) No bond or irrevocable letter of credit shall be required of a dealer who pays for farm products in cash or with a bank-certified check, a bank cashier's check, an irrevocable electronic funds transfer, or a money order at the time the dealer obtains from the owner thereof possession or control of the farm products, or of an applicant for a license or a licensee operating under a bond required by the United States to secure the performance of his or her obligations; except that the bond shall include all obligations pertaining to Colorado farm products, and documentary evidence shall be furnished to the commissioner that the bond required by the United States is in full force and effect.

(g) The bond or irrevocable letter of credit required by section 12-16-218 shall apply to the activities as a dealer of any person licensed pursuant to part 2 of this article. Such persons shall also be subject to the provisions of this section and section 12-16-107.

(2) Whenever the commissioner determines that a previously approved bond or irrevocable letter of credit is, or for any cause has become, insufficient, he may require an additional bond or irrevocable letter of credit or other evidence of financial responsibility to be given by a dealer to conform to the requirements of this part 1 or any rule or regulation promulgated pursuant to the provisions of this part 1. The failure of the dealer to comply with the commissioner's requirement within thirty days after written demand therefor constitutes grounds for the suspension or revocation of his license.

(3) A bond is not required for credit sale contracts.

Source: **L. 85:** Entire article R&RE, p. 441, § 1, effective July 1. **L. 87:** Entire section amended, p. 476, § 13, effective July 1; (1)(d) amended and (3) added, p. 497, § 4, effective July 1; (1)(d)(II) amended, p. 1585, § 53, effective July 1. **L. 88:** (1)(b) repealed and (1)(d)(I) and (2) amended, pp. 489, 488, §§ 4, 5, 2, effective February 28, 1989. **L. 91:** (1)(f) amended, p. 173, § 2, effective March 1, 1992. **L. 94:** (1)(c), (1)(d)(I), and (1)(g) amended, p. 323, § 4, effective March 1, 1995. **L. 2007:** (1)(c) and (1)(f) amended, p. 845, § 4, effective August 3.

Editor's note: (1) This section is similar to former § 12-16-105 as it existed prior to 1985.

(2) Amendments to this section by Senate Bill 87-78 and Senate Bill 87-50 were harmonized.

ANNOTATION

Annotator's note. Since § 12-16-106 is similar to § 12-16-105 as it existed prior to the repeal and reenactment of this article, a relevant case construing the provisions of that section has been included in the annotations to this section.

Liability continues after cancellation for preexisting rights. A surety remains liable upon cancellation of a bond for any rights acquired by the obligee prior to cancellation. *Home Indem. Co. v. Famularo*, 530 F. Supp. 797 (D. Colo. 1982).

The Farm Products Act creates a private right of action where the plaintiffs are producers and the defendants are dealers; plaintiffs' claims arise from defendants' alleged failure to comply with the provisions of the act; and plaintiffs received the written consent of the commissioner of agriculture to bring an action and they seek to recover the damages caused by defendants' fraud, deceit, and willful negligence. *Gorsich v. Double B Trading Co., Inc.*, 893 P.2d 1357 (Colo. App. 1994) (decided under former law).

12-16-107. Investigations, hearings, and examinations. (1) For the purpose of enforcing the provisions of this part 1, the commissioner may receive complaints from persons against any dealer, small-volume dealer, agent, or person assuming or attempting to act as such and, upon the receipt of such a complaint, may make any and all necessary investigations relative to said complaint.

(2) The commissioner upon his own motion may, and upon the verified complaint of any person shall, investigate any transactions involving any provisions of this part 1.

(3) (a) The commissioner, upon consent of the licensee or upon obtaining an administrative search warrant, shall have free and unimpeded access to all buildings, yards, warehouses, and storage facilities owned by a licensee in which any farm products are kept, stored, handled, processed, or transported.

(b) The commissioner, upon consent of the licensee or upon obtaining a search warrant, shall have free and unimpeded access to all records required to be kept and may make copies of such records.

(c) The commissioner shall have full authority to administer oaths and take statements, to issue subpoenas requiring the attendance of witnesses before him and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

(4) The commissioner may examine the ledgers, books, accounts, memoranda, and other documents and the farm products, scales, measures, and other items in connection with the business of any licensee relating to whatever transactions may be involved.

(5) The commissioner shall not be required to investigate or act upon complaints regarding transactions which occurred more than one hundred twenty days prior to the date upon which the commissioner received the written complaint.

(6) If the investigation is against a licensee, the commissioner shall proceed to ascertain the names and addresses of all producers, dealers, small-volume dealers, or owners of farm products, together with the accounts unaccounted for or due and owing to them by said licensee, and shall request all such producers, dealers, small-volume dealers, or owners to file verified statements of their respective claims with the commissioner. If a producer, dealer, small-volume dealer, or owner so requested fails, refuses, or neglects to file a verified statement in the office of the commissioner within thirty days after the date of such request, the commissioner shall thereupon be relieved of any further duty or action under this part 1 on behalf of said producer, dealer, small-volume dealer, or owner.

(7) In the course of any investigation, the commissioner may attempt to effectuate a settlement between the respective parties.

(8) (a) If the commissioner determines, after concluding an investigation on any complaint, that reasonable grounds exist to believe that a licensee has violated any of the provisions of this part 1, he shall notify the licensee that such complaint is valid and shall

inform the licensee of his opportunity to request a hearing, in writing, on such complaint within ten days after the date of such notice.

(b) Upon the receipt of a request for a hearing from a licensee or if the commissioner determines that a hearing concerning any licensee is necessary, he shall cause a copy of the complaint or the grounds specified in section 12-16-108, together with a notice of the time and place of the hearing, to be served personally or by mail upon such licensee. Service shall be made at least ten days before the hearing, which shall be held in the city or town in which the business location of the licensee is situated, or in which the transactions involved allegedly occurred, or at the location deemed by the commissioner to be most convenient.

(c) The commissioner shall conduct such hearing pursuant to the provisions of section 24-4-105, C.R.S. Thereafter, the commissioner shall enter in his office a decision specifying the relevant facts established at such hearing. If the commissioner determines from the facts specified that the licensee has not violated any of the provisions of this part 1, the complaint shall be dismissed. If the commissioner determines from the facts specified that the licensee has violated any of the provisions of this part 1, and that the licensee has not yet made complete restitution to the person complaining, he shall determine the amount of damages, if any, to which such person is entitled as the result of such violation, and he shall enter an order directing the offender to pay the person complaining such amount on or before the date fixed in the order. A copy of the decision shall be furnished to all the respective parties to the complaint.

(9) As a result of such hearing, the commissioner may also enter any order suspending or revoking the license of a licensee or may place the licensee on probation if the commissioner determines that the licensee has committed any of the unlawful acts specified in section 12-16-115 or that the licensee has violated any of the provisions of this part 1.

(10) (a) If a person against whom an order, as specified in paragraph (c) of subsection (8) of this section, is made and issued fails, neglects, or refuses to obey said order within the time specified in the order, the commissioner may thereupon issue a further order to that person directing him to show cause why his license should not be suspended or revoked for failure to comply with said order.

(b) In such case, a copy of said order to show cause, together with a notice of the time and place of the hearing thereupon, shall be served personally or by mail upon the person involved. Service shall be made at least ten days before the hearing, which shall be held in the city or town in which the business location of the licensee is situated or at any convenient place designated by the commissioner.

(c) The commissioner shall conduct such hearing pursuant to the provisions of section 24-4-105, C.R.S., and thereafter shall enter in his office an order and decision specifying the facts established at the hearing and either dismissing the order to show cause, or directing the suspension or revocation of the license held by the licensee, or making such other conditional or probationary orders as may be proper. A copy of said order and decision shall be furnished to the licensee.

(d) Nothing in this section shall be construed as limiting the power of the commissioner to revoke or suspend a license when he is satisfied of the existence of any of the facts specified in section 12-16-115.

(11) Whenever the absence of records or other circumstances makes it impossible or unreasonable for the commissioner to ascertain the names and addresses of all persons specified in subsection (6) of this section, the commissioner, after exercising due diligence and making a reasonable inquiry to secure said information from all reasonable and available sources, shall not be liable or responsible for the claims or the handling of claims which may subsequently appear or be discovered. After ascertaining all claims, assessments, and statements in the manner set forth in subsection (6) of this section, the commissioner may then demand payment on the bond or irrevocable letter of credit on behalf of those claimants whose claims have been determined by the commissioner as valid and, in the instance of a bond, may settle or compromise said claims with the surety company on the bond and execute and deliver a release and discharge of the bond involved. Upon the refusal of the surety company to pay the demand, the commissioner may bring an action on the bond on behalf of the producer, dealer, small-volume dealer, or owner.

(12) For the purpose of this section, a transaction is deemed to have occurred:

- (a) On the date that possession of farm products is transferred by a claimant;
- (b) On delayed payment transactions, on the contractual date of payment or, if there is no contractual date of payment, thirty days following the transfer of title.

(13) Complaints of record made to the commissioner and the results of his investigations may, in the discretion of the commissioner, be closed to public inspection during the investigatory period and until dismissed or until notice of hearing and charges is served on a licensee, unless otherwise provided by court order.

Source: **L. 85:** Entire article R&RE, p. 442, § 1, effective July 1. **L. 87:** (11) amended, p. 477, § 14, effective July 1. **L. 89:** (3) amended and (13) added, p. 644, § 1, effective July 1. **L. 91:** (3)(a) and (11) amended, p. 173, § 3, effective March 1, 1992. **L. 94:** (1), (6), and (11) amended, p. 324, § 5, effective March 1, 1995. **L. 2009:** (1), (3), and (4) amended, (SB 09-114), ch. 111, pp. 466, 462, §§ 17, 7, effective April 9.

Editor's note: (1) This section is similar to former §§ 12-16-106 and 12-16-107 as they existed prior to 1985.

(2) Although the amending clause in Senate Bill 09-114 indicated that all of subsection (3) was amended in the bill, only subsections (3)(a) and (3)(b) appeared in the final act.

12-16-108. Disciplinary powers - licenses. (1) The commissioner may deny any application for a license, or may refuse to renew a license, or may revoke or suspend a license, or may place a licensee on probation, as the case may require, if the licensee or applicant has:

(a) Violated any of the provisions of this part 1 or violated any of the rules and regulations promulgated by the commissioner pursuant to this part 1;

(b) Been convicted of a felony under the laws of this state, or of any other state, or of the United States; except that, in considering a conviction of a felony, the commissioner shall be governed by the provisions of section 24-5-101, C.R.S.;

(c) Committed fraud or deception in the procurement or attempted procurement of a license;

(d) Failed or refused to file with the commissioner a surety bond or an irrevocable letter of credit, as required by section 12-16-106;

(e) Been determined by the commissioner to be in an inadequate financial position to meet liability obligations;

(f) Failed to comply with any lawful order of the commissioner concerning the administration of this part 1;

(g) Had a license revoked, suspended, or not renewed or has been placed on probation in another state for cause, if such cause could be the basis for the same or similar disciplinary action in this state.

(2) All proceedings concerning the denial, refusal to renew, revocation, or suspension of a license or the placing of a licensee on probation shall be conducted pursuant to the provisions of section 12-16-107 and article 4 of title 24, C.R.S.

(3) Any previous violation of the provisions of this part 1 by the applicant or any person connected with him in the business for which he seeks to be licensed, or in the case of a partnership or corporation applicant any previous violations of the provisions of this part 1 by a partner, officer, director, or stockholder of more than thirty percent of the outstanding shares, is sufficient grounds for the denial of a license.

Source: **L. 85:** Entire article R&RE, p. 445, § 1, effective July 1. **L. 87:** IP(1), (1)(a), (1)(b), (1)(e), (2), and (3) amended, p. 497, § 5, effective July 1; (1)(d) amended, p. 478, § 15, effective July 1. **L. 95:** (1)(g) added, p. 694, § 4, effective May 23.

Editor's note: This section is similar to former § 12-16-108 as it existed prior to 1985.

Cross references: For an alternative disciplinary action for persons licensed pursuant to this part, see § 24-34-106.

12-16-109. Cease-and-desist order - suit for restraining order. (1) If the commissioner determines that there exists a violation of any provision of this part 1 or of any rule or regulation promulgated under the authority of this part 1, the commissioner may issue a cease-and-desist order, which may require any person to cease functioning as a dealer or small-volume dealer, except for those functions necessary to prevent spoilage of products stored in such dealer's warehouse. Such order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all functions, except those necessary to prevent spoilage, be ceased forthwith. At any time after the date of the service of the order to cease and desist, the person may request a hearing on the question of whether or not any such violation has occurred. Such hearing shall be concluded in not more than ten days after such request and shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S.

(2) In the event that any person fails to comply with a cease-and-desist order within twenty-four hours after service, the commissioner may bring a suit pursuant to section 12-16-114 (2) to prevent any further or continued violation of such order.

(3) No stay of a cease-and-desist order shall be issued before a hearing thereon involving both parties.

(4) Matters brought before a court pursuant to this section shall have preference over other matters on the court's calendar.

Source: L. 85: Entire article R&RE, p. 445, § 1, effective July 1. L. 89: (2) amended, p. 645, § 2, effective July 1. L. 94: (1) amended, p. 324, § 6, effective March 1, 1995.

Editor's note: This section is similar to former § 12-16-108.5 as it existed prior to 1985.

12-16-110. Appeal. Any action of the commissioner with reference to the administration of this part 1 may be reviewed by any court of competent jurisdiction pursuant to the provisions of section 24-4-106, C.R.S., only after all administrative remedies have been exhausted.

Source: L. 85: Entire article R&RE, p. 446, § 1, effective July 1.

Editor's note: This section is similar to former § 12-16-109 as it existed prior to 1985.

12-16-110.5. Credit sale contracts. (1) When a dealer or small-volume dealer receives farm products for which payment has not been made, the dealer or small-volume dealer, within sixty days after the receipt of such farm products, shall provide the producer or owner of the farm products with a credit sale contract. The credit sale contract shall contain the following information:

- (a) The type of farm products received, the quantity received, and the date of receipt;
- (b) The charges for handling, if any;
- (c) The name and address of the producer or owner and the signature of the dealer or small-volume dealer or the authorized agent thereof;
- (d) The contract number required pursuant to subsection (4) of this section; and
- (e) The statement, "This contract constitutes a voluntary extension of credit by the owner to the dealer and is not protected by the surety bond or irrevocable letter of credit of the dealer." Such statement shall be conspicuously printed on the upper one-third of the first page of the contract, set off by solid lines on all four sides, and shall include a signature block for the signature of the seller.

(2) Records of a dealer or small-volume dealer shall be retained for a period of two years and shall reflect those credit sale contracts that have been cancelled and those that are still open. Such records shall be kept at the dealer's or small-volume dealer's place of business at all times.

(3) An annual report of the status of all of a dealer's or small-volume dealer's credit sale contracts may be required by the commissioner.

(4) All credit sale contracts entered into by a dealer or small-volume dealer shall be consecutively numbered by the dealer, and copies thereof shall be made available for inspection by the commissioner or the commissioner's authorized agents.

Source: L. 91: Entire section added, p. 174, § 4, effective March 1, 1992. L. 94: IP(1), (1)(c), (2), (3), and (4) amended, p. 325, § 7, effective March 1, 1995.

Cross references: For other provisions concerning credit sale contracts, see article 9 of title 4.

12-16-111. Records of dealers. (1) Every dealer handling farm products for any consignor having received any farm products on commission for sale shall promptly make and keep a correct record, showing in detail the following with reference to the handling, sale, or storage of such farm products:

- (a) The name and address of the consignor;
- (b) The date received;
- (c) The condition and quantity upon arrival;
- (d) The date of such sale for the account of the consignor;
- (e) The price for which sold;
- (f) An itemized statement of the charges to be paid by the consignor in connection with the sale;
- (g) The names and addresses of the purchasers if said dealer has any financial interest in the business of said purchasers or if said purchasers have any financial interest in the business of said dealer, directly or indirectly, as a holder of the other's corporate stock, as a copartner, as a lender or borrower of money to or from the other, or in any other capacity;
- (h) A lot number or other identifying mark for each consignment, which number or mark shall appear on all sales tags or other essential records needed to show what the product actually sold for;
- (i) Any claims which have been or may be filed by the dealer against any person for overcharges or for damages resulting from the injury or deterioration of such farm products by the act, neglect, or failure of such person; and such records shall be open to the inspection of the commissioner and the consignor for whom such claims are made.

Source: L. 85: Entire article R&RE, p. 446, § 1, effective July 1.

Editor's note: This section is similar to former § 12-16-110 as it existed prior to 1985.

12-16-111.5. Records of small-volume dealers. Each small-volume dealer shall maintain records of all aspects of each purchase of farm products in the form and manner required by the commissioner.

Source: L. 94: Entire section added, p. 325, § 8, effective March 1, 1995.

12-16-112. Daily reports and settlements. (1) When requested by his consignor, a dealer, before the close of the next business day following the sale of any farm products consigned to him, shall transmit or deliver to the owner or consignor a true written report of such sale, showing the amount sold and the selling price. Remittance in full of the amount realized from such sale, including all collections, overcharges, and damages, less the agreed commission and other charges together with a complete account of sales, shall be made to the consignor within ten days after the receipt of the moneys by the dealer unless otherwise agreed to in writing. In the account, the names and addresses of purchasers need not be given, except as required in section 12-16-111.

(2) Every dealer shall retain a copy of the record covering each consignment transaction for a period of one year after the date thereof, which copy shall, at all times, be available for, and open to, the inspection of the commissioner and the consignor or the authorized representative of either.

(3) Every dealer shall pay for farm products delivered to him on the date and in the manner specified in the contract with the owner or, if no date is set by the contract or on the date of the delivery, within thirty days after the date of the delivery or the taking possession of such farm products.

Source: L. 85: Entire article R&RE, p. 446, § 1, effective July 1.

Editor's note: This section is similar to former § 12-16-111 as it existed prior to 1985.

12-16-113. Pooled consignment. Local produce or fruit associations or other shippers located in the neighborhood where products are grown may receive a reasonable compensation for loading, shipping, and securing persons to handle the same on commission in markets away from the locality where grown. Dealers receiving consignments of farm products from a number of consignors under written agreements or under written authority from them to market such products in season and prorate the net proceeds of such consignments among all consignors or to market the same in connection with other products of the same class may withhold such proportion of the net returns of sales of the consignments as may be necessary to carry out the agreements pertaining to said consignments until final sales have been made. In every case, final settlement shall be made within fifteen days after the final sale of the consignment, unless otherwise agreed to in writing by the consignor.

Source: L. 85: Entire article R&RE, p. 447, § 1, effective July 1.

Editor's note: This section is similar to former § 12-16-112 as it existed prior to 1985.

12-16-114. Enforcement. (1) The commissioner shall be the enforcing authority of this part 1, and the commissioner or the commissioner's authorized representative shall have free and unimpeded access to all places of business and all business records of a licensee pertinent to any proper inquiry in the administration of this part 1. Any person in whom the enforcement of any provision of this part 1 is vested has the power of a peace officer as to such enforcement.

(2) Whenever, upon sufficient evidence satisfactory to the commissioner, the commissioner determines a person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this part 1 or of any rule or of any order promulgated under this part 1, he may apply to a court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this part 1 or any rule or order pursuant to this part 1. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of a remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

Source: L. 85: Entire article R&RE, p. 447, § 1, effective July 1. L. 89: (2) R&RE, p. 645, § 3, effective July 1. L. 2009: (1) amended, (SB 09-114), ch. 111, p. 463, § 8, effective April 9.

Editor's note: This section is similar to former § 12-16-114 as it existed prior to 1985.

12-16-114.5. Civil penalties. (1) Any person who violates any provision of this part 1 or any regulation enacted pursuant to this part 1 is subject to a civil penalty as determined by the commissioner. The maximum penalty shall not exceed one thousand dollars per violation per day.

(2) No civil penalty may be imposed unless the person charged is given notice and an opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(3) If the commissioner is unable to collect a civil penalty or if any person fails to pay all or any portion of a civil penalty, the commissioner may recover such amount, plus costs and attorney fees, by action in any court of competent jurisdiction.

(4) Under circumstances where the commissioner did not have probable cause to impose a civil penalty, the person charged may recover his costs and attorney fees from the department of agriculture.

(5) All moneys collected from civil penalties pursuant to the provisions of this section shall be transmitted to the state treasurer and credited to the inspection and consumer services cash fund created in section 35-1-106.5, C.R.S.

(6) Before imposing a civil penalty, the commissioner may consider the effect of such penalty on the ability of the person charged to stay in business.

Source: L. 89: Entire section added, p. 645, § 4, effective July 1. L. 2003: (5) amended, p. 1737, § 22, effective May 14. L. 2005: (5) amended, p. 1277, § 22, effective July 1. L. 2007: (5) amended, p. 1913, § 20, effective July 1.

12-16-115. Unlawful acts. (1) It is unlawful and a violation of this part 1 for any person to:

(a) Make fraudulent charges or returns for the handling, sale, or storage or for the rendering of any service in connection with the handling, sale, or storage of any farm products. Violation of this paragraph (a) shall constitute a class 6 felony.

(b) Willfully fail or refuse to render a true account of sales or storage or to make a settlement thereon or to pay for farm products received within the time and in the manner required by this part 1. Violation of this paragraph (b) shall constitute a class 6 felony.

(c) Intentionally make false or misleading statements as to the market conditions for farm products or false or misleading statements as to the condition, quality, or quantity of farm products received, handled, sold, or stored. Violation of this paragraph (c) shall constitute a class 6 felony.

(d) Engage in fictitious sales, in collusion, or in unfair practices to defraud the owners. Violation of this paragraph (d) shall constitute a class 6 felony.

(e) Act as a dealer, small-volume dealer, or agent without having obtained a license or act as a dealer without having filed a surety bond or an irrevocable letter of credit, as provided in this part 1. Violation of this paragraph (e) shall constitute a class 6 felony.

(f) Willfully convert to his own use or benefit the farm products of another. Violation of this paragraph (f) shall constitute theft, as defined in section 18-4-401, C.R.S.

(g) Commit fraud or deception in the procurement or attempted procurement of a license. Violation of this paragraph (g) shall constitute a class 1 misdemeanor.

(h) Fail to comply with any lawful order of the commissioner concerning the administration of this part 1. Violation of this paragraph (h) shall constitute a class 1 misdemeanor.

(i) Interfere with or hinder an authorized representative of the commissioner while performing his duties under this part 1. Violation of this paragraph (i) shall constitute a class 1 misdemeanor.

(j) If licensed as a dealer or small-volume dealer, sell farm products for less than the current market price to any person with whom such dealer has any financial connection, directly or indirectly, either as an owner of the corporate stock of a corporation, as a copartner, or in any other capacity, or sell any farm products out of the purchase price of which said dealer or small-volume dealer receives, directly or indirectly, any portion thereof other than the commission allowed in section 12-16-112. Violation of this paragraph (j) shall constitute theft, as defined in section 18-4-401, C.R.S.

(k) Act as a dealer, small-volume dealer, or agent and, with intent to defraud, make, draw, utter, or deliver any check, draft, or order for the payment of money upon any bank or other depository to the owner for the purchase price of any farm products or any part thereof upon obtaining possession or control thereof, when at the time of the making, drawing, uttering, or delivery the maker or drawer has not sufficient funds in or credit with such bank or other depository for the payment of such check, draft, or order in full upon its presentation. The making, drawing, uttering, or delivery of such check, draft, or order shall be prima facie evidence of an intent to defraud. "Credit", as used in this paragraph (k), means an arrangement or understanding with the bank or depository for the payment of such check, draft, or order. Violation of this paragraph (k) shall constitute fraud by check, as defined in section 18-5-205, C.R.S.

(l) If acting as a dealer who has signed an affidavit in accordance with section 12-16-105 (1) (a) (I), fail to make payment in cash or by one of the other means specified in section 12-16-106 (1) (f) for any transaction without first complying with the bonding requirements of section 12-16-106. Violation of this paragraph (l) shall constitute a class 1 misdemeanor.

(m) If licensed as a small-volume dealer, purchase twenty thousand dollars' worth or more of farm products in one year from the owner for processing or resale or purchase two thousand five hundred dollars' worth or more of farm products in any single transaction from the owner for processing or resale. Violation of this paragraph (m) shall constitute a class 1 misdemeanor.

Source: **L. 85:** Entire article R&RE, p. 447, § 1, effective July 1. **L. 87:** (1)(e) amended, p. 478, § 16, effective July 1. **L. 88:** (1)(e) amended, p. 489, § 3, effective February 28. **L. 89:** (1)(a) to (1)(e) amended, p. 823, § 18, effective July 1. **L. 94:** (1)(e), (1)(j), and (1)(k) amended and (1)(m) added, p. 325, § 9, effective March 1, 1995. **L. 95:** (1)(e) and (1)(k) amended, p. 694, § 5, effective May 23. **L. 2007:** (1)(l) amended, p. 846, § 5, effective August 3.

Editor's note: This section is similar to former § 12-16-113 as it existed prior to 1985.

ANNOTATION

Because subsection (1)(e) does not require proof of venue as an element of the offense, the prosecution does not need to establish the

venue to prove the offense. *People v. Felgar*, 58 P.3d 1122 (Colo. App. 2002).

12-16-116. Penalties. (1) Any person who violates any of the provisions of section 12-16-115 (1) (a), (1) (b), (1) (c), (1) (d), or (1) (e) commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S. Any person who violates any of the provisions of section 12-16-115 (1) (f) or (1) (j) commits theft, as defined in section 18-4-401, C.R.S. Any person who violates any of the provisions of section 12-16-115 (1) (g), (1) (h), (1) (i), (1) (l), or (1) (m) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. Any person who violates any of the provisions of section 12-16-115 (1) (k) commits fraud by check, as defined in section 18-5-205, C.R.S.

(2) Any person who violates any other provision of this part 1 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(3) Civil suits and criminal prosecutions arising by virtue of any of the provisions of this part 1 may be commenced and tried either in the county in which the farm products were received by the dealer, small-volume dealer, or agent, or in the county in which the principal place of business of such dealer, small-volume dealer, or agent is located, or in the county in which the violation of this part 1 occurred. The attorney general or the district attorney for the judicial district in which a violation of any of the provisions of this part 1 occurs shall, upon the request of any enforcing officer or other interested person, prosecute such violation.

Source: **L. 85:** Entire article R&RE, p. 449, § 1, effective July 1. **L. 90:** (1) amended, p. 1839, § 14, effective May 3. **L. 94:** (1) and (3) amended, p. 326, § 10, effective March 1, 1995. **L. 2002:** (1) and (2) amended, p. 1474, § 56, effective October 1.

Editor's note: This section is similar to former § 12-16-115 as it existed prior to 1985.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (1) and (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Former provisions of this section held to completely ignore § 12 of art. II, Colo. Const. *Trujillo v. People*, 158 Colo. 362, 407 P.2d 36 (1965) (decided under § 7-5-15, CRS 53).

12-16-117. Administration - rules and regulations - delegation of duties. (1) The commissioner may promulgate such rules and regulations in accordance with article 4 of title 24, C.R.S., as are necessary for the administration of this part 1.

(2) The powers and duties of the commissioner in this part 1 may be delegated to qualified employees of the department of agriculture.

Source: L. 85: Entire article R&RE, p. 449, § 1, effective July 1.

Editor's note: This section is similar to former § 12-16-116 as it existed prior to 1985.

12-16-118. Penalties for theft of farm products. (1) If farm products are contracted for sale to an out-of-state purchaser, the purchaser shall be subject to the jurisdiction of the courts of this state in accordance with the provisions of section 13-1-124 (1) (a), C.R.S. The seller shall be entitled to all remedies at law in seeking the return of such farm products when the purchaser takes delivery of the products but is unable or refuses to make payment for said products and the products have been physically removed to another state. Any such action shall be given priority on the court's docket.

(2) If any person purchases farm products in this state and removes such products to another state and issues a check in payment for those products knowing there are insufficient funds, as defined in section 18-5-205 (1) (d), C.R.S., to pay for said products, he commits theft of farm products and shall be punished as provided in section 18-4-401 (2), C.R.S.

Source: L. 89: Entire section added, p. 646, § 5, effective July 1.

PART 2

COMMODITY WAREHOUSES

12-16-201. Short title. This part 2 shall be known and may be cited as the "Commodity Handler Act".

Source: L. 85: Entire article R&RE, p. 449, § 1, effective July 1. L. 91: Entire section amended, p. 175, § 5, effective March 1.

12-16-202. Definitions - rules. As used in this part 2, unless the context otherwise requires:

(1) (Deleted by amendment, L. 2009, (SB 09-114), ch. 111, p. 464, § 11, effective April 9, 2009.)

(1.5) "Bailee" means a person who, by a negotiable warehouse receipt or other document of title, acknowledges possession of goods and contracts to deliver them.

(2) "Bailment" means the act of delivering goods or personal property to another in trust.

(2.5) "Commercial feeding" means the feeding of livestock by a person who receives compensation from the owner of the livestock for such feeding.

(3) "Commissioner" means the commissioner of agriculture or his designee.

(4) "Commodity" means unprocessed small, hard seeds or fruits such as wheat, corn, oats, barley, rye, sunflower seeds, soybeans, beans, grain sorghum, and such other seeds or fruits as may be determined by the commissioner.

(4.5) (a) "Commodity handler" means:

- (I) Any person engaged in buying any commodities from the owner for processing or resale;
- (II) Any person engaged in receiving and taking possession of any commodities from the owner for storage or safekeeping;
- (III) Any person engaged in soliciting or negotiating sales of commodities between the vendor and purchaser respectively;
- (IV) Any person who receives on consignment or solicits from the owner thereof any kind of commodity for sale on commission on behalf of such owner, or who accepts any commodity in trust from the owner thereof for the purpose of resale, or who sells or offers for sale on commission any commodity or in any way handles any commodity for the account of the owner thereof; or
- (V) Any person engaged in buying any commodity from the owner thereof for the commercial feeding of livestock that are owned wholly or in part by another, at an animal feeding operation with a capacity of more than two thousand five hundred head of livestock. The commissioner shall establish rules to determine the capacity of animal feeding operations for purposes of this article.
- (b) "Commodity handler" does not include bona fide retail grocery merchants or restaurateurs having a fixed or established place of business in Colorado as long as the use of commodities by any such person is directly related to the operation of the person's retail grocery or restaurant.
- (5) "Compensation" means something of value or benefit, whether in cash, in kind, or in any other form.
- (6) "Credit sale contract" means a contract for the sale of a commodity when the sale price is to be paid on a date later than sixty days after delivery of the commodity to the buyer and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, and price later contracts.
- (7) "Department" means the department of agriculture.
- (8) "Financial statement" means a statement that accurately presents the financial condition of an applicant or licensee and that includes, at a minimum, a balance sheet and a statement of income.
- (8.5) "Forwarded commodities" means commodities sent to a terminal warehouse and put on open storage in the name of the forwarding warehouse operator.
- (8.6) "Functional unit" means one or more warehouses that constitute a single operating unit if:
- (a) The same warehouse operator operates each warehouse in conjunction with any other;
- (b) All the warehouses are functioning under the same name and with the same personnel, office, books, and records; and
- (c) Together the warehouses have the capability to weigh, grade, receive, store, and load out commodities.
- (9) "Handling" means buying commodities for resale or processing, brokering commodities, or receiving and loading out commodities tendered for storage.
- (9.5) "Livestock" has the same meaning as set forth in section 35-1-102 (6), C.R.S.
- (10) "Loss" means any monetary loss to a producer or owner which is of an extraordinary nature and which includes, but is not limited to, bankruptcy, embezzlement, theft, fraud, or negligence.
- (11) "Market value" means the value required by law to be used by insurance underwriters in paying for losses of commodities insured for their actual value.
- (12) "Negotiable warehouse receipt" means a receipt which specifies by its terms that the goods are to be delivered to the bearer or to the order of a named person. Any other receipt is nonnegotiable.
- (13) "Owner" means any person in whom legal title to any commodity is vested, whether produced by him or acquired by purchase.
- (14) "Person" includes any individual, firm, association, partnership, or corporation or the commissioner.

(15) “Processing” means the operation of canning, fermenting, distilling, extracting, preserving, grinding, crushing, flaking, mixing, or otherwise changing the form of a commodity for the purpose of selling any of the resulting products.

(16) “Producer” means any grower of commodities.

(17) “Provisional insurance coverage” means a certificate or any other satisfactory evidence of fire and extended coverage insurance issued by an insurance company authorized to do business in this state insuring every commodity in the custody of a warehouse operator, whether held for others or owned by the warehouse operator, at the full local market value of each commodity.

(18) “Public warehouse” includes any elevator, mill, warehouse, or other structure in which commodities are received from one or more members of the public for storage.

(19) “Scale ticket” means a receipt issued for a commodity which names the person to whom it is issued and the kind and grade of the commodity stored.

(20) “Settlement sheet” means a summary of the commodity handler’s transactions with an owner.

(21) “Storage” means the holding of a commodity for another by a person who does not directly own the commodity. “Storage” does not include transportation of a commodity.

(21.5) “Terminal warehouse” means any public warehouse licensed by the Colorado department of agriculture, the United States department of agriculture, or any state that has a warehouse examination cooperative agreement with Colorado or the United States department of agriculture.

(22) “Warehouse operator” includes any person or existing legal entity owning, operating, or controlling any public warehouse.

Source: L. 85: Entire article R&RE, p. 449, § 1, effective July 1. L. 87: (6) amended, p. 498, § 6, effective July 1. L. 89: (8) amended and (8.5), (8.6), and (21.5) added, p. 646, § 6, effective July 1. L. 91: (2.5) and (4.5) added and (4), (9), (15), and (20) amended, p. 175, § 6, effective March 1, 1992. L. 92: (4.5)(a)(V) amended, p. 2076, § 2, effective June 1. L. 93: (4.5)(a)(V) amended, p. 1035, § 2, effective June 2. L. 94: (4.5)(b) and (21.5) amended, p. 327, § 11, effective March 1, 1995. L. 95: (1) amended and (1.5) and (9.5) added, p. 695, § 6, effective May 23. L. 2007: (4.5)(a)(V), (8), (8.5), IP(8.6), (8.6)(a), (15), (17), and (22) amended, p. 846, § 6, effective August 3. L. 2009: (1) and (4.5)(a)(IV) amended, (SB 09-114), ch. 111, p. 464, § 11, effective April 9.

Editor’s note: This section is similar to former § 12-16-101 as it existed prior to 1985.

12-16-203. Licenses - commodity handler - rules. (1) No person shall act as a commodity handler in this state without having first obtained a license from the department.

(2) Every person acting as a commodity handler in this state shall, each year before the date specified by the commissioner by rule, obtain a license from the department.

(3) Repealed.

(4) and (5) (Deleted by amendment, L. 2007, p. 847, § 7, effective August 3, 2007.)

Source: L. 85: Entire article, R&RE, p. 451, § 1, effective July 1. L. 87: (2) amended and (3) repealed, pp. 498, 500, §§ 7, 13, effective July 1. L. 89: (4) added, p. 647, § 7, effective July 1. L. 91: (1) and (2) amended and (5) added, p. 176, § 7, effective March 1, 1992. L. 95: (1) and (2) amended, p. 695, § 7, effective May 23. L. 2007: (2), (4), and (5) amended, p. 847, § 7, effective August 3. L. 2009: (1) and (2) amended, (SB 09-114), ch. 111, p. 464, § 12, effective April 9.

ANNOTATION

The reasonable expectation that a person engaged in a licensed occupation is properly licensed and that transactions with the person, therefore, will be subject to the various protections that come with governmental regulation

establishes proximate cause for purposes of the restitution statute. *People v. Leonard*, 167 P.3d 178 (Colo. App. 2007).

Defendant obtained possession of the victims’ commodities by purporting to act as a licensed

commodity handler; then, as defendant admitted at his restitution hearing, he used the proceeds from the sale of the seed to repay his own creditors rather than pay the victims. Limiting the victims' restitution to the amount of the

bond that defendant failed to post would not take account of the full scope of the criminal conduct to which defendant pleaded guilty. *People v. Leonard*, 167 P.3d 178 (Colo. App. 2007).

12-16-204. Exemptions. (1) The provisions of this part 2 that apply to warehouse operators do not apply to the owner or operator of any public warehouse or other facility where the owner or operator:

(a) Operates a public warehouse in this state with a valid license issued either by the United States department of agriculture or under the provisions of the "United States Warehouse Act", 7 U.S.C. section 241 et seq.;

(b) Receives only commodities that he has purchased, or that he is processing or cleaning for the owners of the commodities, or that he is maintaining for such other purposes as the department may, by rule, prescribe; and

(c) Keeps written evidence, as required by the department, which clearly shows that the warehouse operator maintains the commodities for one or more of the purposes set forth in paragraph (a) or (b) of this subsection (1). The department shall consider a commodity left or deposited with a warehouse operator whose records do not include evidence that the commodity was left or deposited for one or more of the purposes set forth in paragraph (a) or (b) of this subsection (1) as a commodity deposited for storage and handling.

Source: **L. 85:** Entire article R&RE, p. 451, § 1, effective July 1. **L. 91:** IP(1) amended, p. 176, § 8, effective March 1, 1992. **L. 2007:** IP(1) and (1)(c) amended, p. 847, § 8, effective August 3.

12-16-205. Commodity handler licenses - application requirements - fee.

(1) (a) Each applicant for a commodity handler license shall pay, for each year in which such license is to be valid, a license fee established by the agricultural commission, which license fee the department shall collect and transmit to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5, C.R.S.

(b) (I) Except as provided in subparagraph (II) of this paragraph (b), for each fiscal year, commencing on July 1, twenty-five percent of the direct and indirect costs of administering and enforcing this article shall be funded from the general fund. The agricultural commission shall establish a fee schedule to cover any direct and indirect costs not funded from the general fund.

(II) Repealed.

(2) Application for a commodity handler license under this section shall be made to the department upon forms furnished by the department. The application shall include the following information:

(a) The name and address of the applicant; and, if the applicant is a firm, exchange, association, or corporation, the full name of each member of the firm or the names of the officers of the exchange, association, or corporation. The application shall also state the principal business address of the applicant in the state of Colorado and in every other state in which the applicant does business and the names of the persons authorized to receive and accept service of summons and legal notices of all kinds on behalf of the applicant in each state. The applicant shall further satisfy the commissioner of its character, responsibility, and good faith in seeking to carry on the business stated in the application. In determining a person's character, the commissioner shall be governed by the provisions of section 24-5-101, C.R.S.

(b) The location of each public warehouse of the applicant;

(c) The total rated storage capacity in bushels of each public warehouse;

(d) The tariff schedule of charges to be made at each public warehouse for the handling, storage, and shipment of commodities during the license year;

(e) Any other information that the commissioner deems reasonably necessary to carry out the purposes of this part 2.

(2.5) (Deleted by amendment, L. 2009, (SB 09-114), ch. 111, p. 464, § 13, effective April 9, 2009.)

(3) Repealed.

(4) Fraud or misrepresentation in making any application shall in and of itself work a revocation of any license granted pursuant to such application. All indicia of the possession of a license shall at all times be the property of the state of Colorado, and each licensee is entitled to the possession of such indicia only while said license remains valid and current.

Source: **L. 85:** Entire article R&RE, p. 451, § 1, effective July 1. **L. 87:** (3) repealed, p. 500, § 13, effective July 1. **L. 91:** Entire section amended, p. 176, § 9, effective March 1, 1992. **L. 95:** (1) and IP(2) amended and (2.5) added, p. 696, § 8, effective May 23. **L. 2003:** (1) amended, p. 1737, § 23, effective May 14. **L. 2005:** (1) amended, p. 1277, § 23, effective July 1. **L. 2007:** (1) amended, p. 1913, § 21, effective July 1. **L. 2009:** (1)(a) and (2.5) amended, (SB 09-114), ch. 111, p. 464, § 13, effective April 9. **L. 2010:** (1)(b) amended, (HB 10-1377), ch. 212, p. 924, § 8, effective May 6.

Editor's note: Subsection (1)(b)(II)(B) provided for the repeal of subsection (1)(b)(II), effective July 1, 2012. (See L. 2010, p. 924.)

12-16-206. Licenses - requirements - rules. (1) To receive or maintain a license, each applicant or licensee shall satisfy the following requirements:

(a) The applicant or licensee shall furnish the commissioner with evidence of minimum provisional insurance coverage in an amount sufficient to protect the applicant's storage obligations. If, at any time, the commissioner evaluates an applicant's provisional insurance coverage to be insufficient, the commissioner may require such additional insurance as the commissioner considers sufficient. Failure to provide evidence of the additional insurance within thirty days after written notice from the commissioner constitutes grounds for the suspension or revocation of the license.

(b) The applicant or licensee shall furnish the commissioner with a financial statement that presents accurately his or her financial condition. The commissioner may promulgate rules that clearly state the information required from each applicant or licensee under this section. Any financial statement submitted to the commissioner in support of a license application made pursuant to the provisions of this part 2 shall be confidential. Whenever the commissioner deems it appropriate, he or she may require any applicant for an initial license, any applicant for a renewal of a license, or any licensee to submit a financial statement or an audit, prepared by a certified public accountant, or any other information the commissioner deems necessary to determine whether such person is in an adequate financial position to carry out his or her duties as a licensee.

(2) If any licensee fails to apply for license renewal before an annual date specified by the commissioner by rule, such licensee shall, upon application for a renewal license and before such license is issued, pay a penalty fee as established by the agricultural commission. Such penalty fee shall be in addition to the license fee.

Source: **L. 85:** Entire article R&RE, p. 452, § 1, effective July 1. **L. 87:** (2) amended, p. 498, § 8, effective July 1. **L. 91:** Entire section amended, p. 177, § 10, effective March 1, 1992. **L. 95:** Entire section amended, p. 697, § 9, effective May 23. **L. 2005:** (2) amended, p. 1278, § 24, effective July 1. **L. 2007:** (1)(b) amended, p. 848, § 9, effective August 3. **L. 2009:** (2) amended, (SB 09-114), ch. 111, p. 462, § 4, effective April 9.

12-16-206.5. Disciplinary powers - licenses. (1) The commissioner may deny any application for a license, or may refuse to renew a license, or may revoke or suspend a license, or may place a licensee on probation, as the case may require, if the licensee or applicant has:

(a) Violated any of the provisions of this part 2 or violated any of the rules and regulations promulgated by the commissioner pursuant to this part 2;

(b) Failed to place and keep the premises where he conducts the licensed business in the manner required under this part 2;

(c) Been convicted of a felony under the laws of this state, or of any other state, or of the United States; except that, in consideration of the conviction of a felony, the commissioner shall be governed by the provisions of section 24-5-101, C.R.S.;

(d) Committed fraud or deception in the procurement or attempted procurement of a license;

(e) Failed or refused to execute and deliver to the commissioner a surety bond as required by section 12-16-218;

(f) Been determined by the commissioner to be in an inadequate financial position to meet liability obligations;

(g) Failed to comply with any lawful order of the commissioner concerning the administration of this part 2;

(h) Had a license revoked, suspended, or not renewed or has been placed on probation in another state for cause, if such cause could be the basis for similar disciplinary action in this state.

(2) All proceedings concerning the denial, refusal to renew, revocation, or suspension of a license or the placing of a licensee on probation shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S.

(3) Any previous violation of the provisions of this part 2 by the applicant or any person connected with him in the business for which he seeks to be licensed, or in the case of a partnership or corporation applicant any previous violations of the provisions of this part 2 by a partner, officer, director, or stockholder of more than thirty percent of the outstanding shares, is sufficient grounds for the denial of a license.

Source: L. 87: Entire section added, p. 498, § 9, effective July 1. L. 89: Entire section amended, p. 647, § 8, effective July 1. L. 95: (1)(h) added, p. 697, § 10, effective May 23.

12-16-207. Bailment of commodities. (1) Acceptance of commodities for storage by a warehouse operator shall constitute a bailment and not a sale. Stored commodities shall not be liable to seizure upon process of a court in an action against the bailee, except upon action by owners of the stored commodities or the commissioner to enforce the terms thereof; but, in the event of the failure or insolvency of a bailee, commodities shall be first applied exclusively to the settlement on an equal basis of all outstanding negotiable warehouse receipts and other open storage obligations for commodities so stored with the bailee.

(2) Forwarded commodities shall be used only to meet the storage obligation to the forwarding warehouse operator.

(3) The purchase of a commodity does not constitute a bailment.

Source: L. 85: Entire article R&RE, p. 452, § 1, effective July 1. L. 89: Entire section amended, p. 647, § 8, effective July 1. L. 91: (3) added, p. 178, § 11, effective March 1, 1992. L. 2007: Entire section amended, p. 848, § 10, effective August 3.

ANNOTATION

Law reviews. For article, "Grain Elevator Insolvency: State Law And Bankruptcy Law Considerations", see 19 Colo. Law. 635 (1990).

12-16-208. Credit sale contracts. (1) When a commodity handler receives commodities in a manner which is not pursuant to storage for which payment has not been made, the commodity handler, not more than sixty days after the receipt of such commodities, shall provide the producer or owner of the commodities with the credit sale contract. The credit sale contract shall contain the following information:

(a) The class and grade of the commodities received, the quantity received, and the date of the receipt;

- (b) The charges for handling, if any;
 - (c) The name and address of the producer or owner and the signature of the commodity handler;
 - (d) The contract number;
 - (e) The words “not a storage contract” printed in block capital letters in bold-faced type, conspicuously on the first page of the contract;
 - (f) The statement “This contract constitutes a voluntary extension of credit by the owner to the commodity handler and is not protected by the surety bond or irrevocable letter of credit of the commodity handler.” Such statement shall be conspicuously printed on the upper third of the first page of the contract, set off by solid lines on all four sides, including a signature block for the signature of the seller.
- (2) A commodity handler’s records shall be retained for a period of two years and shall reflect those credit sale contracts that have been cancelled and those that are still open. Such records shall be kept at the commodity handler’s place of business at all times.
- (3) An annual report of the status of the credit sale contracts may be required by the commissioner along with the financial statement required in section 12-16-206.
- (4) All credit sale contracts entered into by a commodity handler shall be consecutively numbered by such commodity handler, and copies thereof shall be made available by the commodity handler for inspection and examination by the commissioner or his authorized agents.
- (5) A commodity handler issuing credit sale contracts shall maintain allowable net assets of not less than twenty-five thousand dollars and shall maintain reserves in an amount equaling or exceeding fifty percent of the value of all of that commodity handler’s open credit sale contracts, which value shall be determined with reference to the daily bid price. Such reserves may be in the form of any one or a combination of the following:
- (a) Cash;
 - (b) Commodity assets, including commodities and warehouse receipts or other evidences of storage of commodities;
 - (c) Credit sale contracts with other commodity handlers licensed by the department of agriculture;
 - (d) An irrevocable letter of credit in favor of the commissioner, which letter of credit shall be subject to the provisions of section 12-16-218; or
 - (e) Net worth of the commodity handler of at least four times the value of the open credit sale contracts.

Source: **L. 85:** Entire article R&RE, p. 452, § 1, effective July 1. **L. 87:** IP(1) amended and (1)(e), (1)(f), and (4) added, p. 499, §§ 10, 11, effective July 1. **L. 91:** Entire section amended, p. 178, § 12, effective March 1, 1992. **L. 2009:** IP(1) and (1)(c) amended, (SB 09-114), ch. 111, p. 465, § 14, effective April 9.

12-16-209. Commodity grades established. The department may promulgate rules and regulations concerning commodity grades in accordance with the standards established by the United States department of agriculture as the official grain standards of the United States government.

Source: **L. 85:** Entire article R&RE, p. 453, § 1, effective July 1.

12-16-210. Commissioner - rules - delegation of powers and duties. (1) The commissioner may promulgate such rules and regulations in accordance with article 4 of title 24, C.R.S., as are necessary for the administration of this part 2.

(2) The commissioner shall be the enforcing authority of this part 2, and the commissioner or the commissioner’s authorized representative shall have free and unimpeded access to all places of business and all business records of the licensee pertinent to any proper inquiry in the administration of this part 2. Any person in whom the enforcement of any provision of this part 2 is vested has the power of a peace officer as to such enforcement.

(3) The powers and duties of the commissioner set forth in this part 2 may be delegated to qualified employees of the department.

Source: L. 85: Entire article R&RE, p. 453, § 1, effective July 1. L. 2009: (2) amended, (SB 09-114), ch. 111, p. 463, § 9, effective April 9.

Editor's note: This section is similar to former § 12-16-116 as it existed prior to 1985.

12-16-211. Obtaining negotiable warehouse receipts. (1) Upon written notice, the department shall print, bind, and deliver a sufficient number of negotiable warehouse receipts to any person operating a public warehouse. No person shall use these forms for any purpose other than in connection with the receipt of commodities for storage.

(2) Negotiable warehouse receipts shall conform to the terms set forth in section 4-7-202, C.R.S. The warehouse operator shall maintain a file of all voided, issued, and unused warehouse receipts.

(3) The department shall be the sole source of negotiable warehouse receipts and shall furnish those receipts at cost. Orders for receipts shall specify the number required and shall be submitted at least fifteen days prior to the time the receipts are needed.

Source: L. 85: Entire article R&RE, p. 453, § 1, effective July 1. L. 2007: (2) amended, p. 848, § 11, effective August 3.

12-16-212. Use of scale tickets and negotiable warehouse receipts. (1) It is unlawful to issue negotiable warehouse receipts other than those furnished by the department. These receipts shall be issued consecutively, as numbered, and each receipt shall be stamped with the date on which it is actually issued.

(2) Nothing in this part 2 shall be construed to prevent the issuance of nonnegotiable scale tickets or other nonnegotiable evidences of a similar nature showing the date on which the commodities were received, the quantities received, and the condition of such commodities upon their delivery.

(3) When partial withdrawal of a commodity is made by an owner, the warehouse operator shall make an appropriate notation thereof on the depositor's nonnegotiable warehouse receipt or on such other records as may be prescribed by the department. If the warehouse operator has theretofore issued a negotiable warehouse receipt to the owner, the warehouse operator shall claim, cancel, and replace it with a new negotiable warehouse receipt, showing the amount of such owner's commodity remaining in the public warehouse.

(4) Every commodity handler receiving commodities for storage or handling shall immediately, upon receipt of each load, issue to every person delivering the commodity a scale ticket, which shall contain the net weight of each separate draft or load of the commodity and the dockage, if any, to be levied at the time of delivery, and such other information as may be required by the department.

(5) Acceptance of commodities for storage by a warehouse operator for which a negotiable warehouse receipt is issued shall constitute a bailment process and not a sale. If a warehouse operator fails to claim and cancel a negotiable warehouse receipt issued on delivery for commodities stored in the warehouse operator's public warehouse and the negotiation of which would transfer the right of possession of that commodity, the warehouse operator shall be liable, to a good faith purchaser for value, for his failure to deliver to the purchaser all the commodities specified in the receipt. This liability shall apply whether the purchaser acquired title to the negotiable warehouse receipt before, on, or after the delivery of any part of the commodity by the warehouse operator.

Source: L. 85: Entire article R&RE, p. 453, § 1, effective July 1. L. 91: (4) amended, p. 179, § 13, effective March 1, 1992. L. 2007: (3) and (5) amended, p. 849, § 12, effective August 3.

12-16-213. Commodity handler records - separate and distinct - time of maintenance. (1) A commodity handler operating another business in conjunction with, or in proximity to, the handler's commodity handling business shall keep a complete set of records for the commodity handling business, entirely separate and distinct from the accounts and records of that other business. The deposits of commodities for the account of another business or for commodities owned by the commodity handler shall be entered in the books of the commodity handler in the same manner as those of other depositors. For the purpose of this section, "other business" shall mean any other separate and legally established enterprise which is distinct and separate from the legal and financial transactions of the commodity handling business.

(2) Commodity handlers shall maintain adequate records and systems for the filing and accounting of negotiable warehouse receipts, cancelled negotiable warehouse receipts, scale tickets, and other documents and transactions necessary or common to the commodity handling industry. Cancelled negotiable warehouse receipts, copies of scale tickets, and copies of other documents evidencing ownership or ownership liability shall be retained by the commodity handler for a period of at least three years after the date of cancellation.

(3) A position report shall be posted daily by the commodity handler; however, if a daily position report poses a substantial hardship, the commissioner may authorize, in writing, a weekly position report. The position report shall include, but need not be limited to, total stocks by commodities received or loaded out, forwardings of commodities to terminal storage, conversions of whole commodities to feed, negotiable warehouse receipt obligations, open storage obligations, credit sale contracts, and public warehouse-owned commodities.

(4) A scale ticket shall be issued for each receipt of commodities. A copy of the scale ticket shall be given to the owner. The commodity handler's copy shall be filed with all other such copies in numerical sequence. Voided scale tickets shall be filed and retained at the commodity handler's place of business. Scale tickets shall be issued in numerical sequence. An issued scale ticket shall contain the following: Sequential number; date; owner's name; commodity handler's name; commodity; test weight with dockage, if applicable; grade, if assigned; gross weight; tare weight; and net weights, in the case of weights from hopper scales.

(5) A settlement sheet shall be maintained for each owner and shall contain the following: Owner's name, scale ticket numbers, total receipts, total withdrawals, test weight, and grade if assigned. A copy of a current settlement sheet shall be provided the owner upon request.

Source: L. 85: Entire article R&RE, p. 454, § 1, effective July 1. L. 91: Entire section amended, p. 179, § 14, effective March 1, 1992.

12-16-214. Warehouse operator's liability for disposal of tainted commodities.

(1) A warehouse operator shall be liable for any loss or deterioration of commodities in a public warehouse caused by the warehouse operator's failure to exercise reasonable care of the commodities.

(2) If a warehouse operator discovers that, as a result of a condition of a commodity placed in the warehouse operator's public warehouse of which he or she had no notice at the time of deposit, such commodity is a hazard to other commodities or to persons or to the public warehouse and if such commodity is not immediately removed by the owner upon the warehouse operator's request, the warehouse operator may sell the commodity after reasonable notice to all persons known to claim an interest in the commodity. If the warehouse operator is unable to sell the commodity after a reasonable effort, the warehouse operator may dispose of it in any other lawful manner and shall incur no liability to the owner for such disposition.

(3) At any time before the sale or disposition authorized in this section, the warehouse operator shall deliver the commodity to any person entitled to it upon proper demand and payment of all charges incurred for the specific lot of that commodity.

(4) The commissioner may reject as unsuitable for storage any area of the warehouse operator's premises, unless that area is used for storing the warehouse operator's own commodities.

Source: L. 85: Entire article R&RE, p. 455, § 1, effective July 1. L. 2007: Entire section amended, p. 849, § 13, effective August 3.

12-16-215. Enforcement - inspection of commodity handlers' property - confidentiality. (1) The department has the power to inspect commodity handlers' places of business. The department shall investigate any complaint concerning the operation of any commodity handler, or any person attempting or offering to act as such, subject to the provisions of this part 2.

(1.5) Complaints of record made to the commissioner and the results of his investigations may, in the discretion of the commissioner, be closed to public inspection during the investigatory period and until dismissed or until notice of hearing and charges is served on a licensee, unless otherwise provided by court order.

(2) The commissioner, upon consent of the licensee or upon obtaining an administrative search warrant, has the right to inspect any commodity handler's place of business where commodities are stored, handled, or received and any records pertaining to storage obligations and commodity positions kept by the commodity handler that pertain to the operation thereof. The property, books, records, accounts, and papers pertaining to storage obligations and commodity positions of every commodity handler shall be subject to inspection and copying by the commissioner.

(3) The commissioner shall have full authority to administer oaths and take statements, to issue subpoenas requiring the attendance of witnesses before him and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

(4) The commissioner may examine the ledgers, books, accounts, memoranda, and other documents and the commodities, scales, measures, and other items in connection with the business of any licensee relating to whatever transactions may be involved.

(5) The commissioner shall not be required to investigate or act upon complaints regarding transactions which occurred more than one hundred twenty days prior to the date upon which the commissioner received the written complaint.

(6) If the investigation is against a licensee, the commissioner shall proceed to ascertain the names and addresses of all producers, dealers, or owners of commodities, together with the accounts unaccounted for or due and owing to them by said licensee, and shall request all such producers, dealers, or owners to file verified statements of their respective claims with the commissioner. If a producer, dealer, or owner so requested fails, refuses, or neglects to file a verified statement in the office of the commissioner within thirty days after the date of such request, the commissioner shall thereupon be relieved of any further duty or action under this part 2 on behalf of said producer, dealer, or owner.

(7) In the course of any investigation, the commissioner may attempt to effectuate a settlement between the respective parties.

(8) (a) If the commissioner determines, after concluding an investigation on any complaint, that reasonable grounds exist to believe that a licensee has violated any of the provisions of this part 2, he shall notify the licensee that such complaint is valid and shall inform the licensee of his opportunity to request a hearing, in writing, on such complaint within ten days after the date of such notice.

(b) Upon the receipt of a request for a hearing from a licensee or if the commissioner determines that a hearing concerning any licensee is necessary, he shall cause a copy of the complaint or the grounds specified in section 12-16-206.5, together with a notice of the time and place of the hearing, to be served personally or by mail upon such licensee. Service shall be made at least ten days before the hearing, which shall be held in the city or town in which the business location of the licensee is situated, or in which the transactions involved allegedly occurred, or at any convenient place designated by the commissioner.

(c) The commissioner shall conduct such hearing pursuant to the provisions of section 24-4-105, C.R.S. Thereafter, the commissioner shall enter a decision specifying the relevant facts established at such hearing. If the commissioner determines from the facts specified that the licensee has not violated any of the provisions of this part 2, the complaint shall be dismissed. If the commissioner determines from the facts specified that the licensee has violated any of the provisions of this part 2, and that the licensee has not yet made complete restitution to the person complaining, he shall determine the amount of damages, if any, to which such person is entitled as the result of such violation, and he shall enter an order directing the offender to pay such amount to the person complaining on or before the date fixed in the order. A copy of the decision shall be furnished to all the respective parties to the complaint.

(9) As a result of such hearing, the commissioner may also enter any order suspending or revoking the license of a licensee or may place the licensee on probation if the commissioner determines that the licensee has committed any of the unlawful acts specified in section 12-16-221 or that the licensee has violated any of the provisions of this part 2.

(10) (a) If a person against whom an order, as specified in paragraph (c) of subsection (8) of this section, is made and issued fails, neglects, or refuses to obey said order within the time specified in the order, the commissioner may thereupon issue a further order to that person directing the person to show cause why his or her license should not be suspended or revoked for failure to comply with said order.

(b) In such case, a copy of said order to show cause, together with a notice of the time and place of the hearing thereupon, shall be served personally or by mail upon the person involved. Service shall be made at least ten days before the hearing, which shall be held in the city or town in which the business location of the licensee is situated or at any convenient place designated by the commissioner.

(c) The commissioner shall conduct such hearing pursuant to the provisions of section 24-4-105, C.R.S., and thereafter shall enter an order and decision specifying the facts established at the hearing and either dismissing the order to show cause, or directing the suspension or revocation of the license held by the licensee, or making such other conditional or probationary orders as may be proper. A copy of said order and decision shall be furnished to the licensee.

(d) Nothing in this section shall be construed as limiting the power of the commissioner to revoke or suspend a license when he is satisfied of the existence of any of the facts specified in section 12-16-221.

(11) Whenever the absence of records or other circumstances makes it impossible or unreasonable for the commissioner to ascertain the names and addresses of all persons specified in subsection (6) of this section, the commissioner, after exercising due diligence and making a reasonable inquiry to secure said information from all reasonable and available sources, shall not be liable or responsible for the claims or the handling of claims which may subsequently appear or be discovered. After ascertaining all claims, assessments, and statements in the manner set forth in subsection (6) of this section, the commissioner may then demand payment on the bond or irrevocable letter of credit on behalf of those claimants whose claims have been determined by the commissioner as valid and, in the instance of a bond, may settle or compromise said claims with the surety company on the bond and execute and deliver a release and discharge of the bond involved. Upon the refusal of the surety company to pay the demand, the commissioner may bring an action on the bond on behalf of the producer, dealer, or owner.

(12) For the purpose of this section, a transaction is deemed to have occurred:

(a) On the date that possession of commodities is transferred by a claimant; or

(b) In the case of delayed payment transactions, on the contractual date of payment or, if there is no contractual date of payment, thirty days following the transfer of title.

(13) A public warehouse shall be maintained by the commodity handler in a manner adequate to provide a convenient and safe means of ingress and egress to the various storage bins and compartments by those persons authorized to make inspections.

(14) (a) Each warehouse shall be kept open for the purpose of receiving commodities for storage and delivering commodities out of storage every business day for a period of not less than six hours between the hours of 8 a.m. and 6 p.m. except as provided in paragraph

(b) of this subsection (14). The commodity handler shall post conspicuously on the door of the public entrance to his office and to his licensed warehouse a notice showing the hours during which the warehouse will be kept open; except that such notice is not necessary when a warehouse is kept open continuously from 8 a.m. to 6 p.m.

(b) Whenever a warehouse is not to be kept open as required by paragraph (a) of this subsection (14), the notice posted as prescribed in said paragraph (a) shall state the period during which the warehouse is to be closed and the name, address, and telephone number, if any, of the person who shall be authorized to deliver commodities stored in such warehouse upon lawful demand by the depositor thereof or the holder of the receipt thereof, as the case may be.

Source: L. 85: Entire article R&RE, p. 455, § 1, effective July 1. L. 89: (1.5) and (4) added, p. 647, § 9, effective July 1. L. 91: Entire section amended, p. 180, § 15, effective March 1, 1992. L. 2009: (2) and (4) amended, (SB 09-114), ch. 111, p. 463, § 10, effective April 9.

12-16-216. Procedure on shortage - refusal to submit to inspection. (1) Whenever it appears probable after investigation that a licensed warehouse operator does not possess sufficient commodities to cover the outstanding negotiable warehouse receipts, scale tickets, or other evidences of storage liability issued or assumed by the warehouse operator, the department may give notice to the warehouse operator that he or she is required to do all or any of the following:

- (a) Cover such shortage;
- (b) Give an additional bond or irrevocable letter of credit;
- (c) Submit to such inspection as the department may deem necessary.

(2) If the warehouse operator fails to comply with the terms of the notice within twenty-four hours after the date of its issuance or within such further time as the department may allow, the department may do all or any of the following:

- (a) Issue a cease-and-desist order pursuant to section 12-16-219;
- (b) Take possession of all commodities in the public warehouse owned, operated, or controlled by the warehouse operator and of all books, papers, records, and property of all kinds used in connection with the conduct or operation of the warehouse operator's public warehouse business, whether such books, papers, records, and property pertain specifically, exclusively, directly, or indirectly to that business or are related to his or her handling, storage, or use of commodities in any other business;

(c) Apply to any court of competent jurisdiction for an order to enjoin the warehouse operator from interfering with the department in the discharge of its duties as required by this section;

(d) Petition any court of competent jurisdiction for an order requiring the warehouse operator or any person who has possession of any commodities, books, papers, records, or property of any kind used in connection with the conduct or operation of the public warehouse business who has refused to surrender possession to the department to surrender possession of the same to the department.

(3) Upon its taking possession of the commodities, the department may give written notice of its action to the holders of all negotiable warehouse receipts or other evidences of deposits issued for commodities to present their negotiable warehouse receipts or other evidences of deposits for inspection or to account for the same. Thereupon, the department shall cause an audit to be made of the affairs of such public warehouse with respect to any commodity in which there is an apparent shortage, determine the amount of such shortage, and compute the shortage as to each owner of the commodity. The department shall attempt to notify the warehouse operator of the amount of such shortage and attempt to notify each owner thereby affected. If the owner cannot be notified after a reasonable attempt by the department, the department shall not be held liable for any losses incurred by such owner.

(4) The department shall retain possession of the commodity in the public warehouse and of the books, papers, records, and property of the warehouse operator until such time as the warehouse operator or the warehouse operator's bond or irrevocable letter of credit has satisfied the claims of all holders of negotiable warehouse receipts or other evidences

of deposits. In case the shortage exceeds the amount of the bond or irrevocable letter of credit, the warehouse operator's bond or irrevocable letter of credit shall satisfy such claims pro rata. Nothing in this section shall be construed to prevent the department from complying with an order of a court of competent jurisdiction to surrender possession.

(5) If during or after the audit provided for in this section or at any other time the department is of the opinion that the warehouse operator is insolvent or in danger of becoming so or is unable to satisfy the claims of all holders of negotiable warehouse receipts or other evidences of deposits, the department may petition a court of competent jurisdiction in such county for the appointment of a receiver to operate or liquidate the business of the warehouse operator in accordance with applicable law.

(6) At any time within ten days after the department takes possession of any commodities or the books, papers, records, and property of any public warehouse, the warehouse operator may apply to a court of competent jurisdiction for an order requiring the department to show cause why such commodities, books, papers, records, and property should not be restored to the warehouse operator's possession. Upon its being served notice, the department shall have not more than ten days to respond.

(6.1) (a) If a court of competent jurisdiction determines that all or any part of the commodities, books, papers, records, and property should not be restored to the possession of the warehouse operator, the court may:

(I) Appoint a receiver for all or any part of the commodities, books, papers, records, and property; or

(II) Determine the disposition of the commodities, books, papers, records, and property which were in the public warehouse and seized pursuant to this part 2.

(b) Pending determination of the ownership of the commodities, any funds received from the disposition of the commodities shall be placed in an interest-bearing escrow account.

(6.5) If the warehouse operator does not apply to a court of competent jurisdiction for a show-cause order under subsection (6) of this section, the department's action is presumed valid, and the commissioner may determine the disposition of the commodities, books, papers, records, and property that were in the public warehouse and seized pursuant to this part 2. Pending determination of the ownership of the commodities, any funds received from the disposition of the commodities shall be placed in an interest-bearing escrow account.

(7) All expenses incurred by the department in carrying out the provisions of this section shall be a first charge and lien upon the assets of the warehouse operator; and such expenses may be recovered in a separate civil action brought by the department, represented by the attorney general, in a court in the county in which the public warehouse is located, or they may be recovered at the same time and as a part of an action filed under subsection (5) of this section.

(8) As a part of the expenses so incurred, the department or the receiver is authorized to include the cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out the provisions of this section.

Source: L. 85: Entire article R&RE, p. 456, § 1, effective July 1. L. 87: (1)(b) and (4) amended, p. 478, § 17, effective July 1. L. 89: (2)(d), (6.1), and (6.5) added, p. 648, § 10, effective July 1. L. 2007: IP(1), (2) to (6), IP(6.1)(a), (6.5), and (7) amended, p. 850, § 14, effective August 3.

12-16-217. Inspection fees. (1) The state agricultural commission, after conferring with interested industry groups, is authorized to fix, assess, and collect fees for the inspection of commodity handlers.

(2) (a) Except as provided in paragraph (b) of this subsection (2), for each fiscal year, commencing on July 1, twenty-five percent of the direct and indirect costs of administering and enforcing this article shall be funded from the general fund. The agricultural commission shall establish a fee schedule to cover any direct and indirect costs not funded from the general fund. The inspection fee shall be paid by the person, firm, corporation, or other

organization requesting the service at the time it is rendered or as otherwise provided and authorized by the commission.

(b) Repealed.

(3) All moneys collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the inspection and consumer services cash fund created in section 35-1-106.5, C.R.S.

Source: **L. 85:** Entire article R&RE, p. 457, § 1, effective July 1. **L. 91:** (1) amended, p. 185, § 16, effective March 1, 1992. **L. 2003:** (2) amended and (3) added, p. 1738, § 24, effective May 14. **L. 2005:** (2) and (3) amended, p. 1278, § 25, effective July 1. **L. 2007:** (2) and (3) amended, p. 1914, § 22, effective July 1. **L. 2010:** (2) amended, (HB 10-1377), ch. 212, p. 924, § 9, effective May 6.

Editor's note: Subsection (2)(b)(II) provided for the repeal of subsection (2)(b), effective July 1, 2012. (See L. 2010, p. 924.)

12-16-218. Bonds or irrevocable letters of credit - exemptions. (1) (a) Before any license is issued to any commodity handler, the applicant shall file with the commissioner a bond executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as a surety or an irrevocable letter of credit meeting the requirements of section 11-35-101.5, C.R.S., in the sum of not less than ten thousand dollars nor more than one million dollars, at the discretion of the commissioner.

(b) The bond or irrevocable letter of credit shall be conditioned upon compliance with the provisions of this part 2 and upon the faithful and honest handling of commodities in accordance with the terms of this part 2 and shall cover any and all inspection fees due the people of the state of Colorado by the commodity handler and all costs and reasonable attorney fees incident to any suit upon said bond or irrevocable letter of credit. Said bond or irrevocable letter of credit shall be to the state in favor of every producer or owner and, in the instance of a bond, shall remain in full force and effect until cancelled by the surety upon thirty days' prior written notice to the commissioner.

(c) (I) Any producer or owner within the state of Colorado claiming to be injured by the fraud, deceit, willful negligence, or failure to comply with the provisions of this part 2 of any commodity handler may seek to recover the damages caused by such fraud, deceit, willful negligence, or failure to comply with the provisions of this part 2. If the licensee has elected to file a bond pursuant to this section, the injured party may bring an action, with prior written consent of the commissioner, for collection against both principal and surety in any court of competent jurisdiction. If the licensee has elected to file an irrevocable letter of credit pursuant to this section, the injured party may request the department of agriculture, as beneficiary, to demand payment on the irrevocable letter of credit.

(II) The surety on the bond or the person who filed the letter of credit shall not be liable to pay any claim pursuant to any action brought under the provisions of this part 2 if such action is not commenced within twenty-four months after the date of the transaction on which the claim is based.

(d) When any action is commenced on said bond or irrevocable letter of credit, the commissioner may require the filing of a new bond or irrevocable letter of credit, and the commodity handler's failure to file the new bond or irrevocable letter of credit within ten days after the commencement of said action constitutes grounds for the suspension or revocation of his license.

(e) Any person licensed pursuant to part 1 of this article may apply for a license as a commodity handler and shall not be subject to the license fee required by section 12-16-205. The bond or irrevocable letter of credit required by section 12-16-106 shall also apply to such person's activities as a commodity handler and shall be subject to the provisions of this section and section 12-16-215.

(2) Whenever the commissioner determines that a previously approved bond or irrevocable letter of credit is or for any cause has become insufficient, he may require an additional bond or irrevocable letter of credit or other evidence of financial responsibility to be given by a commodity handler to conform to the requirements of this part 2 or any rule

or regulation promulgated pursuant to the provisions of this part 2. The commodity handler's failure to comply with the commissioner's requirement within thirty days after written demand therefor constitutes grounds for the suspension or revocation of his license.

(3) A bond is not required for credit sale contracts.

Source: **L. 85:** Entire article R&RE, p. 457, § 1, effective July 1. **L. 87:** Entire section amended, p. 478, § 18, effective July 1; (1)(c) amended and (3) added, p. 500, § 12, effective July 1; (1)(c)(II) amended, p. 1585, § 54, effective July 1. **L. 91:** Entire section amended, p. 185, § 17, effective March 1, 1992. **L. 95:** (1)(e) added, p. 697, § 11, effective May 23. **L. 2007:** (1)(a) amended, p. 852, § 15, effective August 3. **L. 2009:** (1)(e) amended, (SB 09-114), ch. 111, p. 465, § 15, effective April 9.

Editor's note: (1) This section is similar to former § 12-16-105 as it existed prior to 1985.

(2) Amendments to this section by Senate Bill 87-78 and Senate Bill 87-50 were harmonized.

ANNOTATION

Limiting victims' restitution to the amount of the bond that defendant failed to post would not take account of the full scope of the criminal

conduct to which defendant pleaded guilty. *People v. Leonard*, 167 P.3d 178 (Colo. App. 2007).

12-16-219. Cease-and-desist order - restraining order. (1) If the commissioner determines that there exists a violation of any provision of this part 2 or of any rule or regulation promulgated under the authority of this part 2, the commissioner may issue a cease-and-desist order, which may require any person to cease functioning as a commodity handler, except for those functions necessary to prevent spoilage of products stored in his public warehouse. Such order shall set forth the provision alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all functions, except those necessary to prevent spoilage, be ceased forthwith. At any time after the date of the service of the order to cease and desist, the person may request a hearing on the question of whether or not any such violation has occurred. Such hearing shall be concluded in not more than ten days after such request and shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S.

(2) In the event that any person fails to comply with a cease-and-desist order within twenty-four hours after service, the commissioner may apply to a court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this part 2 or any rule or order pursuant to this part 2. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of a remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

(3) No stay of a cease-and-desist order shall be issued before a hearing thereon involving both parties.

(4) Matters brought before a court pursuant to this section shall have preference over other matters on the court's calendar.

Source: **L. 85:** Entire article R&RE, p. 458, § 1, effective July 1. **L. 89:** (2) amended, p. 648, § 11, effective July 1. **L. 91:** (1) amended, p. 186, § 18, effective March 1, 1992.

Editor's note: This section is similar to former § 12-16-108.5 as it existed prior to 1985.

ANNOTATION

The reasonable expectation that a person engaged in a licensed occupation is properly licensed and that transactions with the person, therefore, will be subject to the various protections that come with governmental regulation

establishes proximate cause for purposes of the restitution statute. *People v. Leonard*, 167 P.3d 178 (Colo. App. 2007).

Defendant obtained possession of the victims' commodities by purporting to act as a licensed

commodity handler; then, as defendant admitted at his restitution hearing, he used the proceeds from the sale of the seed to repay his own creditors rather than pay the victims. Limiting the victims' restitution to the amount of the

bond that defendant failed to post would not take account of the full scope of the criminal conduct to which defendant pleaded guilty. *People v. Leonard*, 167 P.3d 178 (Colo. App. 2007).

12-16-219.5. Civil penalties. (1) Any person who violates any provision of this part 2 or any regulation enacted pursuant to this part 2 is subject to a civil penalty as determined by the commissioner. The maximum penalty shall not exceed one thousand dollars per violation per day.

(2) No civil penalty may be imposed unless the person charged is given notice and an opportunity for a hearing pursuant to article 4 of title 24, C.R.S.

(3) If the commissioner is unable to collect a civil penalty or if any person fails to pay all or any portion of a civil penalty, the commissioner may recover such amount, plus costs and attorney fees, by action in any court of competent jurisdiction.

(4) Under circumstances where the commissioner did not have probable cause to impose a civil penalty, the person charged may recover his costs and attorney fees from the department of agriculture.

(5) All moneys collected from civil penalties pursuant to the provisions of this section shall be transmitted to the state treasurer and credited to the inspection and consumer services cash fund created in section 35-1-106.5, C.R.S.

(6) Before imposing a civil penalty, the commissioner may consider the effect of such penalty on the ability of the person charged to stay in business.

Source: L. 89: Entire section added, p. 649, § 12, effective July 1. L. 2003: (5) amended, p. 1738, § 25, effective May 14. L. 2005: (5) amended, p. 1278, § 26, effective July 1. L. 2007: (5) amended, p. 1914, § 23, effective July 1.

12-16-220. Appeal. Any action of the commissioner with reference to the administration of this part 2 may be reviewed by any court of competent jurisdiction pursuant to the provisions of section 24-4-106, C.R.S., only after all administrative remedies have been exhausted.

Source: L. 85: Entire article R&RE, p. 458, § 1, effective July 1.

Editor's note: This section is similar to former § 12-16-109 as it existed prior to 1985.

12-16-221. Unlawful acts. (1) It is unlawful and a violation of this part 2 for any person to:

(a) Make fraudulent charges or returns for the handling, sale, or storage or for the rendering of any service in connection with the handling, sale, or storage of any commodities. Violation of this paragraph (a) shall constitute a class 6 felony.

(b) Willfully fail or refuse to render a true account of sales or storage or to make a settlement thereon or to pay for commodities received on the date and in the manner specified in the contract with the owner or, if no date is specified in the contract or on delivery, within thirty days after the date of delivery or the date on which the person took possession of such commodities. Violation of this paragraph (b) shall constitute a class 6 felony.

(c) Intentionally make false or misleading statements as to the market conditions for commodities or false or misleading statements as to the condition, quality, or quantity of commodities received, handled, sold, or stored. Violation of this paragraph (c) shall constitute a class 6 felony.

(d) Engage in fictitious sales, in collusion, or in unfair practices to defraud the owners. Violation of this paragraph (d) shall constitute a class 6 felony.

(e) Act as a commodity handler without having obtained a license or act as a commodity handler without having filed a surety bond or irrevocable letter of credit, as provided in this part 2. Violation of this paragraph (e) shall constitute a class 6 felony.

(f) Willfully convert to his own use or benefit the commodities of another. Violation of this paragraph (f) shall constitute theft, as defined in section 18-4-401, C.R.S.

(g) Commit fraud or deception in the procurement or attempted procurement of a license. Violation of this paragraph (g) shall constitute a class 1 misdemeanor.

(h) Fail to comply with any lawful order of the commissioner concerning the administration of this part 2. Violation of this paragraph (h) shall constitute a class 1 misdemeanor.

(i) Interfere with or hinder an authorized representative of the department while performing his duties under this part 2. Violation of this paragraph (i) shall constitute a class 1 misdemeanor.

(j) Willfully alter or destroy any negotiable warehouse receipt or the record of such negotiable warehouse receipt or issue a negotiable warehouse receipt without preserving a record thereof; or issue a negotiable warehouse receipt when the commodity described is not in the building certified in the receipt; or, with intent to defraud, issue a second or other negotiable warehouse receipt for any commodity for which, or for any part of which, a valid negotiable warehouse receipt is already outstanding and in force; or, while any valid negotiable warehouse receipt is outstanding and in force, sell, pledge, mortgage, encumber, or transfer a commodity in violation of the provisions of this part 2 or permit the same to be done without the written consent of the holder of the negotiable warehouse receipt or receive such property or help to dispose of the same. Violation of this paragraph (j) shall constitute a class 6 felony.

(k) Sell commodities for less than the current market price to any person with whom he or she has any financial connection, directly or indirectly, either as an owner of the corporate stock of a corporation, as a copartner, or in any other capacity, or sell any commodities out of the purchase price of which said handler, directly or indirectly, retains any portion thereof other than the commission allowed and reported pursuant to section 12-16-112. Violation of this paragraph (k) shall constitute theft, as defined in section 18-4-401, C.R.S.

(l) Act as a commodity handler and, with intent to defraud, make, draw, utter, or deliver any check, draft, or order for the payment of money upon any bank or other depository to the owner for the purchase price of any commodities or any part thereof upon obtaining possession or control thereof, when at the time of the making, drawing, uttering, or delivery the maker or drawer has not sufficient funds in or credit with such bank or other depository for the payment of such check, draft, or order in full upon its presentation. The making, drawing, uttering, or delivery of such check, draft, or order shall be prima facie evidence of an intent to defraud. "Credit", as used in this paragraph (l), means an arrangement or understanding with the bank or depository for the payment of such check, draft, or order. Violation of this paragraph (l) shall constitute fraud by check, as defined in section 18-5-205, C.R.S.

Source: L. 85: Entire article R&RE, p. 459, § 1, effective July 1. L. 87: (1)(e) amended, p. 479, § 19, effective July 1. L. 89: (1)(a) to (1)(e) and (1)(j), amended p. 824, § 40, effective July 1. L. 91: (1)(e) amended and (1)(k) and (1)(l) added, p. 186, § 19, effective March 1, 1992. L. 95: (1)(e) and (1)(l) amended, p. 698, § 12, effective May 23. L. 2007: (1)(b) amended, p. 852, § 16, effective August 3. L. 2009: (1)(e) and (1)(l) amended, (SB 09-114), ch. 111, p. 465, § 16, effective April 9.

12-16-222. Penalties. (1) Any person who violates any of the provisions of section 12-16-221 (1) (a), (1) (b), (1) (c), (1) (d), (1) (e), or (1) (j) commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S. Any person who violates any of the provisions of section 12-16-221 (1) (f) commits theft, as defined in section 18-4-401, C.R.S. Any person who violates any of the provisions of section 12-16-221 (1) (g), (1) (h), or (1) (i) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) Any person who violates any other provision of this part 2 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(3) Civil suits and criminal prosecutions arising by virtue of any of the provisions of this part 2 may be commenced and tried either in the county in which the commodities were

received by the commodity handler, or in the county in which the principal place of business of such commodity handler is located, or in the county in which the violation of this part 2 occurred. The attorney general or the district attorney for the judicial district in which the violation of any of the provisions of this part 2 occurs shall, upon the request of any enforcing officer or other interested person, prosecute such violation.

Source: **L. 85:** Entire article R&RE, p. 459, § 1, effective July 1. **L. 89:** (1) amended, p. 825, § 20, effective July 1. **L. 91:** (3) amended, p. 187, § 20, effective March 1, 1992. **L. 2002:** (1) and (2) amended, p. 1474, § 57, effective October 1.

Editor’s note: This section is similar to former § 12-16-115 as it existed prior to 1985.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (1) and (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-16-223. Repeal of article. This article is repealed, effective July 1, 2020. Prior to such repeal, the licensing functions of the commissioner shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: **L. 91:** Entire section added, p. 680 § 15, effective April 20. **L. 95:** Entire section amended, p. 698, § 13, effective May 23. **L. 2009:** Entire section amended, (SB 09-114), ch. 111, p. 461, § 1, effective April 9.

ARTICLE 17

Cosmetologists

12-17-101 to 12-17-211. (Repealed)

Source: **L. 77:** Entire article repealed, p. 623, § 4, effective July 1.

Editor’s note: This article was numbered as article 1 of chapter 32, C.R.S. 1963. For amendments to this article prior to its repeal in 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For current provisions regulating cosmetologists, see article 8 of this title.

ARTICLE 18

Dance Halls

12-18-101.	License required.	12-18-104.	Penalty.
12-18-102.	License not transferable.	12-18-105.	Jurisdiction.
12-18-103.	Revocation of licenses.		

12-18-101. License required. No person, partnership, or corporation shall operate, conduct, carry on, or maintain a public dance hall, booth, pavilion, or other place where public dances are held without first obtaining a license therefor. Any person, firm, or corporation desiring such license shall make application therefor in writing to the board of county commissioners of the county in which such public dance hall, booth, pavilion, or other place is proposed to be located. Such application shall state the name and address of the applicant, if a person, the names and addresses of all the persons composing the partnership, if a partnership, and the names and addresses of the officers and directors of the corporation, if a corporation, a full description of the place and premises at which it is proposed to conduct and carry on such public dances, and the term for which such license is desired. The board of county commissioners has the authority, within its discretion, to grant such license to such applicant for the current calendar year or part thereof unexpired

upon the payment by said applicant of a fee of twenty-five dollars to the county treasurer. Such license shall authorize the person, firm, or corporation receiving it to operate, conduct, and carry on a public dance hall, booth, or pavilion at such place for the term from the date of its issue to the end of the current calendar year for which it is issued. This article shall not apply to incorporated cities and towns.

Source: L. 27: p. 577, § 1. CSA: C. 51, § 1. CRS 53: § 36-17-1. C.R.S. 1963: § 36-17-1.

ANNOTATION

This section provides that public dance halls may be regulated under the police power; that, uncontrolled, their tendency is to weaken morals and breed disorder and indolence. Dwyer v. People, 82 Colo. 574, 261 P. 858 (1927).

The exemption of incorporated towns and cities from the operation of this article, is a

reasonable and valid classification. Dwyer v. People, 82 Colo. 574, 261 P. 858 (1927).

If a person is injured by unlawful action, or failure of county commissioners to act on his application for a license for a public dance hall, the writs of certiorari and mandamus are available remedies. Dwyer v. People, 82 Colo. 574, 261 P. 858 (1927).

12-18-102. License not transferable. No license issued under the provisions of this article shall be assigned or transferred by the person, firm, or corporation to whom it is issued, and no license shall be available or used for more than one particular place, building, or premises described in the application and in such license.

Source: L. 27: p. 578, § 2. CSA: C. 51, § 2. CRS 53: § 36-17-2. C.R.S. 1963: § 36-17-2.

12-18-103. Revocation of licenses. The board of county commissioners issuing such licenses has full power and authority, at its discretion, to revoke and cancel any license issued by such board under this article whenever such board, by proper resolution, determines that the public morals or public safety or public health of the community requires such revocation or cancellation.

Source: L. 27: p. 578, § 3. CSA: C. 51, § 3. CRS 53: § 36-17-3. C.R.S. 1963: § 36-17-3.

ANNOTATION

The board has full power to grant, refuse to grant, revoke, and cancel licenses. Walker v. Hunter, 86 Colo. 483, 283 P. 48 (1929).

For nonaction or wrongful action on an application for a license, certiorari or manda-

mus will lie. Dwyer v. People, 82 Colo. 574, 261 P. 858 (1927).

12-18-104. Penalty. Any person violating any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than three hundred dollars for each offense, or by imprisonment in the county jail for not less than ten days nor more than thirty days for each offense, or by both such fine and imprisonment.

Source: L. 27: p. 578, § 4. CSA: C. 51, § 4. CRS 53: § 36-17-4. C.R.S. 1963: § 36-17-4.

12-18-105. Jurisdiction. The county court of the county wherein such licenses are issued has full jurisdiction to try and punish all cases for violation of the provisions of this article, subject to the right of appeal in such cases as provided by law.

Source: L. 27: p. 579, § 5. CSA: C. 51, § 5. CRS 53: § 36-17-5. C.R.S. 1963: § 36-17-5. L. 64: p. 223, § 55.

ARTICLE 19

Dance Schools

12-19-101 to 12-19-109. (Repealed)

Source: L. 88: Entire article repealed, p. 348, § 16, effective July 1.

Editor's note: This article was numbered as article 4 of chapter 129, C.R.S. 1963. For amendments to this article prior to its repeal in 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For designation of certain activities involving dance studios as deceptive trade practices under the "Colorado Consumer Protection Act", see §§ 6-1-102 and 6-1-105.

ARTICLE 20

Debt Management

12-20-101 to 12-20-116. (Repealed)

Editor's note: (1) This article was numbered as article 3 of chapter 11, C.R.S. 1963. For amendments to this article prior to its repeal in 2000, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 12-20-116 provided for the repeal of this article, effective July 1, 2000. (See L. 94, p. 765.)

ARTICLE 21

Detectives

12-21-101 to 12-21-110. (Repealed)

Source: L. 84: Entire article repealed, p. 409, § 1, effective March 5.

Editor's note: This article was numbered as article 1 of chapter 44, C.R.S. 1963. For amendments to this article prior to its repeal in 1984, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 22

Pharmaceuticals and Pharmacists

12-22-101 to 12-22-806. (Repealed)

Source: L. 2012: Entire article repealed, (HB 12-1311), ch. 281, p. 1594, § 2, effective July 1.

Editor's note: Portions of this article were numbered as articles 1, 2, 5, and 8 of chapter 48, C.R.S. 1963. Portions of this article were added in 1980, 1991, 2005, and 2006. For amendments to this article prior to its repeal in 2012, consult the 2011 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. This article was

relocated to article 42.5 of this title. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

ARTICLE 23

Electricians

12-23-100.2.	Legislative declaration.	12-23-110.5.	Apprentices - supervision - registration - discipline.
12-23-101.	Definitions.	12-23-111.	Exemptions.
12-23-102.	State electrical board.	12-23-112.	Fees.
12-23-102.5.	Repeal of article.	12-23-113.	Disposition of fees and expenses of board.
12-23-103.	Board under department of regulatory agencies.	12-23-114.	Publications.
12-23-104.	Board powers and duties - rules.	12-23-115.	Inspectors - qualifications.
12-23-104.5.	Program director.	12-23-116.	Inspection - application - standards.
12-23-105.	Electrician must have license - control and supervision.	12-23-117.	Permit fees.
12-23-106.	License requirements - rules.	12-23-118.	Violations - citations - settlement agreements - hearings - fines.
12-23-106.5.	Credit for experience not subject to supervision of a licensed electrician.	12-23-118.1.	Reapplication after revocation of licensure.
12-23-107.	Unauthorized use of title.	12-23-118.2.	Reconsideration and review of board action. (Repealed)
12-23-108.	License without written examination. (Repealed)	12-23-118.3.	Immunity.
12-23-109.	License by endorsement or reciprocity.	12-23-119.	Unauthorized practice - penalties.
12-23-110.	Temporary permits.	12-23-120.	Judicial review.

12-23-100.2. Legislative declaration. The general assembly hereby declares that the state electrical board shall be specifically involved in the testing and licensing of electricians and shall provide for inspections of electrical installations where local inspection authorities are not providing such service to the standards required by this article.

Source: L. 78: Entire section added, p. 318, § 1, effective July 1. **L. 2010:** Entire section amended, (HB 10-1225), ch. 198, p. 858, § 4, effective July 1.

12-23-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Apprentice" means a person who is required to be registered as such under section 12-23-110.5 (3) (a), who is in compliance with the provisions of this article, and who is working at the trade in the employment of a registered electrical contractor and is under the direct supervision of a licensed master electrician, journeyman electrician, or residential wireman.

(1.2) "Board" means the state electrical board.

(1.3) "Electric light, heat, and power" means the standard types of electricity that are supplied by an electric utility, regardless of whether the source is an electric utility or the inverter output circuit of a photovoltaic system or a similar circuit from another type of renewable energy system, and used and consumed in a real estate improvement or real estate fixture.

(1.5) "Electrical contractor" means any person, firm, copartnership, corporation, association, or combination thereof who undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power. A licensed professional engineer who plans or designs electrical installation shall not be classed as an electrical contractor.

(1.7) "Electrical work" means wiring for, installing, and repairing electrical apparatus and equipment for electric light, heat, and power.

(2) “Journeyman electrician” means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for electric light, heat, and power, and for other purposes, in accordance with standard rules governing such work.

(3) “Master electrician” means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and supervise the installation and repair of wiring apparatus and equipment for electric light, heat, and power, and for other purposes, in accordance with standard rules governing such work, such as the national electrical code.

(3.2) “National electrical code” means the code for the safe installation of electrical wiring and equipment, as amended, published by the national fire protection association and approved by the American national standards institute, or successor organizations.

(3.5) “Permanent state highway tunnel facilities” means all permanent state highway tunnels, shafts, ventilation systems, and structures and includes all structures, materials, and equipment appurtenant to such facilities. Said term includes all electrical equipment, materials, and systems to be constructed, furnished, and installed as part of the final construction features specified by the applicable contract plans and specifications or by the national electrical code. For the purposes of this article and article 20 of title 34, C.R.S., such state highway tunnel facilities shall be deemed to be mines during the construction of such facilities.

(4) “Residential wireman” means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, and install, electrical apparatus and equipment for wiring one-, two-, three-, and four-family dwellings.

(5) Repealed.

Source: L. 59: p. 416, § 1. CRS 53: § 107-2-1. C.R.S. 1963: § 142-2-1. L. 65: p. 1220, § 1. L. 71: p. 1290, § 1. L. 75: (5) amended, p. 438, § 1, effective July 25. L. 77: (5) amended, p. 648, § 1, effective July 1. L. 78: (1) R&RE and (1.5) added, p. 318, §§ 2, 3, effective July 1. L. 84: (3.5) added, p. 413, § 1, effective March 22. L. 88: (3.5) amended, p. 1434, § 25, effective June 11; (1) R&RE, (1.2) and (1.7) added, and (5) repealed, pp. 490, 502, §§ 1, 2, 23, effective July 1. L. 2004: (1.5) amended, p. 1310, § 51, effective May 28. L. 2009: (1.3) and (3.2) added and (1.7), (2), and (3) amended, (HB 09-1136), ch. 407, p. 2243, § 1, effective August 5.

12-23-102. State electrical board. (1) There is hereby established a state electrical board, which shall consist of nine members appointed by the governor, with the consent of the senate, who shall be residents of the state of Colorado:

- (a) Two members shall be electrical contractors who have masters’ licenses;
 - (b) Two members shall be master or journeymen electricians who are not electrical contractors;
 - (c) One member shall be a representative of private, municipal, or cooperative electric utilities rendering electric service to the ultimate public;
 - (d) One member shall be a building official from a political subdivision of the state performing electrical inspections;
 - (e) One member shall be a general contractor actively engaged in the building industry; and
 - (f) Two members shall be appointed from the public at large.
- (2) All members of the board shall serve for three-year terms and all appointees shall be limited to two full terms each. Any vacancy occurring in the membership of the board shall be filled by the governor by appointment for the unexpired term of the member. The governor may remove any member of the board for misconduct, incompetence, or neglect of duty.

Source: L. 59: p. 417, § 2. CRS 53: § 107-2-2. C.R.S. 1963: § 142-2-2. L. 65: p. 1220, § 2. L. 73: p. 1378, § 44. L. 75: Entire section amended, p. 444, § 1, effective July 25. L. 78: Entire section amended, p. 319, § 5, effective July 1. L. 79: Entire section

amended, p. 908, § 6, effective July 1. **L. 88:** Entire section amended, p. 490, § 3, effective July 1. **L. 2003:** Entire section amended, p. 909, § 5, effective August 6. **L. 2010:** Entire section amended, (HB 10-1225), ch. 198, p. 863, § 10, effective July 1.

12-23-102.5. Repeal of article. This article is repealed, effective July 1, 2019. Prior to such repeal, the state electrical board shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: **L. 76:** Entire section added, p. 623, § 15, effective July 1. **L. 91:** Entire section amended, p. 681, § 20, effective April 20. **L. 98:** Entire section amended, p. 738, § 1, effective May 22. **L. 2001:** Entire section amended, p. 275, § 3, effective March 30. **L. 2010:** Entire section amended, (HB 10-1225), ch. 198, p. 857, § 3, effective July 1.

12-23-103. Board under department of regulatory agencies. The state electrical board and its powers, duties, and functions are transferred, effective July 1, 1978, by a **type 1** transfer, as such transfer is defined in the “Administrative Organization Act of 1968”, article 1 of title 24, C.R.S., to the department of regulatory agencies and allocated to the division of professions and occupations.

Source: **L. 59:** p. 422, § 16. **CRS 53:** § 107-2-16. **C.R.S. 1963:** § 142-2-16. **L. 68:** p. 122, § 116. **L. 73:** p. 934, § 23. **L. 75:** Entire section R&RE, p. 441, § 1, effective April 15. **L. 78:** Entire section R&RE, p. 325, § 14, effective July 1.

12-23-104. Board powers and duties - rules. (1) (a) The board, annually in the month of July, shall elect from its membership a chair and vice-chair. The board shall meet at least annually and at such other times as it deems necessary.

(b) A majority of the board shall constitute a quorum for the transaction of all business.

(2) In addition to all other powers and duties conferred or imposed upon the board by this article, the board is authorized to:

(a) Adopt, and from time to time revise, such rules and regulations not inconsistent with the law as may be necessary to enable it to carry into effect the provisions of this article. In adopting such rules and regulations, the board shall be governed when appropriate by the standards in the most current edition of the national electrical code or by any modifications to such standards made by the board after a hearing is held pursuant to the provisions of article 4 of title 24, C.R.S. These standards are adopted as the minimum standards governing the planning, laying out, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power in this state. A copy of such code shall be kept in the office of the board and open to public inspection. Nothing contained in this section shall prohibit any city, town, county, or city and county from making and enforcing any such standards that are more stringent than the minimum standards adopted by the board, and any city, town, county, or city and county which adopts such more stringent standards shall furnish a copy thereof to the board. The standards adopted by the board shall be prima facie evidence of minimum approved methods of construction for safety to life and property. The affirmative vote of two-thirds of all appointed members of the board shall be required to set any standards that are different from those set forth in the national electrical code. If requested in writing, the board shall send a copy of newly adopted standards and rules and regulations to any interested party at least thirty days before the implementation and enforcement of such standards or rules and regulations. Such copies may be furnished for a fee established pursuant to section 24-34-105, C.R.S.

(b) Repealed.

(c) Register apprentices and register and renew the registration of qualified electrical contractors and examine, license, and renew licenses of journeymen electricians, master electricians, and residential wiremen as provided in this article;

(d) (I) Administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records,

documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board.

(II) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the commission or director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(e) Cause the prosecution and enjoinder, in any court of competent jurisdiction, of all persons violating this article and incur necessary expenses therefor. When seeking an injunction, the board shall not be required to prove that an adequate remedy at law does not exist or that substantial or irreparable damages would result if an injunction is not granted.

(f) Inspect and approve or disapprove the installation of electrical wiring, renewable energy systems, apparatus, or equipment for electric light, heat, and power according to the minimum standards in the national electrical code or as prescribed in this article;

(g) Review and approve or disapprove requests for exceptions to the national electrical code in unique construction situations where a strict interpretation of the code would result in unreasonable operational conditions or unreasonable economic burdens, as long as public safety is not compromised;

(h) Conduct hearings in accordance with the provisions of section 24-4-105, C.R.S.; except that the board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct such hearings;

(i) Repealed.

(j) Enter into reciprocal licensing agreements with the electrical board, or its equivalent, of another state or states where the qualifications for electrical licensing are substantially equivalent to licensure requirements in Colorado;

(k) Find, upon holding a hearing, that an incorporated town or city, county, or city and county fails to meet the minimum requirements of this article if the local inspection authority has failed to adopt or adhere to the minimum standards required by this article within twelve months after the board has adopted the standards by rule pursuant to this subsection (2);

(l) Issue an order to cease and desist from issuing permits or performing inspections under this article to an incorporated town or city, county, or city and county upon finding that the public entity fails to meet the minimum requirements of this article pursuant to paragraph (k) of this subsection (2);

(m) Apply to a court to enjoin an incorporated town or city, county, or city and county from violating an order issued pursuant to paragraph (l) of this subsection (2).

Source: L. 59: p. 417, § 3. CRS 53: § 107-2-3. C.R.S. 1963: § 142-2-3. L. 65: pp. 1221, 1222, §§ 3, 4. L. 71: p. 1290, § 2. L. 73: pp. 1503, 1505, §§ 1, 1. L. 74: (3)(c) amended, p. 439, § 1, effective January 24. L. 75: (3)(h) amended, p. 1465, § 3, effective July 18; (3)(a) amended, p. 438, § 2, effective July 25. L. 78: (3)(a) amended, p. 319, § 6, effective July 1. L. 79: (3)(a) amended, p. 1646, § 75, effective July 19. L. 81: (3)(a) amended, p. 744, § 1, effective July 1. L. 84: (3)(a) amended, p. 415, § 1, effective July 1. L. 87: (3)(a) amended, p. 506, § 1, effective June 20; (3)(c) amended, p. 480, § 20, effective July 1. L. 88: Entire section R&RE, p. 491, § 4, effective July 1. L. 91: (2)(i) added, p. 1478, § 1, effective July 1. L. 99: (2)(j) added, p. 268, § 1, effective April 9. L. 2001: (1)(a) amended and (2)(b) repealed, pp. 275, 276, §§ 4, 5, effective March 30. L. 2004: (2)(d) amended, p. 1808, § 32, effective August 4. L. 2009: (2)(f) and (2)(i) amended, (HB 09-1136), ch. 407, p. 2244, § 2, effective August 5. L. 2010: (1)(a) and (2)(c) amended and (2)(k), (2)(l), and (2)(m) added, (HB 10-1225), ch. 198, pp. 862, 858, §§ 9, 5, effective July 1.

Editor's note: Subsection (2)(i) provided for the repeal of subsection (2)(i), effective January 1, 2011. (See L. 2009, p. 2244.)

12-23-104.5. Program director. The director of the division of professions and occupations may appoint a program director pursuant to section 13 of article XII of the state constitution to work with the board in carrying out its duties under this article.

Source: L. 88: Entire section added, p. 492, § 5, effective July 1. **L. 2010:** Entire section amended, (HB 10-1225), ch. 198, p. 864, § 13, effective July 1.

12-23-105. Electrician must have license - control and supervision. (1) No person shall engage in or work at the business, trade, or calling of a journeyman electrician, master electrician, or residential wireman in this state until the person has received a license from the division of professions and occupations upon written notice from the board or the program director, acting as the agent thereof, or a temporary permit from the board, the program director, or agent of the director.

(2) A residential wireman shall not perform electrical work of a type which is beyond the authorization of the license held.

Source: L. 59: p. 418, § 5. **CRS 53:** § 107-2-5. **C.R.S. 1963:** § 142-2-5. **L. 71:** p. 1290, § 3. **L. 73:** pp. 932, 1419, §§ 16, 17, 108. **L. 88:** (1) amended, p. 492, § 6, effective July 1. **L. 2010:** (1) amended, (HB 10-1225), ch. 198, p. 864, § 14, effective July 1.

12-23-106. License requirements - rules. (1) **Master electrician.** (a) An applicant for a master electrician's license shall furnish written evidence that:

(I) The applicant is a graduate electrical engineer of an accredited college or university and has one year of practical electrical experience in the construction industry;

(II) The applicant is a graduate of an electrical trade school or community college and has at least four years of practical experience in electrical work; or

(III) The applicant has had at least one year of practical experience in planning, laying out, supervising, and installing wiring, apparatus, or equipment for electric light, heat, and power beyond the practical experience requirements for the journeyman's license.

(b) Each applicant for a license as a master electrician shall file an application on forms prepared and furnished by the board, together with the application fee provided in section 12-23-112 (1). The board shall notify each applicant that the evidence submitted with the application is sufficient to qualify the applicant to take the written examination or that the evidence is insufficient and the application is rejected. In the event that the application is rejected, the board shall set forth the reasons for the rejection in the notice to the applicant.

(2) **Journeyman electrician.** (a) An applicant for a journeyman electrician's license shall furnish written evidence that the applicant has had the following:

(I) At least four years' apprenticeship in the electrical trade or four years' practical experience in wiring for, installing, and repairing electrical apparatus and equipment for electric light, heat, and power;

(II) At least two of the applicant's years' experience required by subparagraph (I) of this paragraph (a) has been in commercial, industrial, or substantially similar work; and

(III) Effective January 1, 2011, during the last four years of training, apprenticeship, or practical experience in wiring for, installing, and repairing electrical apparatus and equipment for electric light, heat, and power, at least two hundred eighty-eight hours of training in safety, the national electrical code and its applications, and any other training required by the board that is provided by an accredited college or university, an established industry training program, or any other provider whose training is conducted in compliance with rules promulgated by the board, in collaboration with established industry training programs and industry representatives.

(b) Any applicant for such license shall be permitted to substitute for required practical experience evidence of academic training or practical experience in the electrical field, which shall be credited as follows:

(I) If the applicant is a graduate electrical engineer of an accredited college or university or the graduate of a community college or trade school program approved by the board, the applicant shall receive one year of work experience credit.

(II) If the applicant has academic training, including military training, that does not qualify under subparagraph (I) of this paragraph (b), the board shall provide work experience credit for such training or for substantially similar training established by rule.

(c) Any application for a license and notice to the applicant shall be made and given as provided for in the case of a master electrician's license.

(3) **Residential wireman.** (a) An applicant for a residential wireman's license shall furnish written evidence that the applicant has at least two years of accredited training or two years of practical experience in wiring one-, two-, three-, and four-family dwellings.

(b) Any applicant for such license shall be permitted to substitute for required practical experience evidence of academic training in the electrical field which shall be credited as follows:

(I) If the applicant is a graduate electrical engineer of an accredited college or university or the graduate of a community college or trade school program approved by the board, the applicant shall receive one year of work experience credit.

(II) If the applicant has academic training, including military training, which is not sufficient to qualify under subparagraph (I) of this paragraph (b), the board shall provide work experience credit for such training according to a uniform ratio established by rule.

(c) Any residential wireman's license issued under this section shall be clearly marked as such across its face.

(4) (a) The board shall provide for licensing examinations. Any examination that is given for master electricians, journeymen electricians, and residential wiremen shall be subject to board approval. The board, or its designee, shall conduct and grade the examination and shall set the passing score to reflect a minimum level of competency. If it is determined that the applicant has passed the examination, the division of professions and occupations, upon written notice from the board or the program director, acting as an agent thereof, and upon payment by the applicant of the fee provided in section 12-23-112, shall issue to the applicant a license that authorizes him or her to engage in the business, trade, or calling of a master electrician, journeyman electrician, or residential wireman.

(b) All license and registration expiration and renewal schedules shall be in accord with the provisions of section 24-34-102, C.R.S. Fees in regard to such renewals shall be those set forth in section 12-23-112.

(c) Licenses shall be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(d) (I) On or after January 1, 2011, the department shall not renew a license unless the applicant has demonstrated competency through an assessment of competency, which may be performed by private entities in accordance with rules promulgated by the board.

(II) The board, in collaboration with established industry training programs and industry representatives, shall adopt rules establishing continuing competency standards. The rules shall include, but shall not be limited to, the following elements:

(A) Assessment of the knowledge and skills required to renew a license;

(B) The methods to obtain the required knowledge and skills; and

(C) The documentation necessary to demonstrate compliance with this subparagraph (II).

(III) The assessment required by sub-subparagraph (A) of subparagraph (II) of this paragraph (d) shall provide sufficient information to each licensee to allow the licensee to address any areas of deficiency. If the licensee fails to demonstrate competency, the license

may be renewed if the licensee provides evidence that the licensee has complied with the requirements of the continuing competency program.

(5) (a) No person, firm, copartnership, association, or combination thereof shall engage in the business of an electrical contractor without having first registered with the board. The board shall register such contractor upon payment of the fee as provided in section 12-23-112, presentation of evidence that the applicant has complied with the applicable workers' compensation and unemployment compensation laws of this state, and satisfaction of the requirements of paragraph (b) or (c) of this subsection (5).

(b) If either the owner or the part owner of any firm, copartnership, corporation, association, or combination thereof has been issued a master electrician's license by the division of professions and occupations and is in charge of the supervision of all electrical work performed by such contractor, upon written notice from the board or the program director, acting as the agent thereof, the division shall promptly, upon payment of the fee as provided in section 12-23-112, register such licensee as an electrical contractor.

(c) If any person, firm, copartnership, corporation, association, or combination thereof engages in the business of an electrical contractor and does not comply with paragraph (b) of this subsection (5), it shall employ at least one licensed master electrician, who shall be in charge of the supervision of all electrical work performed by such contractor.

(d) No holder of a master's license shall be named as the master electrician, under paragraphs (b) and (c) of this subsection (5), for more than one contractor, and a master name shall be actively engaged in a full-time capacity with that contracting company. The qualifying master license holder shall be required to notify the board within fifteen days after his or her termination as a qualifying master license holder. The master license holder is responsible for all electrical work performed by the electrical contracting company. Failure to comply with a notification may lead to discipline of the master license holder as provided in section 12-23-118.

Source: L. 59: p. 418, § 6. CRS 53: § 107-2-6. C.R.S. 1963: § 142-2-6. L. 65: p. 1222, § 5. L. 71: p. 1291, § 4. L. 73: pp. 932, 1503, §§ 18, 2. L. 74: (5)(e) and (5)(f) repealed, p. 439, § 1, effective January 24. L. 75: (1)(a), (4), and (5)(b) amended, p. 439, § 3, effective July 25. L. 76: (3) amended, p. 300, § 23, effective May 20. L. 77: (3) and (4) amended, p. 650, § 1, effective June 2. L. 78: (1)(a), (3), and (6)(c) amended, p. 320, § 7, effective July 1. L. 79: (4) amended, p. 1647, § 76, effective July 19. L. 83: (4) amended, p. 525, § 1, effective May 4. L. 84: (3) amended, p. 1117, § 5, effective June 7. L. 88: Entire section R&RE, p. 493, § 7, effective July 1. L. 89: (2) and (3) R&RE, p. 651, § 1, effective June 7. L. 90: (5) amended, p. 563, § 31, effective July 1. L. 91: (4)(b) amended, p. 1478, § 2, effective July 1. L. 2001: (2)(a) and (2)(b) amended, p. 276, § 6, effective March 30. L. 2004: (4)(c) amended, p. 1808, § 33, effective August 4. L. 2009: (1) and (2)(a) amended and (4)(d) added, (HB 09-1136), ch. 407, pp. 2244, 2245, §§ 3, 4, effective August 5. L. 2010: (1)(b), (3)(a), (3)(b)(I), (3)(b)(II), (4)(a), (5)(b), and (5)(d) amended, (HB 10-1225), ch. 198, p. 860, § 7, effective July 1. L. 2011: (4)(b) amended, (HB 11-1303), ch. 264, p. 1150, § 9, effective August 10.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8); for hearings and determinations by state agencies, see § 24-4-105.

ANNOTATION

Constitutional challenge of provisions controlling board assertable on appeal. Section 12-23-120 contemplates that facial constitutional challenges to the provisions under which

the state electrical board acts may be asserted on appeal, even though such challenges are not cognizable by the board. *Clasby v. Klapper*, 636 P.2d 682 (Colo. 1981).

12-23-106.5. Credit for experience not subject to supervision of a licensed electrician. For all applicants seeking work experience credit toward licensure, the board shall

give credit for electrical work that is not required to be performed by or under the supervision of a licensed electrician if the applicant can show that the particular experience received or the supervision under which the work has been performed is adequate.

Source: L. 88: Entire section added, p. 494, § 8, effective July 1. L. 89: Entire section R&RE, p. 652, § 2, effective June 7. L. 2001: Entire section amended, p. 276, § 7, effective March 30.

12-23-107. Unauthorized use of title. No person, firm, partnership, corporation, or association shall advertise in any manner or use the title or designation of master electrician, journeyman electrician, or residential wireman unless qualified and licensed under this article.

Source: L. 59: p. 420, § 7. CRS 53: § 107-2-7. C.R.S. 1963: § 142-2-7. L. 71: p. 1291, § 5. L. 75: Entire section amended, p. 440, § 4, effective July 25. L. 2010: Entire section amended, (HB 10-1225), ch. 198, p. 863, § 11, effective July 1.

12-23-108. License without written examination. (Repealed)

Source: L. 59: p. 420, § 10. CRS 53: § 107-2-10. C.R.S. 1963: § 142-2-10. L. 71: p. 1292, § 7. L. 73: p. 933, § 21. L. 78: Entire section repealed, p. 326, § 17, effective July 1.

12-23-109. License by endorsement or reciprocity. (1) The board shall issue an electrical license by endorsement in this state to any person who is licensed to practice in another jurisdiction if such person presents proof satisfactory to the board that, at the time of application for a Colorado license by endorsement, the person possesses credentials and qualifications that are substantially equivalent to requirements in Colorado for licensure.

(2) The board shall issue an electrical license by reciprocity where a reciprocal agreement for an equivalent license exists, pursuant to section 12-23-104 (2) (j), between the board and the electrical board, or its equivalent, of the state or states where the applicant is licensed. The board shall strive to reduce barriers for Colorado licensees to be licensed by endorsement or through reciprocity in other states.

(3) The board may specify by rule what shall constitute substantially equivalent credentials and qualifications.

Source: L. 59: p. 420, § 8. CRS 53: § 107-2-8. C.R.S. 1963: § 142-2-8. L. 73: p. 933, § 19. L. 88: Entire section R&RE, p. 495, § 9, effective July 1. L. 89: Entire section amended, p. 652, § 3, effective June 7. L. 99: Entire section amended, p. 268, § 2, effective April 9. L. 2001: Entire section amended, p. 276, § 8, effective March 30. L. 2009: Entire section amended, (HB 09-1136), ch. 407, p. 2246, § 5, effective August 5.

12-23-110. Temporary permits. The board or the program director or the director's agent, as provided in the rules promulgated by the board, shall issue temporary permits to engage in the work of a master electrician in cases where an electrical contractor no longer has the services of any master electrician as required under this article and shall issue temporary permits to engage in the work of a journeyman electrician or residential wireman to any applicant who furnishes evidence satisfactory to the board that the applicant has the required experience to qualify for the examination provided in this article and who pays the fee provided in section 12-23-112 for such permits. In addition, and in a similar manner, the board or the program director or the director's agent shall issue temporary permits to any applicant who furnishes evidence satisfactory to the board that the applicant qualifies for a master electrician's license and who pays the required fee. Temporary permits shall continue in effect for no more than thirty days after issuance and may be revoked by the board at any time.

Source: **L. 59:** p. 420, § 9. **CRS 53:** § 107-2-9. **C.R.S. 1963:** § 142-2-9. **L. 71:** p. 1291, § 6. **L. 73:** p. 933, § 20. **L. 78:** Entire section amended, p. 321, § 8, effective July 1. **L. 88:** Entire section amended, p. 495, § 10, effective July 1. **L. 2010:** Entire section amended, (HB 10-1225), ch. 198, p. 864, § 15, effective July 1.

12-23-110.5. Apprentices - supervision - registration - discipline. (1) Any person may work as an apprentice but shall not do any electrical wiring for the installation of electrical apparatus or equipment for light, heat, or power except under the supervision of a licensed electrician. The degree of supervision required shall be no more than one licensed electrician to supervise no more than three apprentices at the jobsite.

(2) Any electrical contractor, journeyman electrician, master electrician, or residential wireman who is the employer or supervisor of any electrical apprentice working at the trade shall be responsible for the work performed by such apprentice. The board may take disciplinary action against any such contractor or any such electrician or residential wireman under the provisions of section 12-23-118 for any improper work performed by an electrical apprentice working at the trade during the time of his employment while under the supervision of such person. The registration of such apprentice may also be subject to disciplinary action under the provisions of section 12-23-118.

(3) (a) Upon employing an electrical apprentice to work at the trade, the electrical contractor, within thirty days after such initial employment, shall register such apprentice with the board. The employer shall also notify the board within thirty days after the termination of such employment.

(b) Such apprentice shall be under the supervision of either a licensed electrician or a residential wireman as set forth in subsection (1) of this section.

Source: **L. 88:** Entire section added, p. 495, § 11, effective July 1. **L. 99:** (1) amended, p. 1393, § 2, effective October 15.

Cross references: For the legislative declaration contained in the 1999 act amending subsection (1), see section 1 of chapter 336, Session Laws of Colorado 1999.

ANNOTATION

The Employee Retirement Income Security Act of 1974 (ERISA) does not preempt the Colorado apprentice supervision requirement set forth in this section. The Colorado law is one of myriad state laws of general applicability that impose some burdens on the

administration of ERISA plans but nevertheless do not relate to them within the meaning of the governing statute. *Willmar Elec. Serv., Inc. v. Cooke*, 212 F.3d 533 (10th Cir. 2000) (decided under law in effect prior to the 1999 amendment).

12-23-111. Exemptions. (1) Employees of public service corporations, rural electrification associations, or municipal utilities generating, distributing, or selling electrical energy for light, heat, or power or for operating street railway systems, or telephone or telegraph systems, or their corporate affiliates and their employees or employees of railroad corporations, or lawfully permitted or franchised cable television companies and their employees shall not be required to hold licenses while doing electrical work for such purposes.

(2) Nothing in this article shall be construed to require any individual to hold a license before doing electrical work on his or her own property or residence if all such electrical work, except for maintenance or repair of existing facilities, is inspected as provided in this article; if, however, the property or residence is intended for sale or resale by a person engaged in the business of constructing or remodeling such facilities or structures or is rental property that is occupied or is to be occupied by tenants for lodging, either transient or permanent, or is generally open to the public, the owner shall be responsible for, and the property shall be subject to, all of the provisions of this article pertaining to inspection and licensing, unless specifically exempted therein.

(3) Nothing in this article shall be construed to require any regular employee of any

firm or corporation to hold a license before doing any electrical work on the property of such firm or corporation, whether or not such property is owned, leased, or rented: If the firm or corporation employing any employee performing such work has all such electrical work installed in conformity with the minimum standards as set forth in this article and all such work is subject to inspection by the board or its inspectors by request in writing in accordance with subsection (14) of this section; and if the property of any such firm or corporation is not generally open to the public. No license for such firm or corporation, nor inspection by the board or its inspectors, nor the payment of any fees thereon shall be required, with the exception of inspection by the board or its inspectors when performed by written request. Nothing contained in this article shall be construed to require any license, any inspection by the board or its inspectors, or the payment of any fees for any electrical work performed for maintenance, repair, or alteration of existing facilities which shall be exempt as provided in this section.

(4) If the property of any person, firm, or corporation is rental property or is developed for sale, lease, or rental, or is occupied or is to be occupied by tenants for lodging, either transient or permanent, or is generally open to the public, then such property of any such person, firm, or corporation shall be subject to all the provisions of this article pertaining to inspection and licensing, except for the maintenance, repair, or alteration of existing facilities which shall be exempt as provided in this section.

(5) Nothing in this article shall be construed to cover the installation, maintenance, repair, or alteration of vertical transportation or passenger conveyors, elevators, escalators, moving walks, dumbwaiters, stage lifts, man lifts, or appurtenances thereto beyond the terminals of the controllers. Furthermore, elevator contractors or constructors performing any installation, maintenance, repair, or alteration under this exemption, or their employees, shall not be covered by the licensing requirements of this article.

(6) (a) Nothing in this article shall be construed to require an individual to hold a license before doing any maintenance or repair of existing facilities on his or her own property or residence, nor to require inspection by the board or its inspectors, nor to pay any fees connected therewith.

(b) Nothing in this article shall be construed to require any firm or corporation or its regular employees to be required to hold a license before doing maintenance or repair of existing facilities on the property of said firm or corporation, whether or not the property is generally open to the public; nor shall inspection by the board or its inspectors or the payment of any fees connected therewith be required.

(c) For the purposes of this subsection (6), "maintenance or repair of existing facilities" means to preserve or keep in good repair lawfully installed facilities by repairing or replacing components with new components that serve the same purpose.

(7) to (9) Repealed.

(10) An individual, firm, copartnership, or corporation may engage in business as an electrical contractor without an electrician's license if all electrical work performed by such individual, firm, copartnership, or corporation is under the direction and control of a licensed master electrician.

(11) Any person who plugs in any electrical appliance where approved electrical outlet is already installed shall not be considered an installer.

(12) No provision of this article shall in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance, if the connection of said appliance does not necessitate the installation of electrical wiring of the structure where said appliance is connected.

(13) The provisions of this article shall not be applicable to the installation or laying of metal or plastic electrical conduits in bridge or highway projects where such conduits must be laid according to specifications complying with applicable electrical codes.

(13.5) Repealed.

(14) Nothing in this article shall be construed to exempt any electrical work from inspection under the provisions of this article except that which is specifically exempted in this article, and nothing in this article shall be construed to exempt any electrical work from inspection by the board or its inspectors upon order of the board or from any required corrections connected therewith. However, no fees or charges may be charged for any such

inspection except as set forth in this article, unless request for inspection has been made to the board or its inspectors in writing, in which case, unless otherwise covered in this article, the actual expenses of the board and its inspectors of the inspection involved shall be charged by and be paid to the board. The board is directed to make available and mail minimum standards pertaining to specific electrical installations on request and to charge a fee for the same, such fee not to exceed the actual cost involved, and in no case more than one dollar. Requests for copies of the national electrical code shall be filled when available, costs thereof not to exceed the actual cost to the board.

(15) Inasmuch as electrical licensing and the examination of persons performing electrical work is a matter of statewide concern, no examination, certification, licensing, or registration of electrical contractors, master electricians, journeymen electricians, residential wiremen, or apprentices who are licensed, registered, or certified under this article shall be required by any city, town, county, or city and county; however, any such local governmental authority may impose reasonable registration requirements on any electrical contractor as a condition of performing services within the jurisdiction of such authority. No fee shall be charged for such registration.

(16) The provisions of this article shall not be applicable to any surface or subsurface operation or property used in, around, or in conjunction with any mine which is inspected pursuant to the "Federal Mine Safety and Health Amendments Act of 1977", Pub.L. 95-164, except permanent state highway tunnel facilities, which shall conform to standards based on the national electrical code. Nothing contained in this subsection (16) shall prohibit the department of transportation from adopting more stringent standards or requirements than those provided by the minimum standards specified in the national electrical code, and the department of transportation shall furnish a copy of such more stringent standards to the board.

(17) (a) The permit and inspection provisions of this article shall not apply to:

(I) Installations under the exclusive control of electric utilities for the purpose of communication or metering or for the generation, control, transformation, transmission, or distribution of electric energy, whether such installations are located in buildings used exclusively for utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, or roads or outdoors by virtue of established rights on private property; or

(II) Load control devices for electrical hot water heaters that are owned, leased, or otherwise under the control of, and are operated by, an electric utility, and are on the load side of the single-family residential meter, if such equipment was installed by a registered electrical contractor. The contractor will notify appropriate local authorities that the work has been completed in order that an inspection may be made at the expense of the utility company. The applicable permit fee imposed by the local authorities shall not exceed ten dollars.

(b) This subsection (17) does not exempt any premises wiring on buildings, structures, or other premises not owned by or under the exclusive control of the utility nor wiring in buildings used by the utility for purposes other than those listed in this subsection (17), such as office buildings, garages, warehouses, machine shops, and recreation buildings. This subsection (17) exempts all of the facilities, buildings, and the like inside the security fence of a generating station, substation, control center, or communication facility.

(18) Nothing in this article shall be construed to cover the installation, maintenance, repair, or alteration of security systems of fifty volts or less, lawn sprinkler systems, environmental controls, or remote radio-controlled systems beyond the terminals of the controllers. Furthermore, the contractors performing any installation, maintenance, repair, or alteration under this exemption, or their employees, shall not be covered by the licensing requirements of this article.

(19) Nothing in this article shall be construed to cover the installation, maintenance, repair, or alteration of electronic computer data processing equipment and systems beyond the terminals of the controllers. Furthermore, the contractors performing any installation, maintenance, repair, or alteration under this exemption, or their employees, shall not be covered by the licensing requirements of this article.

(20) Nothing in this article shall be construed to cover the installation, maintenance, repair, or alteration of communications systems, including telephone and telegraph systems not exempted as utilities in subsection (1) of this section, radio and television receiving and transmitting equipment and stations, and antenna systems other than community antenna television systems beyond the terminals of the controllers. Furthermore, the contractors performing any installation, maintenance, repair, or alteration under this exemption, or their employees, shall not be covered by the licensing requirements of this article.

(21) Nothing in this article shall be construed to cover the installation, maintenance, repair, or alteration of electric signs, cranes, hoists, electroplating, industrial machinery, and irrigation machinery beyond the terminals of the controllers. Furthermore, the contractors performing any installation, maintenance, repair, or alteration under this exemption, or their employees, shall not be covered by the licensing requirements of this article.

(22) Nothing in this article shall be construed to cover the installation, maintenance, repair, or alteration of equipment and wiring for sound recording and reproduction systems, centralized distribution of sound systems, public address and speech-input systems, or electronic organs beyond the terminals of the controllers. Furthermore, the contractors performing any installation, maintenance, repair, or alteration under this exemption, or their employees, shall not be covered by the licensing requirements of this article.

(23) Nothing in this article shall be construed to require either that employees of the federal government who perform electrical work on federal property shall be required to be licensed before doing electrical work on such property or that the electrical work performed on such property shall be regulated pursuant to this article.

(24) Nothing in this article shall be construed to require licensing that covers the installation, maintenance, repair, or alteration of fire alarm systems operating at fifty volts or less. Furthermore, the contractors performing any installation, maintenance, repair, or alteration under this exemption, or their employees, shall not be covered by the licensing requirements of this article but shall be subject to all provisions of this article pertaining to inspections and permitting.

Source: L. 59: p. 420, § 11. CRS 53: § 107-2-11. L. 63: p. 737, § 1. C.R.S. 1963: § 142-2-11. L. 65: p. 1223, § 6. L. 71: pp. 1292, 1294, §§ 8, 9, 1. L. 73: p. 934, § 22. L. 75: (2) and (4) amended and (15) added, pp. 440, 445, §§ 5, 2, effective July 25. L. 77: (7) amended, p. 648, § 2, effective May 20; (16) added, p. 417, § 3, effective June 9; (9) R&RE, p. 648, § 3, effective July 1; (13.5) added, p. 652, § 1, effective July 1. L. 78: (7) and (8) amended and (13.5) repealed, pp. 321, 326, §§ 9, 17, effective July 1. L. 79: (17) added, p. 476, § 1, effective May 25. L. 83: (16) amended, p. 527, § 1, effective May 10. L. 84: (16) amended, p. 413, § 2, effective March 22. L. 87: (9)(b) amended, p. 377, § 1, effective May 20. L. 88: (16) amended, p. 1434, § 26, effective June 11; (1), (5), and (15) amended, (7), (8), and (9) repealed, and (18) to (24) added, pp. 496, 502, §§ 12, 23, effective July 1. L. 91: (16) amended, p. 1057, § 11, effective July 1. L. 97: (17) amended, p. 143, § 1, effective March 28. L. 2010: (2), (6), and (18) amended, (HB 10-1225), ch. 198, p. 862, § 8, effective July 1.

Editor's note: In subsection (6)(a), "of existing facilities on his or her own property or residence," was inadvertently dropped from the introduced version of House Bill 10-1225 in the preparation of the engrossed version of the bill. There were no amendments to subsection (6)(a); therefore, to accurately reflect the intent of the House Bill 10-1225, this language has been restored.

Cross references: For the "Federal Mine Safety and Health Amendments Act of 1977", see 91 Stat. 1290, 5 U.S.C. §§ 5314 and 5315, 29 U.S.C. § 557a, 30 U.S.C. § 801 et seq., and 43 U.S.C. § 1456.

ANNOTATION

State law not superseded by licensing ordinance. The state has a clear concern in ensuring that Colorado electricians have free access to markets throughout the state, in eliminating du-

plicative and expensive licensing and in establishing a statewide policy on the required competence of electricians, and therefore the licensing ordinance of a home-rule city could

not supersede state law. Century Elec. Serv. & Repair, Inc. v. Stone, 193 Colo. 181, 564 P.2d 953 (1977).

Master's duty to direct and control work done under his license. Although subsection (10) does not provide literally for vicarious lia-

bility of a master electrician, there exists a relationship between a master and an electrician working under the master's license which imposes upon the master the duty to direct and control the work done under his license. Stocker v. Stitt, 643 P.2d 793 (Colo. App. 1982).

12-23-112. Fees. (1) As established pursuant to section 24-34-105, C.R.S., fees shall be charged by the state electrical board for the following:

- (a) Master electrician's license or permit;
- (b) Renewal of master electrician's license;
- (c) Journeyman electrician's license or permit;
- (d) Renewal of journeyman electrician's license;
- (e) Examination for master electrician;
- (f) Examination for journeyman electrician;
- (g) Electrical contractor registration;
- (h) Renewal of electrical contractor registration;
- (i) Residential wireman's license or permit;
- (j) Renewal of residential wireman's license;
- (k) Examination for residential wireman;
- (l) Apprentice registration.
- (m) (Deleted by amendment, L. 2010, (HB 10-1225), ch. 198, p. 865, § 16, effective July 1, 2010.)

Source: L. 59: p. 422, § 14. **CRS 53:** § 107-2-14. **C.R.S. 1963:** § 142-2-14. **L. 65:** p. 1226, § 8. **L. 71:** p. 1293, § 10. **L. 75:** Entire section amended, p. 441, § 2, effective April 15. **L. 77:** (1)(l) and (1)(m) added, p. 649, § 4, effective July 1. **L. 79:** Entire section R&RE, p. 1647, § 77, effective July 19. **L. 88:** (1)(g), (1)(h), (1)(l), and (1)(m) amended, p. 497, § 13, effective July 1. **L. 2010:** (1)(b), (1)(d), (1)(h), (1)(j), and (1)(m) amended, (HB 10-1225), ch. 198, p. 865, § 16, effective July 1.

ANNOTATION

Constitutional challenge of provisions controlling board assertable on appeal. Section 12-23-120 contemplates that facial constitutional challenges to the provisions under which

the state electrical board acts may be asserted on appeal, even though such challenges are not cognizable by the board. Clasby v. Klapper, 636 P.2d 682 (Colo. 1981).

12-23-113. Disposition of fees and expenses of board. All moneys collected under this article, except for fines collected pursuant to section 12-23-118 (7) (a), shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for expenditures of the board incurred in the performance of its duties under this article, which expenditures shall be made from such appropriations upon vouchers and warrants drawn pursuant to law.

Source: L. 59: p. 422, § 15. **CRS 53:** § 107-2-15. **C.R.S. 1963:** § 142-2-15. **L. 73:** p. 1378, § 45. **L. 79:** Entire section amended, p. 1648, § 78, effective July 19. **L. 94:** Entire section amended, p. 35, § 1, effective July 1.

12-23-114. Publications.

- (1) Repealed.
- (2) Publications of the board circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

Source: L. 59: p. 418, § 4. C.R.S. 53: § 107-2-4. C.R.S. 1963: § 142-2-4. L. 64: p. 162, § 116. L. 79: (1) amended, p. 435, § 8, effective July 1. L. 83: Entire section amended, p. 828, § 15, effective July 1. L. 96: (1) repealed, p. 1227, § 39, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (1), see section 1 of chapter 237, Session Laws of Colorado 1996.

12-23-115. Inspectors - qualifications. (1) (a) (I) The director of the division of professions and occupations is hereby authorized to appoint or employ, with the power of removal, competent persons licensed under this article as journeymen or master electricians as state electrical inspectors. The division director is also authorized to appoint or employ, with the power of removal, for the purpose of inspecting one-, two-, three-, or four-family dwellings, competent persons with the following qualifications:

(A) Persons who have passed the written residential wireman's examination described in section 12-23-106; or

(B) Persons who have been certified as residential electrical inspectors by a national certification authority approved by the board and who have furnished satisfactory evidence of at least two years' practical experience in the electrical inspection of residential dwellings.

(II) Such inspectors may be employed either on a full-time or on a part-time basis as the circumstances in each case shall warrant; except that the division director may contract with any electrical inspector regularly engaged as such and certify him to make inspections in a designated area at such compensation as shall be fixed by the division director. State electrical inspectors have the right of ingress and egress to and from all public and private premises during reasonable working hours where this law applies for the purpose of making electrical inspections or otherwise determining compliance with the provisions of this article. In order to avoid conflicts of interest, a state electrical inspector hired under this section shall not inspect any electrical work in which such inspector has any financial or other personal interest and shall not be engaged in the electrical business by contracting, supplying material, or performing electrical work as defined in this article.

(b) Any employee of a private, municipal, or cooperative electric utility rendering service to the ultimate public shall be prohibited from employment as an electrical inspector only when in the performance of any electrical work as defined in this article. Electrical inspectors performing electrical inspections who are employed by any city, town, county, or city and county shall possess the same qualifications required of state electrical inspectors under this section, shall be registered with the board prior to the assumption of their duties, shall not inspect any electrical work in which such inspector has any financial or other personal interest, and shall not be engaged, within the jurisdiction employing such inspector, in the electrical business by contracting, supplying material, or performing electrical work as defined in this article.

(c) Nothing in this article shall be construed to limit any inspector from qualifying as an inspector in other construction specialties.

(2) Repealed.

(3) State electrical inspectors appointed or employed pursuant to subsection (1) of this section may:

(a) Conduct inspections and investigations pursuant to section 12-23-118 (4) on behalf of the program director;

(b) Provide service of process for a citation served pursuant to section 12-23-118 (6) (b) in compliance with rule 4 of the Colorado rules of civil procedure.

Source: L. 65: p. 1228, § 9. C.R.S. 1963: § 142-2-18. L. 71: p. 1296, § 1. L. 73: p. 934, § 24. L. 77: Entire section amended, p. 654, § 1, effective May 26. L. 78: Entire section amended, p. 322, § 10, effective July 1. L. 81: (1) amended, p. 746, § 1, effective May 18. L. 88: IP(1)(a)(I) and (1)(a)(II) amended and (2) repealed, pp. 498, 502, §§ 14, 23, effective July 1. L. 94: (3) added, p. 35, § 2, effective July 1. L. 2010: (1)(a)(I)(B) and (3)(a) amended, (HB 10-1225), ch. 198, p. 865, § 17, effective July 1.

12-23-116. Inspection - application - standards. (1) (a) An individual required to have electrical inspection under this article shall apply to the board for an electrical permit, except where an incorporated town or city, county, or city and county of this state has a building department that meets the minimum standards of this article and that processes applications for building permits and inspections, in which case the individual shall apply to such building department.

(b) Upon final inspection and approval by the state electrical inspector, notice shall be issued by the board to the utility, and the office of the board shall retain one copy of the record of approval.

(c) A utility shall not provide service to any person required to have electrical inspection under this article without proof of final approval as provided in paragraph (b) of this subsection (1); except that service shall be provided in those situations determined by the local electrical inspection authority, or by the board, whichever has jurisdiction, to be emergency situations for a maximum period of seven days or until the inspection has been made.

(2) (a) The owner of an electrical installation in any new construction, other than manufactured units certified by the division of housing pursuant to section 24-32-3311, C.R.S., or remodeling or repair of an existing construction, except in any incorporated town or city, county, or city and county having its own electrical code and inspection program equal to the minimum standards as are provided in this article, shall have the electrical portion of the installation, remodeling, or repair inspected by a state electrical inspector.

(b) A state electrical inspector shall inspect any new construction, remodeling, or repair subject to this subsection (2) within three working days after the receipt of the application for inspection. Prior to the commencement of any electrical installation, the person making the installation shall apply for an electrical permit and pay the required permit fee.

(c) A manufactured home, mobile home, or movable structure owner shall have the electrical installation for the manufactured home, mobile home, or movable structure inspected prior to obtaining electric service.

(3) A state electrical inspector shall inspect the work performed, and, if such work meets the minimum standards set forth in the national electrical code referred to in section 12-23-104 (2) (a), a certificate of approval shall be issued by the inspector. If such installation is disapproved, written notice thereof together with the reasons for such disapproval shall be given by the inspector to the applicant. If such installation is hazardous to life or property, the inspector disapproving it may order the electrical service thereto discontinued until such installation is rendered safe and shall send a copy of the notice of disapproval and order for discontinuance of service to the supplier of electricity. The applicant may appeal such disapproval to the board and shall be granted a hearing by the board within seven days after notice of appeal is filed with the board. After removal of the cause of such disapproval, the applicant shall make application for reinspection in the same manner as for the original inspection and pay the required reinspection fee.

(4) The person or inspector making an application, certificate of approval, or notice of disapproval shall include the name of the property owner, if known, the location and a brief description of the installation, the name of the electrical contractor and state registration number, the state electrical inspector, and the fee charged for the permit. The notice of disapproval and corrective actions to be taken shall be submitted to the board, and a copy of the notice shall be submitted to the electrical contractor within two working days after the date of inspection. The inspector shall post a copy of the notice at the installation site. The board shall furnish the forms. A copy of each application, certificate, and notice made or issued shall be filed with the board.

(5) Nothing in this section shall be construed to require any utility as defined in this article to collect or enforce collection or in any way handle the payment of any fee connected with such application.

(6) (a) All inspection permits issued by the board shall be valid for a period of twelve months, and the board shall cancel the permit and remove it from its files at the end of the twelve-month period, except in the following circumstances:

(I) If an applicant makes a showing at the time of application for a permit that the electrical work is substantial and is likely to take longer than twelve months, the board may

issue a permit to be valid for a period longer than twelve months, but not exceeding three years.

(II) If the applicant notifies the board prior to the expiration of the twelve-month period of extenuating circumstances, as determined by the board, during the twelve-month period, the board may extend the validity of the permit for a period not to exceed six months.

(b) If an inspection is requested by an applicant after a permit has expired or has been cancelled, a new permit must be applied for and granted before an inspection is performed.

(7) Notwithstanding the fact that any incorporated town or city, any county, or any city and county in which a public school is located or is to be located has its own electrical code and inspection authority, any electrical installation in any new construction or remodeling or repair of a public school shall be inspected by a state electrical inspector.

(8) In the event that any incorporated town or city, any county, or any city and county intends to commence or cease performing electrical inspections in its respective jurisdiction, it shall commence or cease the same only as of July 1 of any year, and written notice of such intent shall be given to the board on or before October 1 of the preceding calendar year. If such notice is not given and the use of state electrical inspectors is required within such notice requirement, the respective local government of the jurisdiction requiring such inspections shall reimburse the state electrical board for any expenses incurred in performing such inspections, in addition to transmitting the required permit fees.

(9) (a) A person claiming to be aggrieved by the failure of a state electrical inspector to inspect property after proper application or by notice of disapproval without setting forth the reasons for rejecting the inspection may request the program director to review the actions of the state electrical inspector or the manner of the inspection. The request may be made by an authorized representative and shall be in writing.

(b) Upon the filing of such a request, the program director shall cause a copy to be served upon the state electrical inspector complained of, together with an order requiring the inspector to answer the allegations of said request within a time fixed by the program director.

(c) If the request is not granted within ten days after it is filed, it may be treated as rejected. Any person aggrieved by the action of the program director in refusing the review requested or in failing or refusing to grant all or part of the relief requested may file a written complaint and request for a hearing with the board, specifying the grounds relied upon.

(d) Any hearing before the board shall be held pursuant to the provisions of section 24-4-105, C.R.S.

(10) An inspector performing an inspection for the state, an incorporated town or city, a county, or a city and county may verify compliance with any provision of this article and may file a complaint with the board for a violation of this article.

Source: L. 65: p. 1227, § 9. C.R.S. 1963: § 142-2-17. L. 71: p. 1295, § 1. L. 73: p. 242, § 27. L. 75: (2) amended, p. 1465, § 3, effective July 18; (1) and (2) amended, p. 445, § 4, effective July 25. L. 77: (6) added, p. 656, § 1, effective May 18; (2) amended, p. 636, § 3, effective July 1; (7) and (8) added, p. 658, § 1, effective July 1. L. 78: (1), (2), and (4) amended and (9) added, pp. 323, 324, §§ 11, 12, effective July 1. L. 81: (2) amended, p. 748, § 1, effective April 24. L. 88: (2) and (9)(a) to (9)(c) amended, p. 498, § 15, effective July 1. L. 98: (3) amended, p. 817, § 10, effective August 5. L. 2003: (2) amended, p. 551, § 6, effective March 5. L. 2010: (1), (2), (4), (9)(a), (9)(b), and (9)(c) amended and (10) added, (HB 10-1225), ch. 198, p. 858, § 6, effective July 1.

Editor's note: Amendments to subsection (2) by House Bill 75-1508 and Senate Bill 75-305 were harmonized.

12-23-117. Permit fees. (1) As established pursuant to section 24-34-105, C.R.S., inspection fees shall be charged by the board and shall be set and categorized based upon the actual expense of inspecting each type of electrical installation.

(2) Because electrical inspections are matters of statewide concern, the maximum fees, established annually, chargeable for electrical inspections by any city, town, county, or city

and county shall not be more than fifteen percent above those provided for in this section, and no such local government shall impose or collect any other fee or charge related to electrical inspections or permits.

(3) If an application is not filed in advance of the commencement of an installation, the inspection fee shall be twice the amount of the inspection fee set by the board pursuant to subsection (1) of this section.

Source: **L. 65:** p. 1228, § 9. **C.R.S. 1963:** § 142-2-19. **L. 71:** p. 1298, § 1. **L. 73:** pp. 242, 1506, §§ 28, 1. **L. 75:** (1)(a) and (1)(b) amended, p. 442, § 3, effective April 15; (1)(b) and (1)(c) amended, p. 1465, § 5, effective July 18; (1)(b) amended, p. 446, § 4, effective July 25. **L. 77:** (1)(a) and (1)(b) amended, p. 636, § 4, effective July 1; (1)(b) amended, p. 652, § 2, effective July 1; (1)(d) amended, p. 658, § 2, effective July 1. **L. 79:** Entire section R&RE, p. 1648, § 79, effective July 19. **L. 81:** (2) amended, p. 747, § 2, effective May 18. **L. 83:** Entire section R&RE, p. 525, § 2, effective May 4. **L. 2010:** (1) and (3) amended, (HB 10-1225), ch. 198, p. 863, § 12, effective July 1.

12-23-118. Violations - citations - settlement agreements - hearings - fines.

(1) The board may deny, suspend, revoke, refuse to renew, or issue a letter of admonition in regard to any license or registration issued or applied for under the provisions of this article, may place a licensee or registrant on probation, or may issue a citation to a licensee, registrant, or applicant for licensure for any of the following reasons:

(a) Violation of or aiding or abetting in the violation of any of the provisions of this article;

(b) Violation of the rules and regulations or orders promulgated by the board in conformity with the provisions of this article or aiding or abetting in such violation;

(c) Failure or refusal to remove within a reasonable time the cause of the disapproval of any electrical installation as reported on the notice of disapproval, but such reasonable time shall include time for appeal to and a hearing before the board;

(d) Failure or refusal to maintain or adhere to the minimum standards set forth in rules and regulations adopted by the board pursuant to section 12-23-104 (2) (a);

(e) Any cause for which the issuance of the license could have been refused had it then existed and been known to the board;

(f) Commitment of one or more acts or omissions that do not meet generally accepted standards of electrical practice;

(g) Conviction of or acceptance of a plea of guilty or nolo contendere by a court to a felony. In considering the disciplinary action, the board shall be governed by the provisions of section 24-5-101, C.R.S.

(h) Advertising by any licensee or registrant which is false or misleading;

(i) Deception, misrepresentation, or fraud in obtaining or attempting to obtain a license;

(j) Failure of a master electrician who is charged with supervising all electrical work performed by a contractor pursuant to section 12-23-106 (5) (c) to adequately supervise such work or failure of any licensee to adequately supervise an apprentice who is working at the trade pursuant to section 12-23-110.5;

(k) Employment of any person required by this article to be licensed or registered or to obtain a permit who has not obtained such license, registration, or permit;

(l) Disciplinary action against an electrician's license or registration in another jurisdiction. Evidence of such disciplinary action shall be prima facie evidence for denial of licensure or registration or other disciplinary action if the violation would be grounds for such disciplinary action in this state.

(m) Providing false information to the board during an investigation with the intent to deceive or mislead the board;

(n) Practicing as a residential wireman, journeyman, master, contractor, or apprentice during a period when the licensee's license or the registrant's registration has been suspended or revoked;

(o) Selling or fraudulently obtaining or furnishing a license to practice as a residential wireman, journeyman, or master or aiding or abetting therein;

(p) In conjunction with any construction or building project requiring the services of any person regulated by this article, willfully disregarding or violating:

- (I) Any building or construction law of this state or any of its political subdivisions;
 - (II) Any safety or labor law;
 - (III) Any health law;
 - (IV) Any workers' compensation insurance law;
 - (V) Any state or federal law governing withholdings from employee income, including but not limited to income taxes, unemployment taxes, or social security taxes; or
 - (VI) Any reporting, notification, or filing law of this state or the federal government.
- (2) and (3) (Deleted by amendment, L. 94, p. 36, § 3, effective July 1, 1994.)

(4) (a) If, pursuant to an inspection or investigation by a state electrical inspector, the board concludes that any licensee, registrant, or applicant for licensure has violated any provision of subsection (1) of this section and that disciplinary action is appropriate, the program director or the program director's designee may issue a citation in accordance with subsection (6) of this section to such licensee, registrant, or applicant.

(b) (I) The licensee, registrant, or applicant to whom a citation has been issued may make a request to negotiate a stipulated settlement agreement with the program director or the program director's designee, if such request is made in writing within ten working days after issuance of the citation that is the subject of the settlement agreement.

(II) All stipulated settlement agreements shall be conducted pursuant to rules adopted by the board pursuant to section 12-23-104 (2) (a). The board shall adopt a rule to allow any licensee, registrant, or applicant unable, in good faith, to settle with the program director to request an administrative hearing pursuant to paragraph (c) of this subsection (4).

(III) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(c) (I) The licensee, registrant, or applicant to whom a citation has been issued may request an administrative hearing to determine the propriety of such citation if such request is made in writing within ten working days after issuance of the citation that is the subject of the hearing or within a reasonable period after negotiations for a stipulated settlement agreement pursuant to paragraph (b) of this subsection (4) have been deemed futile by the program director.

(II) For good cause the board may extend the period of time in which a person who has been cited may request a hearing.

(III) All hearings conducted pursuant to subparagraph (I) of this paragraph (c) shall be conducted in compliance with section 24-4-105, C.R.S.

(d) Any action taken by the board pursuant to this section shall be deemed final after the period of time extended to the licensee, registrant, or applicant to contest such action pursuant to this subsection (4) has expired.

(5) (a) The board shall adopt a schedule of fines pursuant to paragraph (b) of this subsection (5) as penalties for violating subsection (1) of this section. Such fines shall be assessed in conjunction with the issuance of a citation, pursuant to a stipulated settlement agreement, or following an administrative hearing. Such schedule shall be adopted by rule in accordance with section 12-23-104 (2) (a).

(b) In developing the schedule of fines, the board shall:

- (I) Provide that a first offense may carry a fine of up to one thousand dollars;
 - (II) Provide that a second offense may carry a fine of up to two thousand dollars;
 - (III) Provide that any subsequent offense may carry a fine of up to two thousand dollars for each day that subsection (1) of this section is violated;
 - (IV) Consider how the violation impacts the public, including any health and safety considerations;
 - (V) Consider whether to provide for a range of fines for any particular violation or type of violation; and
 - (VI) Provide uniformity in the fine schedule.
- (c) Repealed.

(6) (a) (I) Any citation issued pursuant to this section shall be in writing, shall adequately describe the nature of the violation, and shall reference the statutory or regulatory provision or order alleged to have been violated.

(II) Any citation issued pursuant to this section shall clearly state whether a fine is imposed, the amount of such fine, and that payment for such fine must be remitted within the time specified in such citation if such citation is not contested pursuant to subsection (4) of this section.

(III) Any citation issued pursuant to this section shall clearly set forth how such citation may be contested pursuant to subsection (4) of this section, including any time limitations.

(b) A citation or copy of a citation issued pursuant to this section may be served by certified mail or in person by a state electrical inspector or the program director's designee upon a person or the person's agent in accordance with rule 4 of the Colorado rules of civil procedure.

(c) If the recipient fails to give written notice to the board that the recipient intends to contest such citation or to negotiate a stipulated settlement agreement within ten working days after service of a citation by the board, such citation shall be deemed a final order of the board.

(d) (I) The board may suspend or revoke a license or registration or may refuse to renew any license or registration issued or may place on probation any licensee or registrant if the licensee or registrant fails to comply with the requirements set forth in a citation deemed final pursuant to paragraph (c) of this subsection (6).

(II) Upon completing an investigation, the board shall make one of the following findings:

(A) The complaint is without merit and no further action need be taken.

(B) There is no reasonable cause to warrant further action.

(C) The investigation discloses an instance of conduct that does not warrant formal action and should be dismissed, but the investigation also discloses indications of possible errant conduct that could lead to serious consequences if not corrected. If this finding is made, the board shall send a confidential letter of concern to the licensee or registrant.

(D) The investigation discloses an instance of conduct that does not warrant formal action but should not be dismissed as being without merit. If this finding is made, the board may send a letter of admonition to the licensee or registrant by certified mail.

(E) The investigation discloses facts that warrant further proceedings by formal complaint. If this finding is made, the board shall refer the complaint to the attorney general for preparation and filing of a formal complaint.

(III) (A) When a letter of admonition is sent by certified mail to a licensee or registrant, the board shall include in the letter a notice that the licensee or registrant has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(B) If the request for adjudication is timely made, the letter of admonition is vacated and the board shall proceed by means of formal disciplinary proceedings.

(IV) (Deleted by amendment, L. 2010, (HB 10-1225), ch. 198, p. 866, § 18, effective July 1, 2010.)

(V) The board shall conduct all proceedings pursuant to this subsection (6) expeditiously and informally so that no licensee or registrant is subjected to unfair and unjust charges and that no complainant is deprived of the right to a timely, fair, and proper investigation of a complaint.

(e) The failure of an applicant for licensure to comply with a citation deemed final pursuant to paragraph (c) of this subsection (6) is grounds for denial of a license.

(f) No citation may be issued under this section unless the citation is issued within the six-month period following the occurrence of the violation.

(7) (a) Any fine collected pursuant to this section shall be transmitted to the state treasurer, who shall credit one-half of the amount of any such fine to the general fund, and one-half of the amount of any such fine shall be shared with the appropriate city, town, county, or city and county, which amounts shall be transmitted to any such entity on an annual basis.

(b) Any fine assessed in a citation or an administrative hearing or any amount due pursuant to a stipulated settlement agreement that is not paid may be collected by the program director through a collection agency or in an action in the district court of the county in which the person against whom the fine is imposed resides or in the county in which the office of the program director is located.

(c) The attorney general shall provide legal assistance and advice to the program director in any action to collect an unpaid fine.

(d) In any action brought to enforce this subsection (7), reasonable attorney fees and costs shall be awarded.

(8) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public or a person is acting or has acted without the required license, the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (8), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(9) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (9) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (9) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (9). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (9) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (9) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (9), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(10) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the board may enter into a stipulation with such person.

(11) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(12) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order in a court of competent jurisdiction.

Source: L. 65: p. 1229, § 9. C.R.S. 1963: § 142-2-20. L. 71: p. 1293, § 11. L. 73: p. 1504, § 3. L. 74: (1)(h) repealed, p. 439, § 2, effective January 24. L. 78: IP(1), (1)(e), and (1)(g) amended, p. 325, § 13, effective July 1. L. 88: Entire section R&RE, p. 499, § 16, effective July 1. L. 91: (1)(i) amended, p. 1478, § 3, effective July 1. L. 94: Entire section amended, p. 36, § 3, effective July 1. L. 2001: (1)(m) added, p. 277, § 9, effective March 30. L. 2002: (5)(c) amended, p. 1475, § 59, effective October 1. L. 2004: IP(1) and (6)(d) amended and (4)(b)(III) added, p. 1809, §§ 35, 34, effective August 4. L. 2006: (6)(d)(V) and (8) to (12) added, p. 780, §§ 14, 15, effective July 1; (1)(n) to (1)(p) added with relocated provisions and (5)(c) repealed, pp. 83, 84, §§ 12, 14, effective August 7. L. 2010: (1)(l), (4)(a), (4)(b)(I), (4)(b)(II), (4)(c)(I), (6)(b), (6)(d)(II) to (6)(d)(V), (7)(b), and (7)(c) amended, (HB 10-1225), ch. 198, p. 866, § 18, effective July 1.

Editor's note: Subsections (1)(n), (1)(o), and (1)(p) are similar to former § 12-23-119 (1)(b), (1)(c), and (1)(d) as they existed prior to 2006.

Cross references: (1) For an alternative disciplinary action for persons licensed or registered pursuant to this article, see § 24-34-106.

(2) For the legislative declaration contained in the 2002 act amending subsection (5)(c), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-23-118.1. Reapplication after revocation of licensure. No person whose license has been revoked shall be allowed to reapply for licensure earlier than two years from the effective date of the revocation.

Source: L. 88: Entire section added, p. 501, § 17, effective July 1.

12-23-118.2. Reconsideration and review of board action. (Repealed)

Source: L. 88: Entire section added, p. 501, § 17, effective July 1. L. 94: Entire section repealed, p. 40, § 4, effective July 1.

12-23-118.3. Immunity. Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: **L. 88:** Entire section added, p. 501, § 17, effective July 1. **L. 2004:** Entire section amended, p. 1809, § 36, effective August 4.

12-23-119. Unauthorized practice - penalties.

(1) Repealed.

(2) Any person who practices or offers or attempts to practice the profession of an electrician without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and, for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: **L. 59:** p. 421, § 12. **CRS 53:** § 107-2-12. **C.R.S. 1963:** § 142-2-12. **L. 65:** p. 1226, § 7. **L. 75:** Entire section amended, p. 446, § 5, effective July 25. **L. 85:** Entire section amended, p. 406, § 3, effective July 1. **L. 88:** Entire section R&RE, p. 501, § 18, effective July 1. **L. 94:** Entire section amended, p. 40, § 5, effective July 1. **L. 2002:** (2) amended, p. 1475, § 60, effective October 1. **L. 2006:** (1) repealed and (2) amended, p. 84, §§ 14, 15, 13, effective August 7.

Editor's note: Subsections (1)(b), (1)(c), and (1)(d) were relocated to § 12-23-118 (1)(n), (1)(o), and (1)(p) in 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-23-120. Judicial review. The court of appeals shall have initial jurisdiction to review all final actions and orders of the board that are subject to judicial review. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

Source: **L. 59:** p. 421, § 13. **CRS 53:** § 107-2-13. **C.R.S. 1963:** § 142-2-13. **L. 88:** Entire section R&RE, p. 501, § 19, effective July 1.

ANNOTATION

Constitutional challenge of provisions controlling board assertable on appeal. This section contemplates that facial constitutional challenges to the provisions under which the state electrical board acts may be asserted on appeal, even though such challenges are not cognizable by the board. *Clasby v. Klapper*, 636 P.2d 682 (Colo. 1981).

Appeal exclusive vehicle for constitutional challenge. The statutory appeal procedure is intended to provide the exclusive means of asserting constitutional challenges to decisions of the state electrical board. *Clasby v. Klapper*, 636 P.2d 682 (Colo. 1981).

Not declaratory or injunctive relief actions.

A party cannot circumvent the limitations on his right of review by attempting to obtain declaratory or injunctive relief where the prescribed avenue of review is adequate. *Clasby v. Klapper*, 636 P.2d 682 (Colo. 1981).

Appeal must be timely. Failure to bring a proceeding to appeal a decision of the board within the applicable time limit is a jurisdictional defect. *Clasby v. Klapper*, 636 P.2d 682 (Colo. 1981).

Applied in *Bonacci v. City of Aurora*, 642 P.2d 4 (Colo. 1982).

ARTICLE 24

Employment Agencies

12-24-101 to 12-24-214. (Repealed)

Source: **L. 83:** Entire article repealed, p. 701, § 5, effective June 10.

Editor's note: This article was numbered as articles 9 and 10 of chapter 80, C.R.S. 1963. For amendments to this article prior to its repeal in 1983, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 25

Engineers, Surveyors, and Architects

Editor's note: This article was numbered as articles 1 and 2 of chapter 51, C.R.S. 1963. This article was repealed and reenacted in 1981 and was subsequently repealed and reenacted in 1985, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1985, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers prior to 1985 are shown in editor's notes following those sections that were relocated.

Cross references: For public policy concerning accurate land boundaries and public records relating thereto, see § 38-53-101; for surveys and boundaries, see articles 50 to 53 of title 38; for provisions regarding geology and the definition of "geologist", see part 2 of article 1 of title 34; for the responsibilities of engineers concerning the obtaining of underground facilities information prior to excavation, see § 9-1.5-103; for the statute of limitations for actions against engineers and architects, see § 13-80-104; for the statute of limitations for actions against land surveyors, see § 13-80-105.

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PART 1

ENGINEERS

12-25-101. General provisions. In order to safeguard life, health, and property and to promote the public welfare, the practice of engineering is declared to be subject to regulation in the public interest. It shall be deemed that the right to engage in the practice of engineering is a privilege granted by the state through the state board of licensure for architects, professional engineers, and professional land surveyors, created in section 12-25-106; that the profession involves personal skill and presupposes a period of intensive preparation, internship, due examination, and admission; and that a professional engineer's license is solely such professional engineer's own and is nontransferable.

Source: L. 85: Entire article R&RE, p. 461, § 1, effective July 1. L. 94: Entire section amended, p. 1481, § 1, effective July 1. L. 2004: Entire section amended, p. 1292, § 7, effective May 28. L. 2006: Entire section amended, p. 741, § 4, effective July 1.

Editor's note: This section is similar to former § 12-25-101 as it existed prior to 1985.

ANNOTATION

Law reviews. For comment on Prouty v. Heron, appearing below, see 26 Rocky Mt. L. Rev. 91 (1953).

Annotator's note. The case annotated below was decided under repealed CSA, C. 62, § 42, the subject matter of which was similar to this section.

Right to practice protected by due process clause. One who has qualified for admittance and license to practice engineering without restriction, under the standards applicable at the

time of admission, thereby acquires a valuable right fully protected and covered by the due process clause of the federal and state constitutions. Prouty v. Heron, 127 Colo. 168, 255 P.2d 755 (1953).

It follows, therefore, that the general assembly cannot by statute deny or abridge that right in any manner except for cause, and after due notice and a fair and impartial hearing before an unbiased tribunal. Prouty v. Heron, 127 Colo. 168, 255 P.2d 755 (1953).

12-25-102. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Board" means the state board of licensure for architects, professional engineers, and professional land surveyors, created in section 12-25-106.

(2) "Certificate" means the media issued by the board to evidence licensing of a professional engineer.

(3) "Engineer" means a person who, by reason of intensive preparation in the use of mathematics, chemistry, physics, and engineering sciences, including the principles and

methods of engineering analysis and design, is qualified to perform engineering work as defined in this part 1.

(4) “Engineering” means analysis or design work requiring intensive preparation and experience in the use of mathematics, chemistry, and physics and the engineering sciences.

(5) “Engineering experience”, in addition to the practice of engineering as defined in subsection (10) of this section, may include:

(a) Up to four years of undergraduate engineering study, as approved by the board, in mathematics, basic science, engineering science, engineering design, and engineering practice;

(b) Up to two years of graduate engineering study as approved by the board if the study results in the award of an advanced degree;

(c) Teaching at the instructor level, or at a higher level, of courses in engineering science, design, or engineering practice at a college or university offering an engineering curriculum of four or more years which is approved by the board or at a college offering courses transferable to a board-approved college. This experience must result from a full-time position in teaching or teaching and research.

(d) Engineering research, including that performed by a teacher at the instructor level or at a higher level. The research done by the teacher must be part of his assigned duties in a full-time position in teaching and research.

(6) “Engineer-intern” means a person who has complied with the requirements of sections 12-25-111 and 12-25-112 and is duly enrolled as an “engineer-intern”.

(7) (Deleted by amendment, L. 2004, p. 1293, § 8, effective May 28, 2004.)

(8) “License” means the formal legal permission to practice engineering granted by the board.

(9) Repealed.

(10) (a) “Practice of engineering” means the performance for others of any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical and engineering sciences to such professional services or creative work, including consultation, investigation, evaluation, planning, design, and the observation of construction to evaluate compliance with plans and specifications in connection with the utilization of the forces, energies, and materials of nature in the development, production, and functioning of engineering processes, apparatus, machines, equipment, facilities, structures, buildings, works, or utilities, or any combination or aggregations thereof, employed in or devoted to public or private enterprise or uses.

(b) An individual shall be construed as practicing or offering to practice “professional engineering” within the meaning and intent of this section if the individual, by verbal claim, sign, advertisement, letterhead, card, or in any other way, represents himself or herself to be a professional engineer; through the use of any other means implies that the individual is licensed under this part 1; or performs engineering services.

(11) “Professional engineer” means an engineer duly licensed pursuant to this part 1.

(12) and (13) (Deleted by amendment, L. 2004, p. 1293, § 8, effective May 28, 2004.)

(14) “Responsible charge” means personal responsibility for the control and direction of engineering work within a professional engineer’s scope of competence. Experience may only be classified as “responsible charge” if the engineer is licensed pursuant to this part 1, unless the work involves an activity exempted pursuant to section 12-25-103.

Source: L. 85: Entire article R&RE, p. 461, § 1, effective July 1. L. 88: (9) repealed, p. 519, § 34, effective July 1. L. 94: (1), (2), (6), and (10) to (14) amended, p. 1481, § 2, effective July 1. L. 2004: (1), (2), (7), and (10) to (14) amended, p. 1293, § 8, effective May 28. L. 2006: (1) amended, p. 741, § 5, effective July 1.

Editor’s note: This section is similar to former § 12-25-102 as it existed prior to 1985.

ANNOTATION

Formerly, engineers were confined to the industrial and structural field, while architects were committed to the field of public or

semipublic buildings. Heron v. City of Denver, 131 Colo. 501, 283 P.2d 647 (1955) (decided under repealed § 51-1-2, CRS 53).

12-25-103. Exemptions. (1) This part 1 shall not be construed to affect any of the following:

- (a) Individuals who normally operate and maintain machinery or equipment;
- (b) Individuals who perform engineering services for themselves;
- (c) Partnerships, professional associations, joint stock companies, limited liability companies, or corporations, or the employees of any such organizations, who perform engineering services for themselves or their affiliates;
- (d) Individuals who perform engineering services under the responsible charge of a professional engineer;
- (e) Work of a strictly agricultural nature which is not required to be of public record;
- (f) Professional land surveying as defined in section 12-25-202 (6);
- (g) Individuals who are employed by and perform engineering services solely for a county, city and county, or municipality;
- (h) (Deleted by amendment, L. 94, p. 1482, § 3, effective July 1, 1994.)
- (i) Individuals who are employed by and perform engineering services solely for the federal government;
- (j) Individuals who practice architecture as defined in section 12-25-302 (6); or
- (k) Utilities or their employees or contractors when performing services for another utility during times of natural disasters or emergency situations.

Source: **L. 85:** Entire article R&RE, p. 463, § 1, effective July 1. **L. 88:** (1)(g) and (1)(h) amended and (1)(i) added, p. 503, § 1, effective July 1. **L. 94:** Entire section amended, p. 1482, § 3, effective July 1. **L. 2004:** (1)(d) amended, p. 1293, § 9, effective May 28. **L. 2006:** (1)(j) amended, p. 761, § 18, effective July 1.

Editor's note: This section is similar to former § 12-25-115 as it existed prior to 1985.

12-25-104. Forms of organizations permitted to practice. (1) No partnership, corporation, limited liability company, or joint stock association shall be licensed under this part 1. No partnership, corporation, limited liability company, or joint stock association shall practice or offer to practice engineering in the state except under the following conditions:

(a) Professional engineers may practice under this part 1 as individuals or partners or through joint stock associations, registered limited liability partnerships, limited liability companies, or corporations.

(b) In the case of practice through a partnership, at least one of the partners shall be a professional engineer licensed under this part 1, and all engineering plans, designs, drawings, specifications, or reports issued by or for the partnership shall bear the seal of said professional engineer partner or a professional engineer in responsible charge of, and directly responsible for, such engineering work when issued.

(c) In the case of the practice of engineering through a joint stock association, limited liability company, or corporation, engineering services or work involving the practice of engineering may be offered through such joint stock association, limited liability company, or corporation if the person in responsible charge of the engineering activities of the joint stock association, limited liability company, or corporation is a professional engineer licensed pursuant to this part 1. All engineering plans, designs, drawings, specifications, or reports that are involved in such practice, issued by or for such joint stock association, limited liability company, or corporation, shall bear the seal and signature of a professional engineer in responsible charge of, and directly responsible for, such engineering work when issued.

Source: **L. 85:** Entire article R&RE, p. 464, § 1, effective July 1. **L. 94:** Entire section amended, p. 1483, § 4, effective July 1. **L. 95:** (1)(a) amended, p. 811, § 29, effective May 24. **L. 2004:** IP(1), (1)(b), and (1)(c) amended, p. 1294, § 10, effective May 28.

Editor's note: This section is similar to former § 12-25-103 as it existed prior to 1985.

12-25-105. Unlawful practice - penalties - enforcement. (1) It is unlawful for any individual to hold himself or herself out to the public as a professional engineer unless such individual has complied with the provisions contained in this part 1.

(2) It is unlawful for any individual, partnership, professional association, joint stock company, limited liability company, or corporation to practice, or offer to practice, engineering in this state unless the individual in responsible charge has complied with the provisions of this part 1.

(3) Unless licensed or exempted pursuant to this part 1, it is unlawful for any individual, partnership, professional association, joint stock company, limited liability company, or corporation to use any of the following titles: Civil engineer, structural engineer, chemical engineer, petroleum engineer, mining engineer, mechanical engineer, or electrical engineer. In addition, unless licensed pursuant to this part 1, it is unlawful for any individual, partnership, professional association, joint stock company, limited liability company, or corporation to use the words "engineer", "engineered", or "engineering" in any offer to the public to perform the services set forth in section 12-25-102 (10). Nothing in this subsection (3) shall prohibit the general use of the words "engineer", "engineered", and "engineering" so long as such words are not being used in an offer to the public to perform the services set forth in section 12-25-102 (10).

(4) Repealed.

(5) It is unlawful for any individual to use in any manner a certificate or certificate number which has not been issued to such individual by the board.

(6) The practice of professional engineering in violation of any of the provisions of this part 1 shall be either:

(a) Restrained by injunction in an action brought by the attorney general or by the district attorney of the proper district in the county in which the violation occurs; or

(b) (I) Ceased by order of the board pursuant to section 12-25-109 (8.2) to (8.9).

(II) (Deleted by amendment, L. 2006, p. 782, § 16, effective July 1, 2006.)

(7) Any person who practices or offers or attempts to practice professional engineering without an active license issued under this part 1 commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and, for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(8) Repealed.

(9) After finding that an individual, partnership, professional association, joint stock company, limited liability company, or corporation has unlawfully engaged in the practice of engineering, the board may jointly and severally assess a fine against such unlawfully engaged party in an amount not less than fifty dollars and not more than five thousand dollars for each violation proven by the board. Any moneys collected as an administrative fine pursuant to this subsection (9) shall be transmitted to the state treasurer, who shall credit such moneys to the general fund.

(10) An individual practicing professional engineering who is not licensed or exempt shall not collect compensation of any kind for such practice, and, if compensation has been paid, the compensation shall be refunded in full.

Source: **L. 85:** Entire article R&RE, p. 464, § 1, effective July 1. **L. 88:** (8) repealed, p. 519, § 34, effective July 1. **L. 94:** Entire section amended, p. 1484, § 5, effective July 1. **L. 2002:** (7) amended, p. 1475, § 61, effective October 1. **L. 2004:** (4), IP(6), and (9) amended and (10) added, pp. 1307, 1303, §§ 40, 34, effective May 28; (9) amended, p. 1815, § 47, effective August 4. **L. 2006:** (6)(b) amended, p. 782, § 16, effective July 1; (4) repealed and IP(6) and (7) amended, pp. 85, 84, §§ 18, 16, effective August 7.

Editor's note: (1) This section is similar to former §§ 12-25-104 and 12-25-120 as they existed prior to 1985.

(2) Subsection (4) was relocated to § 12-25-108 (1)(n) in 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (7), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For note, "Licensing of Occupations and Professions in Colorado", see 35 Dicta 235 (1958).

12-25-106. State board of licensure - subject to termination - repeal of article.

(1) A state board of licensure for architects, professional engineers, and professional land surveyors is hereby created, the duty of which shall be to administer the provisions of this article. Duties of the board shall include those provided in sections 12-25-107, 12-25-207, and 12-25-307.

(2) (a) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state, unless extended as provided in that section, are applicable to the board created by this section.

(b) This article is repealed, effective July 1, 2013.

(3) The board shall consist of thirteen members. Four members shall be professional engineers, with no more than two of the four engaged in the same discipline of engineering service or practice; three members shall be practicing professional land surveyors; three members shall be practicing licensed architects; and three members shall be citizens of the United States and residents of this state for at least one year who have not practiced architecture, engineering, or land surveying.

(4) Each professional engineer member of the board shall be a citizen of the United States and a resident of this state for at least one year and shall have been licensed as a professional engineer and practicing as such for at least five years. Professional land surveyor members of the board shall have the qualifications outlined in section 12-25-206.

(5) Appointments to the board shall be made by the governor and shall be made to provide for staggering of terms of members so that not more than three members' terms expire each year. Thereafter appointments shall be for terms of four years. Each board member shall hold office until the expiration of the term for which such member is appointed or until a successor has been duly appointed and qualified. Appointees shall be limited to two full terms. The governor may remove any member of the board for misconduct, incompetence, or neglect of duty.

(6) Each appointee shall receive a certificate of his appointment from the governor.

(7) The director of the division of professions and occupations shall appoint a program director for the board and such other personnel as are deemed necessary for the board to perform its statutory duties, pursuant to section 13 of article XII of the state constitution.

Source: L. 85: Entire article R&RE, p. 465, § 1, effective July 1. L. 88: (3) to (7) amended, p. 503, § 2, effective July 1. L. 91: (2) amended, p. 681, § 21, effective April 20. L. 94: (2)(b) and (5) amended, p. 1485, § 6, effective July 1. L. 2004: (1), (2)(a), (2)(b), (3), (4), and (7) amended, pp. 1292, 1291, 1294, 1307, §§ 6, 1, 4, 11, 41, effective May 28. L. 2006: (1) and (3) amended, p. 741, § 6, effective July 1.

Editor's note: This section is similar to former §§ 12-25-105, 12-25-107, and 12-25-108 as they existed prior to 1985.

Cross references: For additional duties of the board in relation to land surveying, see § 12-25-207.

ANNOTATION

Law reviews. For note, "Licensing of Occupations and Professions in Colorado", see 35 Dicta 235 (1958).

12-25-107. Powers and duties of the board. (1) In order to carry into effect the provisions of this part 1, the board shall:

(a) Adopt and promulgate, under the provisions of section 24-4-103, C.R.S., such rules and regulations as it may deem necessary or proper to carry out the provisions of this article;

(b) Adopt rules of professional conduct for professional engineers under the provisions of section 24-4-103, C.R.S., which rules shall be published. Such publication shall constitute due notice to all professional engineers.

(c) Keep a record of its proceedings and of all applications. The application record for each applicant shall include:

(I) Name, age, and residence of the applicant;

(II) Date of application;

(III) Place of business of the applicant;

(IV) Education of the applicant;

(V) Engineering experience of the applicant;

(VI) Date and type of action taken by the board;

(VII) Such other information as may be deemed necessary by the board;

(d) (Deleted by amendment, L. 2004, p. 1294, § 12, effective May 28, 2004.)

(e) (I) (Deleted by amendment, L. 2003, p. 1305, § 1, effective April 22, 2003.)

(II) Make available through printed or electronic means the following:

(A) (Deleted by amendment, L. 2004, p. 1294, § 12, effective May 28, 2004.)

(B) Statutes administered by the board;

(C) A list of the names and addresses, of record, of all professional engineers;

(D) (Deleted by amendment, L. 2003, p. 1305, § 1, effective April 22, 2003.)

(E) Rules of the board;

(F) Such other pertinent information as the board deems necessary;

(G) The rules of professional conduct adopted pursuant to paragraph (b) of this subsection (1);

(f) Provide information to the public regarding the requirements for compliance with this part 1;

(g) Provide for written examinations in the "fundamentals of engineering" and the "principles and practice of engineering". Examinations shall be given as often as practicable, at such locations as the board shall determine. The board shall ensure that the passing score for any examination shall be set to measure the level of minimum competency. An applicant who fails to pass the prescribed examination may be reexamined at the next regularly scheduled examination.

(h) Adopt and have an official seal;

(i) Hold at least six regular meetings each year. Special meetings shall be held at such times as the bylaws of the board may provide. The board shall elect annually a chairman, a vice-chairman, and a secretary. A quorum of the board shall consist of not less than five members.

(j) Participate in the affairs of the national council of engineering examiners and send a minimum of one delegate to the national meeting annually.

(2) The division of professions and occupations in the department of regulatory agencies may employ at least one investigator qualified to investigate complaints relative to the provisions of this part 1.

Source: L. 85: Entire article R&RE, p. 466, § 1, effective July 1. L. 88: (1)(g) and (1)(i) amended, p. 504, § 3, effective July 1. L. 94: (1)(e) amended, p. 1485, § 7, effective July 1. L. 2003: (1)(b) and (1)(e) amended, p. 1305, § 1, effective April 22. L. 2004: (1)(b), (1)(d), (1)(e)(II)(A), (1)(g), and (2) amended, pp. 1294, 1308, §§ 12, 44, effective May 28.

Editor's note: This section is similar to former § 12-25-106 as it existed prior to 1985.

Cross references: For additional powers and duties of the board in relation to land surveying, see § 12-25-207.

ANNOTATION

Annotator's note. The case annotated below was decided under repealed § 51-1-19, CRS 53, the subject matter of which was similar to this section.

A license may be revoked for any reason that would have justified a refusal to issue it in the first instance. State Bd. of Registration for Prof'l Eng'rs v. Antonio, 159 Colo. 51, 409 P.2d 505 (1966).

It may be revoked for unfitness of the licensee to engage in the particular occupation or privi-

lege or for fraud or deceit in obtaining the license. State Bd. of Registration for Prof'l Eng'rs v. Antonio, 159 Colo. 51, 409 P.2d 505 (1966).

A misstatement of the applicant as to a matter which would not have justified refusal of the license is not a ground for revocation, particularly where the misstatement is the result of a misunderstanding. State Bd. of Registration for Prof'l Eng'rs v. Antonio, 159 Colo. 51, 409 P.2d 505 (1966).

12-25-108. Disciplinary actions - grounds for discipline. (1) The board has the power to deny, suspend, revoke, or refuse to renew the license and certificate of licensure or enrollment of, limit the scope of practice of, or place on probation, any professional engineer or engineer-intern who is found guilty of:

(a) Engaging in fraud, misrepresentation, or deceit in obtaining or attempting to obtain a certificate of licensure or enrollment;

(b) Failing to meet the generally accepted standards of engineering practice whether through act or omission;

(c) A felony that is related to the ability to practice engineering; except that the board shall be governed by the provisions of section 24-5-101, C.R.S., in considering such conviction or plea. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be presumptive evidence of such conviction or plea for the purposes of any hearing under this part 1. A plea of nolo contendere, or its equivalent, accepted by the court shall be considered as a conviction.

(d) (Deleted by amendment, L. 88, p. 504, § 4, effective July 1, 1988.)

(e) Violating, or aiding or abetting in the violation of, the provisions of this part 1, any rule or regulation adopted by the board in conformance with the provisions of this part 1, or any order of the board issued in conformance with the provisions of this part 1;

(f) Using false, deceptive, or misleading advertising;

(g) Performing services beyond one's competency, training, or education;

(h) Failing to report to the board any professional engineer known to have violated any provision of this part 1 or any board order or rule;

(i) Being addicted to or dependent upon alcohol or habit-forming drugs or controlled substances as defined in section 18-18-102 (5), C.R.S.;

(j) Using any schedule I controlled substance, as set forth in section 18-18-203, C.R.S.;

(k) Failing to report to the board any malpractice claim against such professional engineer or any partnership, corporation, limited liability company, or joint stock association of which such professional engineer is a member, that is settled or in which judgment is rendered, within sixty days of the effective date of such settlement or judgment, if such claim concerned engineering services performed or supervised by such engineer;

(l) Failing to pay any fine assessed pursuant to this article;

(m) Violating any law or regulation governing the practice of engineering in another state or jurisdiction. A plea of nolo contendere or its equivalent accepted by the board of another state or jurisdiction may be considered to be the same as a finding of guilty for purposes of any hearing under this part 1.

(n) Using in any manner an expired, suspended, or revoked license, certificate, or seal, practicing or offering to practice when not qualified, or falsely claiming that the individual is licensed.

(2) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the professional engineer or engineer-intern.

(b) When a letter of admonition is sent by the board, by certified mail, to a professional engineer or engineer-intern, the professional engineer or engineer-intern shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(3) (Deleted by amendment, L. 94, p. 1486, § 8, effective July 1, 1994.)

(4) (a) In addition to any other penalty that may be imposed pursuant to this article, any professional engineer violating any provision of this article or any rule promulgated pursuant to this article may be fined for each violation proven by the board as follows:

(I) In the first administrative proceeding against a professional engineer, a fine of not less than fifty dollars and not more than five hundred dollars;

(II) In any subsequent administrative proceeding against a professional engineer determining that a violation of this article has occurred, a fine of not less than two hundred fifty dollars and not more than five thousand dollars for each violation proven by the board.

(b) All fines collected pursuant to this subsection (4) shall be credited to the general fund.

(5) The board may issue a letter of concern to a professional engineer or an engineer-intern based on any of the grounds specified in subsection (1) of this section without conducting a hearing as specified in section 12-25-109 (4) when an instance of potentially unsatisfactory conduct comes to the board's attention but, in the board's judgment, does not warrant formal action by the board. Letters of concern shall be confidential and shall not be disclosed to members of the public or in any court action unless the board is a party.

Source: L. 85: Entire article R&RE, L. 85 p. 467, § 1, effective July 1. L. 88: Entire section amended, p. 504, § 4, effective July 1. L. 92: (1)(j) amended, p. 390, § 12, effective July 1. L. 94: Entire section amended, p. 1486, § 8, effective July 1. L. 2004: IP(1), (1)(a), (1)(c), (1)(h), (1)(k), (2), and (4)(a) amended and (5) added, pp. 1308, 1306, 1304, §§ 45, 38, 35, effective May 28; (2) amended, p. 1815, § 48, effective August 4. L. 2006: (1)(n) added with relocated provision, p. 85, § 17, effective August 7.

Editor's note: (1) This section is similar to former § 12-25-106 as it existed prior to 1985.

(2) Subsection (1)(n) is similar to former § 12-25-105 (4) as it existed prior to 2006.

Cross references: For an alternative disciplinary action for persons licensed pursuant to this part 1, see § 24-34-106.

12-25-109. Disciplinary proceedings - injunctive relief procedure. (1) The board upon its own motion may, and upon the receipt of a signed complaint in writing from any person shall, investigate the activities of any professional engineer, engineer-intern, or other person who presents grounds for disciplinary action as specified in this part 1.

(2) Repealed.

(3) All charges, unless dismissed by the board, shall be referred to an administrative hearing by the board within five years after the date on which they were filed.

(4) Disciplinary hearings shall be conducted by the board or by an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., and shall be held in the manner prescribed in article 4 of title 24, C.R.S.

(5) and (6) Repealed.

(7) (a) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence,

and materials in any hearing, investigation, accusation, or other matter coming before the board pursuant to this part 1.

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(8) (a) The board is authorized to apply for injunctive relief, in the manner provided by the Colorado rules of civil procedure, to enforce the provisions of this part 1 or to restrain any violation thereof. In such proceedings, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof. The members of the board, its staff, and the attorney general shall not be held personally liable in any such proceeding.

(b) (I) If the board has reason to believe that any individual has engaged in, or is engaging in, any act or practice which constitutes a violation of any provision of this article, the board may initiate proceedings to determine if such a violation has occurred. Hearings shall be conducted in accordance with the provisions of article 4 of title 24, C.R.S.

(II) (Deleted by amendment, L. 2006, p. 782, § 17, effective July 1, 2006.)

(c) In any action brought pursuant to this subsection (8), evidence of the commission of a single act prohibited by this article shall be sufficient to justify the issuance of an injunction or a cease-and-desist order.

(8.2) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee or registrant is acting in a manner that is an imminent threat to the health and safety of the public or a person is acting or has acted without the required license or registration, the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (8.2), the respondent may request a hearing on the question of whether acts or practices in violation of this part 1 have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(8.4) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 1, then, in addition to any specific powers granted pursuant to this part 1, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed or unregistered practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (8.4) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (8.4) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (8.4). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (8.4) does not appear at the hearing, the board may present

evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (8.4) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or registration or has or is about to engage in acts or practices constituting violations of this part 1, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed or unregistered.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (8.4), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of paragraph (c) of this subsection (8.4) shall be effective when issued and shall be a final order for purposes of judicial review.

(8.5) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed or unregistered act or practice, any act or practice constituting a violation of this part 1, any rule promulgated pursuant to this part 1, any order issued pursuant to this part 1, or any act or practice constituting grounds for administrative sanction pursuant to this part 1, the board may enter into a stipulation with such person.

(8.7) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(8.9) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in subsection (10) of this section.

(9) Repealed.

(10) The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the board. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

(11) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(12) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the licensee or registrant that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee or registrant.

Source: L. 85: Entire article R&RE, p. 468, § 1, effective July 1. L. 87: (4) and (7) amended, p. 945, § 30, effective July 1. L. 88: (2) and (3) amended and (5), (6), and (9) repealed, pp. 506, 519, §§ 5, 34, effective July 1. L. 94: (1), (2), and (8) amended, p. 1488, § 9, effective July 1. L. 2004: (7) amended, p. 1307, § 42, effective May 28; (7) amended and (11) added, p. 1816, §§ 49, 50, effective August 4. L. 2006: (2) repealed, p. 761, § 16, effective July 1; (8)(b)(II) amended and (8.2), (8.4), (8.5), (8.7), (8.9), and (12) added, p. 782, § 17, effective July 1.

Editor's note: This section is similar to former § 12-25-106 as it existed prior to 1985.

Cross references: For the Colorado rules of civil procedure concerning subpoenas, injunctions, and civil contempt, see C.R.C.P. 45, 65, and 107.

12-25-109.5. Reconsideration and review of board action. The board, on its own motion or upon application, at any time after the imposition of any discipline as provided in section 12-25-109, may reconsider its prior action and reinstate or restore such license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any such further action, or the holding of a hearing with respect thereto, shall rest in the sole discretion of the board.

Source: L. 88: Entire section added, p. 506, § 6, effective July 1.

12-25-110. Application for license and certificates. (1) The board shall prescribe and furnish application forms. All applications shall be made under oath and shall be accompanied by the appropriate fee. Each application shall contain a statement indicating whether the applicant has ever been convicted of a felony in this or any other state, or has ever had a license to practice engineering revoked or suspended in this or any other state. Applications that are not complete shall be deemed defective and shall not be accepted by the board. The board shall take no action on defective applications, except to give notice to the applicant of defects. The board shall retain all fees submitted with applications, whether or not such applications are acted upon.

(2) No new application shall be required of any individual requiring reexamination by the board, and any such individual shall be notified when the next examination will be held.

(3) When considering applications, personal interviews may be required by the board only if the application fails to demonstrate that the applicant possesses the minimum qualifications necessary to qualify to take the written examination.

(4) Whenever the board is reviewing or considering the conviction of a crime, it shall be governed by the provisions of section 24-5-101, C.R.S.

(5) No individual whose license or enrollment has been revoked shall be allowed to reapply for licensure or enrollment earlier than two years after the effective date of the revocation.

Source: L. 85: Entire article R&RE, p. 469, § 1, effective July 1. L. 88: (3) and (4) amended and (5) added, p. 507, § 7, effective July 1. L. 94: (2) and (5) amended, p. 1489, § 10, effective July 1. L. 2004: (1) and (5) amended, p. 1309, § 46, effective May 28.

Editor's note: This section is similar to former § 12-25-106 as it existed prior to 1985.

12-25-111. Eligibility for engineer-intern. To be eligible for enrollment as an engineer-intern, an applicant shall provide documentation of such applicant's technical competence.

Source: L. 85: Entire article R&RE, p. 469, § 1, effective July 1. L. 88: Entire section amended, p. 507, § 8, effective July 1. L. 94: Entire section amended, p. 1489, § 11, effective July 1.

Editor's note: This section is similar to former § 12-25-111 as it existed prior to 1985.

12-25-112. Qualifications for engineer-intern. (1) (a) An applicant may qualify for enrollment as an engineer-intern by endorsement if such applicant is enrolled in good standing in another jurisdiction requiring qualifications substantially equivalent to those currently required of applicants under this part 1 or if, at the time of initial enrollment in such jurisdiction, such applicant met the requirements for enrollment then in existence under Colorado law.

(b) Upon completion of the application and approval by the board, the applicant shall be enrolled as an engineer-intern if the applicant is otherwise qualified pursuant to section 12-25-111.

(2) (a) An applicant may qualify for enrollment as an engineer-intern by graduation and examination if such applicant passes the fundamentals of engineering examination.

(b) In order to be admitted to the examination pursuant to paragraph (a) of this subsection (2), the applicant must:

(I) Have graduated from a board-approved engineering or engineering technology curriculum of four or more years; or

(II) Have senior status in a board-approved engineering or engineering technology curriculum of four or more years.

(c) Upon passing the examination and the submission of official transcripts verifying graduation or impending graduation, the applicant shall be enrolled as an engineer-intern if the applicant is otherwise qualified pursuant to section 12-25-111.

(3) (a) An applicant may qualify for enrollment as an engineer-intern by graduation, experience, and examination if such applicant passes the fundamentals of engineering examination and possesses a total of six years of progressive engineering experience, of which educational study may be a part.

(b) In order to be admitted to the examination pursuant to paragraph (a) of this subsection (3), the applicant must:

(I) (Deleted by amendment, L. 2004, p. 1295, § 13, effective May 28, 2004.)

(II) (A) Have graduated from an engineering curriculum of four or more years not approved by the board or from a related science curriculum of four or more years; and

(B) Have four years of progressive engineering experience, of which educational study may be a part.

(c) Upon passing the examination and the submission of evidence of experience satisfactory to the board, the applicant shall be enrolled as an engineer-intern if the applicant is otherwise qualified pursuant to section 12-25-111.

(4) (a) An applicant may qualify for enrollment as an engineer-intern by experience and examination if such applicant passes the fundamentals of engineering examination.

(b) In order to be admitted to the examination pursuant to paragraph (a) of this subsection (4), the applicant must:

(I) Have graduated from high school or its equivalent; and

(II) Have six years of progressive engineering experience, of which educational study may be a part.

(c) Upon passing the examination and the submission of evidence of experience satisfactory to the board, the applicant shall be enrolled as an engineer-intern if the applicant is otherwise qualified pursuant to section 12-25-111.

Source: L. 85: Entire article R&RE, p. 469, § 1, effective July 1. L. 88: (1)(a) amended, p. 507, § 9, effective July 1. L. 94: Entire section amended, p. 1489, § 12, effective July 1. L. 2004: (2)(b) and (3)(b)(I) amended, p. 1295, § 13, effective May 28.

Editor's note: This section is similar to former § 12-25-112 as it existed prior to 1985.

12-25-113. Eligibility for professional engineer. To be eligible for licensing as a professional engineer, an applicant shall provide documentation of such applicant's technical competence.

Source: L. 85: Entire article R&RE, p. 470, § 1, effective July 1. L. 88: Entire section amended, p. 507, § 10, effective July 1. L. 94: Entire section amended, p. 1491, § 13, effective July 1. L. 2004: Entire section amended, p. 1295, § 14, effective May 28.

Editor's note: This section is similar to former § 12-25-109 as it existed prior to 1985.

ANNOTATION

Language concerning good moral character in § 12-48.5-108, which is similar to language in this section, is applied in R & F Enters.,

Inc. v. Bd. of County Comm'rs, 199 Colo. 137, 606 P.2d 64 (1980).

12-25-114. Qualifications for professional engineer. (1) (a) An applicant may qualify for licensing as a professional engineer by endorsement if such applicant is licensed in good standing in another jurisdiction requiring qualifications substantially equivalent to those currently required of applicants under this part 1 or if, at the time of initial licensure in such jurisdiction, such applicant met the requirements for licensure then in existence under Colorado law.

(b) Upon completion of the application and approval by the board, the applicant shall be licensed as a professional engineer if the applicant is otherwise qualified pursuant to section 12-25-113.

(2) (a) An applicant may qualify for licensing as a professional engineer by graduation, experience, and examination if such applicant passes the principles and practice of engineering examination.

(b) In order to be admitted to the examination pursuant to paragraph (a) of this subsection (2), the applicant must:

(I) (A) Have graduated from a board-approved engineering curriculum of four or more years; and

(B) Have eight years of progressive engineering experience, of which educational study may be a part; and

(C) Have been enrolled as an engineer-intern in this state; or

(II) (A) Have graduated from a board-approved engineering technology curriculum of four or more years; and

(B) Have ten years of progressive engineering experience, of which educational study may be a part; and

(C) Have been enrolled as an engineer-intern in this state; or

(III) (A) Have graduated from an engineering curriculum of four or more years not approved by the board or from a related science curriculum of four or more years; and

(B) Have ten years of progressive engineering experience, of which educational study may be a part; and

(C) Have been enrolled as an engineer-intern in this state; or

(IV) (A) Have graduated from an engineering curriculum of four or more years or from a related science curriculum of four or more years; and

(B) Have twenty years of progressive engineering experience, of which educational study may be a part.

(c) Upon passing the examination and the submission of evidence of experience satisfactory to the board, the applicant shall be licensed as a professional engineer if the applicant is otherwise qualified pursuant to section 12-25-113.

(3) (a) An applicant may qualify for licensing as a professional engineer by experience and examination if such applicant passes the principles and practice of engineering examination.

(b) In order to be admitted to the examination pursuant to paragraph (a) of this subsection (3), the applicant must:

(I) Have twelve years of progressive engineering experience, of which educational study may be a part; and

(II) Have been enrolled as an engineer-intern in this state.

(c) Upon passing the examination and the submission of evidence of experience satisfactory to the board, the applicant shall be licensed as a professional engineer if the applicant is otherwise qualified pursuant to section 12-25-113.

(4) (a) A professional engineer who has been duly licensed to practice engineering in this state and who is over sixty-five years of age, upon application, may be classified as a retired professional engineer. Individuals who are so classified shall lose their licensure and shall not practice engineering and shall pay a fee to retain retired professional engineer status.

(b) (I) A retired professional engineer shall be reinstated to the status of a professional engineer upon payment of the renewal fee. No other fee shall be assessed against such retired professional engineer as a penalty.

(II) For any professional engineer who has been retired for two or more years, the board may require reexamination or recertification, unless the board is satisfied of such retired professional engineer's continued competence.

Source: **L. 85:** Entire article R&RE, p. 470, § 1, effective July 1. **L. 88:** (1)(a), (2)(a)(IV)(B), and (4) amended, p. 508, § 11, effective July 1. **L. 94:** Entire section amended, p. 1491, § 14, effective July 1. **L. 2004:** (1), (2)(a), (2)(c), (3)(a), (3)(c), (4)(a), and (4)(b)(I) amended, p. 1295, § 15, effective May 28.

Editor's note: This section is similar to former § 12-25-110 as it existed prior to 1985.

ANNOTATION

Law reviews. For article, "The State Bar Act — Another Major Objective in the 1949 Legislature", see 25 Dicta 294 (1948). For note,

"Licensing of Occupations and Professions in Colorado", see 35 Dicta 235 (1958).

12-25-115. Licenses - certificates. (1) The board, upon acceptance of an applicant who has demonstrated competence in professional engineering and upon receipt of payment of the required fee, shall license and issue a numbered certificate of licensure to said applicant.

(2) The board, upon acceptance of a qualified engineer-intern and upon receipt of payment of the required fee, shall certify said applicant.

(3) A license may be issued at any time but shall expire in conformance with section 24-34-102 (8), C.R.S. A license shall be renewed at the time of such expiration.

(4) Licenses and registrations shall be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license or registration pursuant to the schedule established by the director of the division of professions and occupations, such license or registration shall expire. Any person whose license or registration has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(5) and (6) Repealed.

(7) A professional engineer shall give immediate notice to the board, in writing, of any change of address.

Source: **L. 85:** Entire article R&RE, p. 472, § 1, effective July 1. **L. 88:** (1) to (3) amended and (5) and (6) repealed, pp. 508, 519, §§ 12, 34, effective July 1. **L. 94:** (2) and (4) amended, p. 1493, § 15, effective July 1. **L. 2004:** (1) and (7) amended, p. 1296, § 16, effective May 28; (3) and (4) amended, p. 1811, § 40, effective August 4.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8).

12-25-116. Fees - disposition. (1) Pursuant to section 24-34-105, C.R.S., the board shall charge and collect fees for the following:

(a) With respect to professional engineers:

(I) Renewal of a license;

(II) Replacement of a license or a certificate of licensure;

(III) Application for licensure by endorsement;

(IV) Application for the principles and practice of engineering examination;

- (V) Issuance of a certificate of licensure as a professional engineer;
- (VI) Late renewal of a license;
- (VII) Reexamination for the principles and practice of engineering examination;
- (VIII) Renewal of an expired license;
- (IX) Listing as a retired professional engineer;
- (b) With respect to engineer-interns:
 - (I) (Deleted by amendment, L. 2004, p. 1296, § 17, effective May 28, 2004.)
 - (II) (Deleted by amendment, L. 94, p. 1493, § 16, effective July 1, 1994.)
 - (III) Application for the fundamentals of engineering examination;
 - (IV) Reexamination for the fundamentals of engineering examination;
 - (V) Application for enrollment by endorsement.

(2) All moneys collected by the board shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for expenditures of the board required to perform its duties under this part 1, which expenditures shall be made from such appropriations upon vouchers and warrants drawn pursuant to law. The division shall employ, subject to section 13 of article XII of the state constitution, such clerical or other assistants as are necessary for the proper performance of its work.

(3) and (4) Repealed.

Source: L. 85: Entire article R&RE, p. 472, § 1, effective July 1. L. 88: (3) and (4) repealed, p. 519, § 34, effective July 1. L. 94: (1)(b) amended, p. 1493, § 16, effective July 1. L. 2004: (1)(a)(II), (1)(a)(III), (1)(a)(V), (1)(a)(IX), (1)(b)(I), and (2) amended, p. 1296, § 17, effective May 28.

Editor's note: This section is similar to former §§ 12-25-116 and 12-25-119 as they existed prior to 1985.

12-25-117. Professional engineer seal. (1) Upon receipt of a certificate of licensure, the newly licensed professional engineer may obtain a seal. A crimp type seal, a rubber stamp type seal, or an electronic type seal may be used. The seal shall be of a design approved by the board and shall contain the professional engineer's name and license number and the designation "Colorado licensed professional engineer". Colorado professional engineers licensed before July 1, 2004, may continue to use their prior existing seals.

(2) Repealed.

(3) The seal and signature shall be used by an engineer only when the work being stamped was under the engineer's responsible charge.

(4) (Deleted by amendment, L. 94, p. 1493, § 17, effective July 1, 1994.)

Source: L. 85: Entire article R&RE, p. 473, § 1, effective July 1. L. 88: (2) repealed and (4) added, pp. 519, 508, §§ 34, 13, effective July 1. L. 94: (3) and (4) amended, p. 1493, § 17, effective July 1. L. 2004: (1) amended, p. 1309, § 47, effective May 28.

Editor's note: This section is similar to former § 12-25-118 as it existed prior to 1985.

12-25-118. Immunity in professional review. Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this part 1, and any person who lodges a complaint pursuant to this part 1 shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in

lodging a complaint or participating in any investigative or administrative proceeding pursuant to this part 1 shall be immune from any civil or criminal liability that may result from such participation pursuant to this part 1.

Source: L. 85: Entire article R&RE, p. 474, § 1, effective July 1. L. 94: Entire section amended, p. 1494, § 18, effective July 1. L. 2004: Entire section amended, p. 1812, § 41, effective August 4.

Editor's note: This section is similar to former § 12-25-121 as it existed prior to 1985.

12-25-119. Prior actions. (1) The board shall take over, assume, and continue all actions and requirements regarding engineers from its predecessor, the state board of registration for professional engineers and land surveyors. There shall be no legal discontinuity, and previously licensed engineers shall continue their licensure as professional engineers.

(2) The name change from the state board of licensure for professional engineers and professional land surveyors to the state board of licensure for architects, professional engineers, and professional land surveyors shall not be construed to change the entity. There shall be no legal discontinuity, and previously licensed engineers shall continue their licensure as professional engineers, and any obligations of the board or of persons to the board shall not be affected by the name change.

Source: L. 85: Entire article R&RE, p. 474, § 1, effective July 1. L. 2004: Entire section amended, p. 1297, § 18, effective May 28. L. 2006: Entire section amended, p. 742, § 7, effective July 1.

Editor's note: This section is similar to former § 12-25-117 as it existed prior to 1985.

PART 2

SURVEYORS

12-25-201. General provisions. In order to safeguard life, health, and property and to promote the public welfare, the practice of professional land surveying in Colorado is hereby declared to be subject to regulation. It shall be unlawful for any individual to practice professional land surveying in Colorado or to use in connection with such individual's name, or to otherwise assume, or to advertise any title or description tending to convey the impression that such individual is a professional land surveyor, unless such individual has been duly licensed or is exempted under the provisions of this part 2. The practice of professional land surveying shall be deemed a privilege granted by the state of Colorado based on the qualifications of the individual as evidenced by such individual's licensing.

Source: L. 85: Entire article R&RE, p. 474, § 1, effective July 1. L. 94: Entire section amended, p. 1494, § 19, effective July 1. L. 2004: Entire section amended, p. 1297, § 19, effective May 28.

Editor's note: This section is similar to former § 12-25-201 as it existed prior to 1985.

ANNOTATION

Annotator's note. Since § 12-25-201 is similar to § 12-25-202 as it existed prior to the 1981 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

To practice a profession is to hold one's self

out as following that profession as a calling, as one's usual business. Beaver Brook Resort Co. v. Stevens, 76 Colo. 131, 230 P. 121 (1924) (decided under repealed laws antecedent to CSA, C. 62, § 18).

Surveyors are licensed to protect the public

from unqualified work. *S. Park Land & Livestock Co. v. Hamilton Enters., Ltd.*, 189 Colo. 157, 538 P.2d 444 (1975).

Licensee not required to revoke certification on changed documents. The statutes governing the licensing of surveyors and engineers do not require that where documents prepared by one licensed under their authority have been changed without the licensee's knowledge or approval before they become of public record, the licensee has an obligation to revoke his certification on them. Such a duty is nowhere mentioned in any of the statutes. *S. Park Land &*

Livestock Co. v. Hamilton Enters., Ltd., 189 Colo. 157, 538 P.2d 444 (1975).

Such action was arbitrary and unreasonable. Where landowner, who had contracted for survey and platting of land, altered two plats without surveyor's knowledge or permission, surveyor's revocation of its certificate for all the plats filed with the county planning commission, which action rendered its work totally valueless to landowner, was arbitrary and unreasonable. *S. Park Land & Livestock Co. v. Hamilton Enters., Ltd.*, 189 Colo. 157, 538 P.2d 444 (1975).

12-25-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Basic control for engineering projects" means survey markers set on or in the vicinity of a construction project to enable all components of the project to be built in compliance with plans and specifications with respect to the project location, orientation, elevation, and relationship to property, easement, or right-of-way boundaries.

(1.5) "Board" means the state board of licensure for architects, professional engineers, and professional land surveyors, created by section 12-25-106.

(2) (Deleted by amendment, L. 2004, p. 1297, § 20, effective May 28, 2004.)

(3) "Certificate" means the media issued by the board under seal to evidence licensing or enrollment.

(3.3) "Geodetic surveying" means the performance of surveys in which measure or account is taken of the shape, size, and gravitational forces of the earth to determine or predetermine the horizontal or vertical positions of points, monuments, or stations for use in the practice of professional land surveying or for stating the geodetic position of control points, monuments, or stations by using a coordinate system or derivative thereof recognized by the national geodetic survey.

(3.5) "Land surveyor-intern" means an individual certified by the board after demonstrating such individual's competency, as required by section 12-25-212.

(4) "License" means the formal legal permission to practice land surveying granted by the board.

(5) Repealed.

(6) (a) "Professional land surveying" means the application of special knowledge of principles of mathematics, methods of measurement, and law for the determination and preservation of land boundaries. "Professional land surveying" specifically includes:

(I) Restoration and rehabilitation of corners and boundaries in the United States public land survey system;

(II) Obtaining and evaluating boundary evidence;

(III) Determination of the areas and elevations of land parcels;

(IV) Subdivision of land parcels into smaller parcels and layout of alignment and grades for streets or roads to serve such smaller parcels;

(V) Measuring and platting underground mine workings;

(VI) Preparation of the boundary control portions of geographic information systems and land information systems except as allowed otherwise by section 38-51-109.3, C.R.S.;

(VII) Establishment, restoration, and rehabilitation of land survey monuments and bench marks;

(VIII) Preparation of land survey plats, condominium plats, monument records, property descriptions that result from the practice of professional land surveying, and survey reports;

(IX) Surveying, monumenting, and platting of easements and rights-of-way;

(X) Geodetic surveying;

(X.5) Basic control for engineering projects; and

(XI) Any other activities incidental to and necessary for the adequate performance of the services described in this paragraph (a).

(b) An individual shall be construed as practicing or offering to practice “professional land surveying” within the meaning and intent of this part 2 if such individual engages therein or, by verbal claim, sign, letterhead, or card or in any other way holds himself or herself out to be a professional land surveyor or as being able to perform any professional land surveying service or if such individual does perform any professional land surveying service or work.

(c) Professional land surveying may include other types of surveying.

(7) “Professional land surveyor” means an individual who practices professional land surveying and who is currently licensed with the board after demonstrating competency to practice, as required by section 12-25-214.

(8) and (9) (Deleted by amendment, L. 2004, p. 1297, § 20, effective May 28, 2004.)

(10) “Responsible charge” means personal responsibility for the control and direction of professional land surveying work.

(11) (Deleted by amendment, L. 94, p. 1495, § 20, effective July 1, 1994.)

(12) “Surveyor quorum of the board” means not less than the three professional land surveyor members of the board and one of the nonengineering, non-land surveyor members of the board.

Source: L. 85: Entire article R&RE, p. 474, § 1, effective July 1. L. 88: (5) repealed and (12) amended, pp. 519, 509, §§ 34, 14, effective July 1. L. 94: (2), (3), (6), (7), (8), (9), and (11) amended and (3.5) added, p. 1495, § 20, effective July 1. L. 97: (6) amended, p. 1627, § 1, effective July 1. L. 2004: (1) to (3), (6)(a)(VIII), (6)(a)(X), (7) to (9), and (12) amended, pp. 1297, 1292, §§ 20, 5, effective May 28. L. 2006: (1) amended, p. 742, § 8, effective July 1. L. 2007: (1) and (6)(a)(X) amended and (1.5), (3.3), and (6)(a)(X.5) added, pp. 292, 293, §§ 1, 2, effective August 3.

Editor’s note: This section is similar to former § 12-25-202 as it existed prior to 1985.

ANNOTATION

Law reviews. For comment on *Prouty v. Heron*, appearing below, see 26 Rocky Mt. L. Rev. 91 (1953).

To practice a profession is to hold one’s self out as following that profession as a calling, as one’s usual business. *Beaver Brook Resort Co. v. Stevens*, 76 Colo. 131, 230 P. 121 (1924) (decided under repealed laws antecedent to CSA, C. 62, § 18).

Surveyors are licensed to protect the public from unqualified work. *S. Park Land & Livestock Co. v. Hamilton Enters., Ltd.*, 189 Colo. 157, 538 P.2d 444 (1975).

Licensee not required to revoke certification on changed documents. The statutes governing the licensing of surveyors and engineers do not require that where documents prepared by one licensed under their authority have been

changed without the licensee’s knowledge or approval before they become of public record, the licensee has an obligation to revoke his certification on them. Such a duty is nowhere mentioned in any of the statutes. *S. Park Land & Livestock Co. v. Hamilton Enters., Ltd.*, 189 Colo. 157, 538 P.2d 444 (1975).

Such action was arbitrary and unreasonable. Where landowner, who had contracted for survey and platting of land, altered two plats without surveyor’s knowledge or permission, surveyor’s revocation of its certificate for all the plats filed with the county planning commission, which action rendered its work totally valueless to landowner, was arbitrary and unreasonable. *S. Park Land & Livestock Co. v. Hamilton Enters., Ltd.*, 189 Colo. 157, 538 P.2d 444 (1975).

12-25-203. Exemptions. (1) This part 2 shall not be construed to prevent or to affect:

(a) The work of an employee or subordinate of a professional land surveyor if such work is performed under the responsible charge of the professional land surveyor;

(b) The practice of employees of the federal government duly authorized under 43 U.S.C. sec. 772 and 43 CFR 9180.0-3, while engaged in the practice of surveying within the course of their federal employment in the state of Colorado; or

(c) The rights of any other legally recognized profession.

Source: **L. 85:** Entire article R&RE, p. 475, § 1, effective July 1. **L. 88:** (1)(b) amended, p. 509, § 15, effective July 1. **L. 94:** (1)(a) and (1)(b) amended, p. 1496, § 21, effective July 1. **L. 2004:** (1)(a) amended, p. 1298, § 21, effective May 28.

Editor's note: This section is similar to former § 12-25-220 as it existed prior to 1985.

12-25-204. Forms of organizations permitted to practice. (1) No partnership, corporation, limited liability company, or joint stock association shall be licensed under this part 2.

(2) No partnership, corporation, limited liability company, or joint stock association shall practice or offer to practice land surveying in this state unless the individual in responsible charge of the land surveying activities of the organization is a professional land surveyor. All documents, plats, and reports that are involved in such practice, issued by or for such organizations, shall bear the seal and signature of the professional land surveyor who is in responsible charge of and directly responsible for such land surveying work.

Source: **L. 85:** Entire article R&RE, p. 476, § 1, effective July 1. **L. 94:** Entire section amended, p. 1496, § 22, effective July 1. **L. 2004:** Entire section amended, p. 1298, § 22, effective May 28.

12-25-205. Unlawful practice - penalties - enforcement. (1) It is unlawful for any individual to practice or offer to practice professional land surveying in Colorado without being licensed in accordance with the provisions of this part 2, or for any individual or entity to use or employ the words "land surveyor", "land surveying", or "professional land surveyor" or words of similar meaning or any modification or derivative except as authorized in this part 2.

(2) It is unlawful for any individual, partnership, professional association, joint stock company, limited liability company, or corporation to practice, or offer to practice, land surveying in this state unless the individual in responsible charge has complied with the provisions of this part 2.

(3) Repealed.

(3.5) The practice of professional land surveying in violation of any of the provisions of this part 2 shall be either:

(a) Restrained by injunction in an action brought by the attorney general or by the district attorney of the proper district in the county in which the violation occurs; or

(b) (I) Ceased by order of the board pursuant to section 12-25-209 (8.2) to (8.9).

(II) (Deleted by amendment, L. 2006, p. 784, § 18, effective July 1, 2006.)

(4) Any person who practices or offers or attempts to practice professional land surveying without an active license issued under this part 2 commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and, for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(5) It is the duty of all duly constituted officers of the law of Colorado, or any political subdivision thereof, to enforce the provisions of this part 2 and to prosecute any person violating this part 2.

(6) The attorney general or the attorney general's assistant shall act as legal advisor to the board and render such timely legal assistance as may be necessary in carrying out the provisions of this part 2. With the concurrence of the attorney general, the board may employ counsel and assistance necessary to aid in the enforcement of this part 2, and the compensation and expenses therefor shall be paid from the funds of the board.

(7) Any individual practicing professional land surveying, as defined in this part 2, who is not licensed or exempt shall not collect compensation of any kind for such practice, and, if compensation has been paid, such compensation shall be refunded in full.

(8) After finding that an individual has unlawfully engaged in the practice of professional land surveying, the board may assess a fine against such unlawfully engaged individual in an amount not less than fifty dollars and not more than five thousand dollars

for each violation proven by the board. Any moneys collected as an administrative fine pursuant to this subsection (8) shall be transmitted to the state treasurer, who shall credit such moneys to the general fund.

Source: **L. 85:** Entire article R&RE, p. 476, § 1, effective July 1. **L. 94:** Entire section amended, p. 1496, § 23, effective July 1. **L. 2002:** (4) amended, p. 1475, § 62, effective October 1. **L. 2004:** (1) to (3), (7), and (8) amended, p. 1304, § 36, effective May 28; (8) amended, p. 1817, § 51, effective August 4. **L. 2006:** (3.5)(b) amended, p. 784, § 18, effective July 1; (3) repealed and IP(3.5) and (4) amended, pp. 86, 85, §§ 21, 19, effective August 7.

Editor's note: (1) This section is similar to former § 12-25-219 as it existed prior to 1985. (2) Subsection (3) was relocated to § 12-25-208 (1)(n) in 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (4), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Annotator's note. Since § 12-25-205 is similar to § 12-25-212 as it existed prior to the 1981 repeal and reenactment of this article, a relevant case construing that provision has been included in the annotations to this section.

This section provides express criminal sanctions should a surveyor, or an outsider, violate seal certification. *S. Park Land & Livestock Co. v. Hamilton Enters., Ltd.*, 189 Colo. 157, 538 P.2d 444 (1975).

Section 38-51-104 similar. Section 38-51-104 contains both criminal sanctions for a violation

of the minimum standards for land surveys and plats, and prosecutorial commands similar to this section and § 12-25-213. *S. Park Land & Livestock Co. v. Hamilton Enters., Ltd.*, 189 Colo. 157, 538 P.2d 444 (1975).

Prosecutors. The attorney general and assistants and the district attorney are authorized to prosecute violations or institute proceedings by injunction. *S. Park Land & Livestock Co. v. Hamilton Enters., Ltd.*, 189 Colo. 157, 538 P.2d 444 (1975).

12-25-206. Board - composition - appointments - terms. (1) A professional land surveyor who is a member of the board shall be a citizen of the United States and a resident of Colorado for at least one year.

(2) A professional land surveyor who is designated as a land surveyor member of the board shall have been licensed as a land surveyor for at least five years.

(3) The board shall have a surveyor quorum of the board, as defined in section 12-25-202 (12). The surveyor quorum shall advise the board concerning issues relating to land surveyors.

(4) The governor, in making appointments of professional land surveyors to the board, shall endeavor to select the highest qualified members of the profession willing to serve on the board. Staggered appointments shall be made so that not more than one member's term expires in any one year, and thereafter appointments shall be for terms of four years each. Appointees shall be limited to two full terms each. Each board member shall hold office until the expiration of the term for which such member is appointed or until a successor has been duly appointed.

(5) In the event of a professional land surveyor vacancy on the board due to resignation, death, or any cause resulting in an unexpired term, the governor shall fill such vacancy promptly to allow the surveyor quorum of the board to function.

(6) The governor may remove any professional land surveyor member of the board for official misconduct, incompetence, or neglect of duty.

(7) The surveyor quorum of the board shall elect or appoint annually a chairman, a vice-chairman, and a secretary.

Source: **L. 85:** Entire article R&RE, p. 477, § 1, effective July 1. **L. 88:** (1) to (4) amended, p. 509, § 16, effective July 1. **L. 94:** (4) amended, p. 1498, § 24, effective July 1. **L. 2004:** (2) and (3) amended, p. 1298, § 23, effective May 28.

Editor's note: This section is similar to former §§ 12-25-203, 12-25-204, and 12-25-205 as they existed prior to 1985.

12-25-207. Powers and duties of the board. (1) In order to carry into effect this part 2, the board shall:

(a) Promulgate under the provisions of section 24-4-103, C.R.S., such rules as it may deem necessary and proper;

(b) Require each applicant for licensing or certification to demonstrate competence by means of examination and education and may require work examples as it deems necessary and sufficient for licensing or certification;

(c) Keep a record of its proceedings and of all applications for licensing or certification under this part 2. The application record for each applicant shall include:

(I) Name, age, and residence of the applicant;

(II) Date of application;

(III) Place of business;

(IV) Education of the applicant;

(V) Surveying and other applicable experience of the applicant;

(VI) Type of examination required;

(VII) Date and type of action by the board;

(VIII) Repealed.

(IX) Such other information as may be deemed necessary by the board.

(d) (I) (Deleted by amendment, L. 2003, p. 1306, § 2, effective April 22, 2003.)

(II) Make available through printed or electronic means the following:

(A) The surveying statutes administered by the board;

(B) A list of the names and addresses of record of all currently licensed professional land surveyors;

(C) A list containing the license numbers in numerical sequence and the names of all current and previously licensed professional land surveyors;

(D) The rules of conduct for professional land surveyors adopted pursuant to paragraph (a) of this subsection (1); and

(E) The rules of the board and such other pertinent information as the board deems necessary.

(e) Provide for and administer written examinations to be given as often as practicable at such times and locations as the board shall designate. Written examination papers shall be identified only by numbers and shall be anonymously graded. After review and approval by the board, all examination results shall be recorded, and each examinee's examination results shall be sent to such examinee by first-class mail. The board shall ensure that the passing score on surveying examinations shall be set to measure the level of minimum competency. The board shall publish and make available to interested applicants a list of the subjects included in the surveying examinations that are developed by the board, such subjects being consistent with and related to the various aspects of surveying.

(f) Adopt and have an official seal.

(2) The division of professions and occupations in the department of regulatory agencies may employ at least one investigator to investigate complaints relative to the provisions of this part 2.

Source: L. 85: Entire article R&RE, p. 477, § 1, effective July 1. L. 88: IP(1) and (1)(e) amended and (1)(c)(VIII) repealed, pp. 510, 519, §§ 17, 34, effective July 1. L. 94: (1)(d) and (1)(e) amended, p. 1498, § 25, effective July 1. L. 2003: (1)(a) and (1)(d) amended, p. 1306, § 2, effective April 22. L. 2004: IP(1), (1)(a), (1)(b), IP(1)(c), (1)(d)(II)(B), (1)(d)(II)(C), (1)(d)(II)(E), (1)(e), and (2) amended, p. 1299, § 24, effective May 28.

Editor's note: This section is similar to former §§ 12-25-206, 12-25-208, 12-25-209, and 12-25-213 as they existed prior to 1985.

Cross references: For additional powers and duties of the board in relation to engineering, see § 12-25-107.

12-25-208. Disciplinary actions - grounds for discipline. (1) The board has the power to deny, suspend, revoke, or refuse to renew the license of, or place on probation, limit the scope of practice of, or require additional training of any professional land surveyor or land surveyor-intern who is found guilty of:

(a) Engaging in fraud, misrepresentation, or deceit in obtaining or attempting to obtain a license or enrollment;

(b) Failing to meet the generally accepted standards of the practice of land surveying through act or omission;

(c) A felony that is related to the ability to practice land surveying. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be presumptive evidence of such conviction or plea for the purposes of any hearing under this part 2. A plea of nolo contendere, or its equivalent, accepted by the court shall be considered as a conviction.

(d) (Deleted by amendment, L. 88, p. 510, § 18, effective July 1, 1988.)

(e) Violating, attempting to violate, or aiding or abetting the violation or attempted violation of:

(I) Any provision of this part 2 or article 50, 51, 52, or 53 of title 38, C.R.S.;

(II) Any rule adopted by the board in conformance with the provisions of this part 2; or

(III) Any order of the board issued in conformance with the provisions of this part 2;

(f) Using false, deceptive, or misleading advertising;

(g) Performing services beyond one's competency, training, or education;

(h) Failing to report to the board any professional land surveyor known to have violated any provision of this part 2 or any board order or rule;

(i) Being addicted to or dependent upon alcohol or any habit-forming drugs or controlled substances as defined in section 18-18-102 (5), C.R.S.;

(j) Using any schedule I controlled substance, as set forth in section 18-18-203, C.R.S.;

(k) Failing to report to the board any malpractice claim against such professional land surveyor or any partnership, limited liability company, corporation, or joint stock association of which such professional land surveyor is a member, which claim is settled or in which judgment is rendered, within sixty days after the effective date of such settlement or judgment, if such claim concerned surveying services performed or supervised by such land surveyor;

(l) Failing to pay any fine assessed pursuant to this article;

(m) Violating any law or regulation governing the practice of professional land surveying in another state or jurisdiction. A plea of nolo contendere or its equivalent accepted by the board of another state or jurisdiction may be considered to be the same as a finding of guilty for purposes of any hearing under this part 2.

(n) Attempting to use an expired, revoked, suspended, or nonexistent license, practicing or offering to practice when not qualified, or falsely claiming that the individual is licensed; or

(o) Using in any manner a certificate or certificate number that has not been issued to the individual by the board.

(2) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the professional land surveyor or land surveyor-intern.

(b) When a letter of admonition is sent by the board, by certified mail, to a professional land surveyor or land surveyor-intern, such professional land surveyor or land surveyor-intern shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(3) (Deleted by amendment, L. 94, p. 1499, § 26, effective July 1, 1994.)

(4) (a) In addition to any other penalty that may be imposed pursuant to this section, any professional land surveyor violating any provision of this article or any rule promulgated pursuant to this article may be fined for each violation proven by the board as follows:

(I) In the first administrative proceeding against a professional land surveyor, a fine of not less than fifty dollars and not more than five hundred dollars;

(II) In any subsequent administrative proceeding against a professional land surveyor determining that a violation of this article has occurred, a fine of not less than two hundred fifty dollars and not more than five thousand dollars for each violation proven by the board.

(b) All fines collected pursuant to this subsection (4) shall be credited to the general fund.

(5) The board may issue a letter of concern to a professional land surveyor or land surveyor-intern based on any of the grounds specified in subsection (1) of this section without conducting a hearing as specified in section 12-25-209 (4) when an instance of potentially unsatisfactory conduct comes to the board's attention but, in the board's judgment, does not warrant formal action by the board. Letters of concern shall be confidential and shall not be disclosed to members of the public or in any court action unless the board is a party.

Source: L. 85: Entire article R&RE, p. 478, § 1, effective July 1. L. 88: Entire section amended, p. 510, § 18, effective July 1. L. 92: (1)(j) amended, p. 390, § 13, effective July 1. L. 94: Entire section amended, p. 1499, § 26, effective July 1. L. 2004: (IP)(1), (1)(a), (1)(e)(II), (1)(h), (1)(k), (2), and (4)(a) amended and (5) added, pp. 1305, 1306, §§ 37, 39, effective May 28; (2) amended, p. 1817, § 52, effective August 4. L. 2006: (1)(n) added with relocated provision and (1)(o) added, p. 85, § 20, effective August 7.

Editor's note: (1) This section is similar to former § 12-25-217 as it existed prior to 1985.

(2) Subsection (1)(n) is similar to former § 12-25-205 (3) as it existed prior to 2006.

Cross references: For an alternative disciplinary action for persons registered pursuant to this part 2, see § 24-34-106.

ANNOTATION

Annotator's note. Since § 12-25-208 is similar to § 12-25-211 as it existed prior to the 1981 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

Responsibility to public. The required seal specified in § 12-25-209(3) acknowledges the surveyor's responsibility to protect the public for any mistakes or negligence in the survey which bears the seal. *S. Park Land & Livestock Co. v. Hamilton Enters., Ltd.*, 189 Colo. 157, 538 P.2d 444 (1975).

Licensee not required to revoke certification on changed documents. The statutes governing the licensing of surveyors and engineers do not require that where documents prepared by one licensed under their authority have been changed without the licensee's knowledge or approval before they become of public record, the licensee has an obligation to revoke his certification on them. Such a duty is nowhere

mentioned in any of the statutes. *S. Park Land & Livestock Co. v. Hamilton Enters., Ltd.*, 189 Colo. 157, 538 P.2d 444 (1975).

Such action was arbitrary and unreasonable. Where landowner, who had contracted for survey and platting of land, altered two plats without surveyor's knowledge or permission, surveyor's revocation of its certificate for all the plats filed with the county planning commission, which action rendered its work totally valueless to landowner, was arbitrary and unreasonable. *S. Park Land & Livestock Co. v. Hamilton Enters., Ltd.*, 189 Colo. 157, 538 P.2d 444 (1975).

There is nothing in the statute that provides for the tolling of the three-month limit by investigations of the board, and it is incumbent upon the board to comply with the terms of the act which created it. *Fenwick v. Colo. State Bd. of Registration for Prof'l Eng'rs & Land Surveyors*, 31 Colo. App. 501, 503 P.2d 1038 (1972).

12-25-209. Disciplinary proceedings - injunctive relief procedure. (1) The board upon its own motion may, and upon the receipt of a signed complaint in writing from any person shall, investigate the activities of any professional land surveyor, land surveyor-intern, or other person who presents grounds for disciplinary action as specified in this part 2.

(2) Repealed.

(3) All charges, unless dismissed by the board, shall be referred to administrative hearing by the board within five years after the date on which said charges were filed.

(4) Disciplinary hearings shall be conducted by the board or by an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., and shall be held in the manner prescribed in article 4 of title 24, C.R.S.

(5) and (6) Repealed.

(7) (a) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board pursuant to this part 2.

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(8) (a) The board is authorized to apply for injunctive relief, in the manner provided by the Colorado rules of civil procedure, to enforce the provisions of this part 2, or to restrain any violation thereof. In such proceedings, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof. The members of the board, its staff, and the attorney general shall not be held personally liable in any such proceeding.

(b) (I) If the board has reason to believe that any individual has engaged in, or is engaging in, any act or practice which constitutes a violation of any provision of this article, the board may initiate proceedings to determine if such a violation has occurred. Hearings shall be conducted in accordance with the provisions of article 4 of title 24, C.R.S.

(II) (Deleted by amendment, L. 2006, p. 785, § 19, effective July 1, 2006.)

(c) In any action brought pursuant to this subsection (8), evidence of the commission of a single act prohibited by this article shall be sufficient to justify the issuance of an injunction or a cease-and-desist order.

(8.2) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee or certificate holder is acting in a manner that is an imminent threat to the health and safety of the public or a person is acting or has acted without the required license or certificate, the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed or uncertified practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (8.2), the respondent may request a hearing on the question of whether acts or practices in violation of this part 2 have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(8.4) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 2, then, in addition to any specific powers granted pursuant to this part 2, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed or uncertified practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (8.4) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (8.4) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (8.4). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (8.4) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (8.4) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or certificate or has or is about to engage in acts or practices constituting violations of this part 2, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed or uncertified practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (8.4), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(8.5) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed or uncertified act or practice, any act or practice constituting a violation of this part 2, any rule promulgated pursuant to this part 2, any order issued pursuant to this part 2, or any act or practice constituting grounds for administrative sanction pursuant to this part 2, the board may enter into a stipulation with such person.

(8.7) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(8.9) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in subsection (10) of this section.

(9) Repealed.

(10) The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the board. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

(11) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(12) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the

licensee or certificate holder that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee or certificate holder.

Source: **L. 85:** Entire article R&RE, p. 479, § 1, effective July 1. **L. 87:** (4) and (7) amended, p. 945, § 31, effective March 13. **L. 88:** (2) and (3) amended and (5), (6), and (9) repealed, pp. 512, 519, §§ 19, 34, effective July 1. **L. 94:** (1) and (8) amended, p. 1501, § 27, effective July 1. **L. 97:** (7) amended, p. 1628, § 2, effective July 1. **L. 2004:** (2) and (7) amended and (10) added, p. 1307, § 43, effective May 28; (7) amended and (11) added, pp. 1817, 1818, §§ 53, 54, effective August 4. **L. 2006:** (2) repealed, p. 761, § 17, effective July 1; (8)(b)(II) amended and (8.2), (8.4), (8.5), (8.7), (8.9), and (12) added, p. 785, § 19, effective July 1.

Editor's note: This section is similar to former § 12-25-218 as it existed prior to 1985.

Cross references: For the Colorado rules of civil procedure concerning subpoenas, injunctions, and civil contempt, see C.R.C.P. 45, 65, and 107.

12-25-209.5. Reconsideration and review of board actions. The board, on its own motion or upon application, at any time after the imposition of any discipline as provided in section 12-25-209, may reconsider its prior action and reinstate or restore such license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any such further action, or the holding of a hearing with respect thereto, shall rest in the sole discretion of the board. The professional land surveyor or land surveyor-intern in any action before the board shall have the right to appeal any decision of the board to a court of competent jurisdiction.

Source: **L. 88:** Entire section added, p. 512, § 20, effective July 1. **L. 97:** Entire section amended, p. 1629, § 3, effective July 1. **L. 2004:** Entire section amended, p. 1300, § 25, effective May 28.

12-25-210. Application for licensing or certification. (1) Each application for licensing or certification shall be on a form furnished by the board and shall contain statements made under oath showing the applicant's education and showing a detailed summary of such applicant's surveying experience. Each application shall contain a statement indicating whether the applicant has ever been convicted of a felony in this or in any other state, or has ever had a surveyor's license or registration revoked, suspended, or not renewed, or has been reprimanded or fined relative to surveying in this or any other state. Applications that are not complete shall be deemed defective, and the board shall take no action on defective applications except to give notice to the applicant of the defects. A nonrefundable application fee in an amount set by the board shall accompany each application.

(2) No new application shall be required of an individual requiring reexamination by the board, and such individual shall be notified when the next examination will be held.

(3) Whenever the board is reviewing or considering the conviction of a crime, it shall be governed by the provisions of section 24-5-101, C.R.S.

(4) No individual whose license or enrollment has been revoked shall be allowed to reapply for licensure or enrollment earlier than two years after the effective date of the revocation.

Source: **L. 85:** Entire article R&RE, p. 480, § 1, effective July 1. **L. 88:** (2) and (3) amended and (4) added, p. 512, § 21, effective July 1. **L. 94:** (1) and (4) amended, p. 1501, § 28, effective July 1. **L. 2004:** (1), (2), and (4) amended, p. 1300, § 26, effective May 28.

Editor's note: This section is similar to former § 12-25-212 as it existed prior to 1985.

12-25-211. Eligibility for land surveyor-intern. To be eligible for enrollment as a land surveyor-intern, an applicant shall provide documentation of the applicant's technical competence.

Source: L. 85: Entire article R&RE, p. 480, § 1, effective July 1. L. 88: Entire section amended, p. 513, § 22, effective July 1. L. 94: Entire section amended, p. 1502, § 29, effective July 1. L. 2004: Entire section amended, p. 1301, § 27, effective May 28.

12-25-212. Qualifications for land surveyor-interns. (1) (a) An applicant may qualify for enrollment as a land surveyor-intern by endorsement if the applicant is enrolled in good standing in another jurisdiction requiring qualifications substantially equivalent to those currently required of applicants under this part 2 or if, at the time of initial enrollment in such jurisdiction, the applicant met the requirements for enrollment then in existence under Colorado law.

(b) Upon completion of the application and approval by the board, the applicant shall be enrolled as a land surveyor-intern if the applicant is otherwise qualified pursuant to section 12-25-211.

(2) (a) An applicant may qualify for enrollment as a land surveyor-intern by graduation and examination if the applicant passes the fundamentals of surveying examination.

(b) In order to be admitted to the examination pursuant to paragraph (a) of this subsection (2), the applicant must have satisfied either of the following requirements:

(I) The applicant graduated from a board-approved surveying or surveying technology curriculum that is at least four years.

(II) The applicant has senior status in a board-approved surveying or surveying technology curriculum that is at least four years.

(c) Upon passing the examination and upon submission of official transcripts to the board verifying graduation or impending graduation, the applicant shall be enrolled as a land surveyor-intern if the applicant is otherwise qualified pursuant to section 12-25-211.

(3) (a) An applicant may qualify for enrollment as a land surveyor-intern by education, experience, and examination if such applicant passes the fundamentals of surveying examination.

(b) In order to be admitted to the examination pursuant to paragraph (a) of this subsection (3), the applicant must:

(I) (A) Have graduated from high school or the equivalent; and

(B) Have a cumulative record of four years or more of progressive land surveying experience, of which a maximum of one year of educational credit may be substituted; or

(II) (A) Have graduated from a board-approved two-year surveying curriculum; and

(B) Have a cumulative record of two years or more of progressive land surveying experience.

(c) Upon passing the examination and the submission of evidence of experience satisfactory to the board, the applicant shall be enrolled as a land surveyor-intern if the applicant is otherwise qualified pursuant to section 12-25-211.

Source: L. 85: Entire article R&RE, p. 480, § 1, effective July 1. L. 88: (1)(a) amended, p. 513, § 23, effective July 1. L. 94: Entire section amended, p. 1502, § 30, effective July 1. L. 2004: (1)(a), (1)(b), (2)(a), (2)(c), (3)(b), and (3)(c) amended, p. 1301, § 28, effective May 28. L. 2007: (2)(b) and (2)(c) amended, p. 293, § 3, effective August 3.

Editor's note: This section is similar to former § 12-25-210 as it existed prior to 1985.

12-25-213. Eligibility for professional land surveyor. To be eligible for licensing as a professional land surveyor, an applicant shall provide documentation of technical competence.

Source: L. 85: Entire article R&RE, p. 481, § 1, effective July 1. L. 88: Entire section amended, p. 513, § 24, effective July 1. L. 94: Entire section amended, p. 1503, § 31, effective July 1. L. 2004: Entire section amended, p. 1301, § 29, effective May 28.

12-25-214. Qualifications for professional land surveyor - repeal. (1) (a) An applicant may qualify for licensing as a professional land surveyor by endorsement and examination if such applicant passes the required examination or examinations pertaining to Colorado law.

(b) In order to be admitted to the examination pursuant to paragraph (a) of this subsection (1), the applicant shall be licensed in good standing in another jurisdiction requiring qualifications substantially equivalent to those currently required of applicants under this part 2 or, at the time of initial licensure in such jurisdiction, have met the requirements for licensure then in existence under Colorado law.

(c) Upon passing the examination, the applicant shall be licensed as a professional land surveyor if the applicant is otherwise qualified pursuant to section 12-25-213.

(2) (a) An applicant may qualify for licensing as a professional land surveyor by education, experience, and examination if such applicant passes the principle and practice of surveying examination and the examination pertaining to Colorado law.

(b) To be admitted to an examination pursuant to paragraph (a) of this subsection (2), the applicant shall meet the requirements stated in at least one of the following:

(I) (A) Have graduated from a board-approved surveying curriculum of four or more years; and

(B) Have two years of progressive land surveying experience under the supervision of a professional land surveyor or an exempted federal employee defined in section 12-25-203 (1) (b); and

(C) Have been certified as a land surveyor-intern in this state; or

(D) Repealed.

(II) (A) Have graduated from a nonboard-approved surveying curriculum of four or more years; and

(B) Have four years of progressive land surveying experience of which at least two must be under the supervision of a professional land surveyor or an exempted federal employee as defined in section 12-25-203 (1) (b); and

(C) Have been certified as a land surveyor-intern in this state; or

(D) Repealed.

(III) (A) Have graduated from a board-approved two-year surveying curriculum or from a four-year engineering curriculum that included surveying course work as specified by the board by rule; and

(B) Have six years of progressive land surveying experience of which four years shall have been under the supervision of a professional land surveyor or an exempt federal employee as defined under 12-25-203 (1) (b); and

(C) Have been enrolled as a land surveyor-intern in this state; or

(IV) (A) Have obtained a bachelor's degree in a nonsurveying curriculum;

(B) Have completed surveying and other related course work, as specified by the board by rule;

(C) Have six years of progressive land surveying experience, of which four years shall have been under the supervision of a professional land surveyor or an exempted federal employee as defined in section 12-25-203; and

(D) Have been enrolled as a land surveyor-intern in this state.

(c) Upon passing the examinations and the submission of evidence of experience satisfactory to the board, the applicant shall be licensed as a professional land surveyor if such applicant is otherwise qualified pursuant to section 12-25-213.

(3) The board may allow an applicant to substitute for one year of experience the satisfactory completion of one academic year in a curriculum approved by the board. The substitution of education for experience shall not exceed three years.

(4) (a) An applicant may qualify for licensure as a professional land surveyor by experience and examination if such applicant passes the principles and practice of land surveying examination and the examination pertaining to Colorado law.

(b) In order to be admitted to an examination pursuant to paragraph (a) of this subsection (4), the applicant shall:

(I) Have graduated from high school or its equivalent;

(II) Have ten years of progressive land surveying experience of which at least six years must have been under the supervision of a professional land surveyor or an exempted federal employee as defined in section 12-25-203 (1) (b); and

(III) Have been enrolled as a land surveyor-intern in this state.

(c) Upon passage of the examination pursuant to paragraph (a) of this subsection (4), the applicant shall be licensed as a professional land surveyor if such applicant is otherwise qualified pursuant to section 12-25-213.

(d) The board may allow an applicant to substitute for one year of experience the satisfactory completion of one academic year in a curriculum approved by the board. The substitution of education for experience shall not exceed three years.

(e) This subsection (4) is repealed, effective July 1, 2020.

(5) (a) A professional land surveyor who has been duly licensed to practice professional land surveying in this state and who is over sixty-five years of age, upon application, may be classified as a retired professional land surveyor. Individuals who are so classified shall lose their licensure, shall not practice professional land surveying, and shall pay a fee to retain retired professional land surveyor status.

(b) (I) A retired professional land surveyor shall be reinstated to the status of a professional land surveyor upon payment of the renewal fee. No other fee shall be assessed against such retired professional land surveyor as a penalty.

(II) For any professional land surveyor who has been retired for two or more years, the board may require reexamination or recertification, unless the board is satisfied of such retired professional land surveyor's continued competence.

(6) (Deleted by amendment, L. 2004, p. 1302, § 30, effective May 28, 2004.)

Source: L. 85: Entire article R&RE, p. 481, § 1, effective July 1. L. 88: (1)(a) amended and (2)(a)(I)(D) and (2)(a)(II)(D) repealed, pp. 513, 519, §§ 25, 34, effective July 1. L. 94: Entire section amended, p. 1503, § 32, effective July 1. L. 2004: (1)(a), (1)(c), (2)(a), (2)(c), (4)(c), (5)(a), (5)(b)(I), and (6) amended, p. 1302, § 30, effective May 28. L. 2010: (4)(e) added, (HB 10-1085), ch. 95, p. 324, § 2, effective August 11; (1)(b), IP(2)(b), (2)(b)(III)(A), and IP(4)(b) amended and (2)(b)(IV) added, (HB 10-1085), ch. 95, p. 323, § 1, effective January 1, 2011.

Editor's note: This section is similar to former § 12-25-211 as it existed prior to 1985.

12-25-215. Licenses - certificates. (1) The board, upon acceptance of an applicant who has demonstrated competence in professional land surveying and upon receipt of payment of the required fee, shall license and issue a numbered certificate of licensure to said applicant.

(2) The board, upon acceptance of a qualified land surveyor-intern and upon receipt of payment of the required fee, shall certify said qualified land surveyor-intern.

(3) A license may be issued at any time but shall expire in conformance with section 24-34-102, C.R.S. A license shall be renewed at the time of such expiration.

(4) All licenses and registrations shall be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license or registration pursuant to the schedule established by the director of the division of professions and occupations, such license or registration shall expire. Any person whose license or registration has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(5) Repealed.

(6) A professional land surveyor shall give immediate notice to the board, in writing, of any change of address.

Source: L. 85: Entire article R&RE, p. 482, § 1, effective July 1. L. 88: (1) to (3) amended and (5) repealed, pp. 514, 519, §§ 26, 34, effective July 1. L. 94: (2) and (4) amended, p. 1506, § 33, effective July 1. L. 2004: (1) and (6) amended, p. 1302, § 31, effective May 28; (3) and (4) amended, p. 1814, § 45, effective August 4.

Editor's note: This section is similar to former §§ 12-25-214 and 12-25-215 as they existed prior to 1985.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8).

ANNOTATION

Annotator's note. Since § 12-25-215 is similar to § 12-25-209 as it existed prior to the 1981 repeal and reenactment of this article, a relevant case construing that provision has been included in the annotations to this section.

Plats must be certified by a licensed engineer or surveyor before they may be filed for public record. South Park Land & Livestock Co. v. Hamilton Enterprises, Ltd., 189 Colo. 157, 538 P.2d 444 (1975).

The required seal specified in subsection (3) certifies expertise. South Park Land & Livestock Co. v. Hamilton Enterprises, Ltd., 189 Colo. 157, 538 P.2d 444 (1975).

Acknowledgment of responsibility to public. The required seal specified in subsection (3) acknowledges the surveyor's responsibility to protect the public for any mistakes or negligence in the survey which bears the seal. South Park Land & Livestock Co. v. Hamilton Enterprises, Ltd., 189 Colo. 157, 538 P.2d 444 (1975).

Licensee not required to revoke certification on changed documents. The statutes gov-

erning the licensing of surveyors and engineers do not require that where documents prepared by one licensed under their authority have been changed without the licensee's knowledge or approval before they become of public record, the licensee has an obligation to revoke his certification on them. Such a duty is nowhere mentioned in any of the statutes. South Park Land & Livestock Co. v. Hamilton Enterprises, Ltd., 189 Colo. 157, 538 P.2d 444 (1975).

Such action was arbitrary and unreasonable. Where landowner, who had contracted for survey and platting of land, altered two plats without surveyor's knowledge or permission, surveyor's revocation of its certificate for all the plats filed with the county planning commission, which action rendered its work totally valueless to landowner, was arbitrary and unreasonable. South Park Land & Livestock Co. v. Hamilton Enterprises, Ltd., 189 Colo. 157, 538 P.2d 444 (1975).

12-25-216. Fees - disposition. (1) Pursuant to section 24-34-105, C.R.S., the board shall charge and collect fees for the following:

- (a) With respect to professional land surveyors:
 - (I) Renewal of a license;
 - (II) Replacement of a license, certificate of licensure, or renewal card;
 - (III) Application for licensure by endorsement and examination;
 - (IV) Application for the principles and practice of surveying examination or the legal aspects of surveying examination;
 - (V) Issuance of a certificate of licensure as a professional land surveyor;
 - (VI) Late renewal of a license;
 - (VII) Reexamination for the principles and practice of surveying examination or the legal aspects of surveying examination;
 - (VIII) Renewal of an expired license;
 - (IX) Listing as a retired professional land surveyor;
- (b) With respect to land surveyor-interns:
 - (I) (Deleted by amendment, L. 2004, p. 1303, § 32, effective May 28, 2004.)
 - (II) (Deleted by amendment, L. 94, p. 1506, § 34, effective July 1, 1994.)
 - (III) Application for the fundamentals of surveying examination;
 - (IV) Reexamination for the fundamentals of surveying examination;
 - (V) Application for enrollment as a land surveyor-intern by endorsement.

(2) All moneys collected by the board in administering this part 2 shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for expenditures required for the administration of this part 2, which expenditures shall be made from such appropriations upon vouchers and warrants drawn pursuant to law. The division shall employ, subject to section 13 of article XII of the state constitution, such clerical or other assistants as are necessary for the performance of its duties.

(3) Repealed.

Source: L. 85: Entire article R&RE, p. 482, § 1, effective July 1. L. 88: (3) repealed, p. 519, § 34, effective July 1. L. 94: (1)(a)(III) and (1)(b) amended, p. 1506, § 34, effective July 1. L. 2004: (1)(a)(II), (1)(a)(III), (1)(a)(V), (1)(b)(I), (1)(b)(V), and (2) amended and (1)(a)(IX) added, p. 1303, § 32, effective May 28.

Editor's note: This section is similar to former §§ 12-25-116 and 12-25-207 as they existed prior to 1985.

12-25-217. Professional land surveying seals. (1) Upon receipt of a certificate of licensure, the newly licensed professional land surveyor may obtain a seal. A crimp type seal, a rubber stamp type seal, or an electronic type seal may be used. The seal shall be of a design approved by the board and shall contain the professional land surveyor's name and license number and the designation "Colorado licensed professional land surveyor". Colorado land surveyors licensed before July 1, 2004, may continue to use their prior existing seals.

(2) All documents, plats, and reports resulting from the practice of land surveying shall be identified with and bear the seal or facsimile and signature of the land surveyor in responsible charge.

(3) The seal and signature shall be used by a professional land surveyor only when the work being stamped was under such professional land surveyor's responsible charge.

Source: L. 85: Entire article R&RE, p. 483, § 1, effective July 1. L. 94: (3) amended, p. 1506, § 35, effective July 1. L. 2004: (1) amended, p. 1309, § 48, effective May 28.

Editor's note: This section is similar to former § 12-25-214 as it existed prior to 1985.

12-25-218. Immunity in professional review. Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this part 2, and any person who lodges a complaint pursuant to this part 2 shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this part 2 shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 85: Entire article R&RE, p. 483, § 1, effective July 1. L. 94: Entire section amended, p. 1506, § 36, effective July 1. L. 2004: Entire section amended, p. 1814, § 46, effective August 4.

Editor's note: This section is similar to former § 12-25-221 as it existed prior to 1985.

12-25-219. Prior actions. (1) The board shall take over, assume, and continue all actions and requirements regarding land surveyors from its predecessor, the state board of

registration for professional engineers and professional land surveyors. There shall be no legal discontinuity, and previously licensed land surveyors shall continue their licensure as professional land surveyors.

(2) The name change from the state board of licensure for professional engineers and professional land surveyors to the state board of licensure for architects, professional engineers, and professional land surveyors shall not be construed to change the entity. There shall be no legal discontinuity, and previously licensed land surveyors shall continue their licensure as land surveyors, and any obligations of the board or of persons to the board shall not be affected by the name change.

Source: L. 85: Entire article R&RE, p. 484, § 1, effective July 1. L. 2004: Entire section amended, p. 1303, § 33, effective May 28. L. 2006: Entire section amended, p. 742, § 9, effective July 1.

PART 3

ARCHITECTS

Editor's note: This part 3 was added with relocations in 2006. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this part 3, see the comparative tables located in the back of the index.

Cross references: For the responsibilities of architects concerning the obtaining of underground facilities information prior to excavation, see § 9-1.5-103; for the statute of limitations for civil actions against architects, see § 13-80-104.

12-25-301. General provisions. The regulatory authority established by this part 3 is necessary to safeguard the life, health, property, and public welfare of the people of this state and to protect them against unauthorized, unqualified, and improper practice of architecture.

Source: L. 2006: Entire part added with relocated provisions, p. 744, § 15, effective July 1.

Editor's note: This section is similar to former § 12-4-101 as it existed prior to 2006.

ANNOTATION

Law reviews. For article, "The Validity of Exculpatory Clauses in Architectural Service Contracts", see 25 Colo. Law. 39 (March 1996).

A contract whereby the plaintiff was to secure architectural contracts for defendant, assist governing boards in preparing and submitting P. W. A. applications, and supply super-

vision of work in return for part of architects' fees, is not inherently vulnerable to the objection that it is in contravention of public policy. *Mitchell v. Jones*, 104 Colo. 62, 88 P.2d 557 (1939) (decided under repealed CSA, C. 10, § 2).

12-25-302. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Architect" means a person licensed under this part 3 and entitled thereby to conduct a practice of architecture in the state of Colorado.

(2) "Board" means the state board of licensure for architects, professional engineers, and professional land surveyors, created in section 12-25-106.

(3) "Buildings" means buildings of any type for public or private use, including the structural, mechanical, and electrical systems, utility services, and other facilities required for said buildings.

(4) "Drawings" means the original documents produced to describe a project. Such original documents may be produced by computer assisted design and drafting software, commonly known as "CADD", or other means.

(5) "Dwellings" means private residences intended for permanent occupancy by one or more families but does not include apartment houses, lodging houses, hotels, or motels.

(6) (a) The "practice of architecture" means the performance of the professional services of planning and design of buildings, preparation of construction contract documents including working drawings and specifications for the construction of buildings, and the observation of construction pursuant to an agreement between an architect and any other person, but does not include the performance of the construction of buildings.

(b) An architect's professional services, unless performed pursuant to the exemptions set forth in section 12-25-303 by a person who is not an architect, may include any or all of the following:

(I) Investigations, evaluations, schematic and preliminary studies, designs, working drawings, and specifications for construction, or for one or more buildings, and for the space within and surrounding the buildings or structures;

(II) Coordination of the work of technical and special consultants;

(III) Compliance with generally applicable codes and regulations, and assistance in the governmental review process;

(IV) Technical assistance in the preparation of bid documents and agreements between clients and contractors;

(V) Contract administration; and

(VI) Construction observation.

(7) "Responsible control" means that amount of control over and detailed knowledge of the content of technical submissions as defined in section 12-25-304 (3) (c) during their preparation as is ordinarily exercised by a licensed architect applying the required standard of care.

Source: L. 2006: Entire part added with relocated provisions, p. 744, § 15, effective July 1.

Editor's note: This section is similar to former § 12-4-102 as it existed prior to 2006.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Formerly, engineers were confined to the industrial and structural field, while architects only were committed to the field of public or semi-public buildings. *Heron v. City of Denver*, 131 Colo. 501, 283 P.2d 647 (1955).

The statutory definition of the practice of architecture does not outlaw the practice of architecture by an employee. *Neverdahl v. Linder*, 141 Colo. 186, 347 P.2d 512 (1959).

Had the general assembly intended to limit the definition of the practice of architecture to outlaw the practice of architecture by an employee, it would have been relatively easy to state that one who is employed by a firm which has performed work requiring the services of an architect is not engaged in the practice of architecture. *Neverdahl v. Linder*, 141 Colo. 186, 347 P.2d 512 (1959).

12-25-303. Exemptions. (1) Nothing in this part 3 shall prevent any person, firm, corporation, or association from preparing plans and specifications for, designing, planning, or administering the construction contracts for construction, alterations, remodeling, additions to, or repair of, any of the following:

(a) One-, two-, three-, and four-family dwellings, including accessory buildings commonly associated with such dwellings;

(b) Garages, industrial buildings, offices, farm buildings, and buildings for the marketing, storage, or processing of farm products, and warehouses, that do not exceed one story in height, exclusive of a one-story basement, and, under applicable building codes, are not designed for occupancy by more than ten persons;

(c) Additions, alterations, or repairs to the buildings referred to in paragraphs (a) and (b) of this subsection (1) that do not cause the completed buildings to exceed the applicable limitations set forth in this subsection (1);

(d) Nonstructural alterations of any nature to any building if such alterations do not affect the life safety of the occupants of the building.

(2) Nothing in this part 3 shall prevent, prohibit, or limit any municipality or county of this state, home rule or otherwise, from adopting such building codes as may, in the reasonable exercise of the police power of said governmental unit, be necessary for the protection of the inhabitants of said municipality or county.

(3) Nothing in this part 3 shall be construed as curtailing or extending the rights of any other profession or craft.

(4) Nothing in this part 3 shall be construed as prohibiting the practice of architecture by any employee of the United States government or any bureau, division, or agency thereof while in the discharge of his or her official duties.

(5) Nothing in this part 3 shall be construed to prevent the independent employment of a licensed professional engineer practicing pursuant to part 1 of this article.

(6) (a) Except as provided in paragraph (b) of this subsection (6), nothing in this part 3 shall be construed to prevent an interior designer from preparing interior design documents and specifications for interior finishes and nonstructural elements within and surrounding interior spaces of a building or structure of any size, height, and occupancy and filing such documents and specifications for the purpose of obtaining approval for a building permit as provided by law from the appropriate city, city and county, or regional building authority, which may approve or reject any such filing in the same manner as for other professions.

(b) Interior designers shall not be engaged in the construction of the structural frame system supporting a building; mechanical, plumbing, heating, air conditioning, ventilation, or electrical vertical transportation systems; fire-rated vertical shafts in any multi-story structure; fire-related protection of structural elements; smoke evacuation and compartmentalization; emergency sprinkler systems; emergency alarm systems; or any other alteration affecting the life safety of the occupants of a building. Any interior designer shall, as a condition of filing interior design documents and specifications for the purpose of obtaining approval for a building permit, provide to the responsible building official of the jurisdiction a current copy of the interior designer's professional liability insurance coverage that is in force. No interior designer shall be subject to any of the restrictions set forth in paragraphs (b) and (d) of subsection (1) of this section.

(c) As used in this subsection (6), "interior designer" means a person who:

(I) Engages in:

(A) Consultation, study, design analysis, drawing, space planning, and specification for nonstructural or nonseismic interior construction with due concern for the life safety of the occupants of the building;

(B) Preparing and filing interior design documents for the purpose of obtaining approval for a building permit as provided by law for nonstructural or nonseismic interior construction, materials, finishes, space planning, furnishings, fixtures, equipment, lighting, and reflected ceiling plans;

(C) Designing for fabrication nonstructural elements within and surrounding interior spaces of buildings; or

(D) The administration of design construction and contract documents, as the clients' agent, relating to the functions described in sub-subparagraphs (A) to (C) of this subparagraph (I), and collaboration with specialty consultants and licensed practitioners in other areas of technical expertise; and

(II) Possesses written documentation that he or she:

(A) Has graduated with a degree in interior design from a college or university offering such program consisting of four or more years of study and has completed two years of interior design experience; or

(B) Has graduated with a degree in interior design from a college or university offering such program consisting of two or more years of study and has completed four years of interior design experience; and

(C) Has met the education and experience requirements of, and has subsequently passed, the qualification examination promulgated by the national council for interior design qualification or its successor organization.

(d) As used in this subsection (6), “nonstructural or nonseismic” includes interior elements or components that are not load-bearing or that do not assist in the seismic design and do not require design computations for a building’s structure. Common nonstructural or nonseismic elements or components include, but are not limited to, ceiling and partition systems that employ normal and typical bracing conventions and are not part of the structural integrity of the building.

(7) Nothing in this article shall prohibit a person who is licensed to practice architecture in another jurisdiction of the United States from soliciting work in Colorado. The person shall not perform the practice of architecture in this state without first having obtained a license from the board or having associated with an architect licensed in this state who is associated with the project at all stages of the project.

Source: L. 2006: Entire part added with relocated provisions, p. 745, § 15, effective July 1; (7) added with relocated provisions, p. 81, § 2, effective August 7.

Editor’s note: (1) This section is similar to former § 12-4-112 as it existed prior to 2006.

(2) Subsection (7) is similar to former § 12-4-113 (1.5). It was then renumbered as § 12-4-112 (7) in House Bill 06-1048. Due to the repeal and relocation of § 12-4-112 in House Bill 06-1196, House Bill 06-1048 was harmonized with House Bill 06-1196 and § 12-4-112 (7) was relocated to subsection (7) of this section.

12-25-304. Forms of organizations permitted to practice - requirements. (1) Except as otherwise provided in this section, no firm, partnership, entity, or group of persons shall be licensed to practice architecture; except that a partnership, entity, or group of persons may use the term “architects” in its business name if a majority of the individual officers and directors or members or partners are either licensed architects under this part 3 or persons who qualify for a license by endorsement under section 12-25-314 (3).

(2) The practice of architecture by the following entities is permitted, subject to subsection (3) of this section:

(a) A corporation that complies with the “Colorado Business Corporation Act”, articles 101 to 117 of title 7, C.R.S.;

(b) A limited liability company that complies with the “Colorado Limited Liability Company Act”, article 80 of title 7, C.R.S.;

(c) A registered limited liability partnership that has registered in accordance with section 7-60-144, C.R.S., or qualified in accordance with section 7-64-1002, C.R.S.

(3) An entity listed in subsection (2) of this section may practice architecture, but only if:

(a) The practice of architecture by such entity is under the direct supervision of an architect, licensed in the state of Colorado, who is an officer of the corporation, a member of the limited liability company, or a partner in the registered limited liability partnership;

(b) Such architect remains individually responsible to the board and the public for his or her professional acts and conduct; and

(c) All architectural plans, designs, drawings, specifications, or reports that are involved in such practice, issued by or for such entity, bear the seal and signature of an architect in responsible control of, and directly responsible for, such architectural work when issued.

(4) (a) Nothing in this part 3 shall be construed as prohibiting the formation of a corporation, limited liability company, registered limited liability partnership, joint venture, partnership, or association consisting of one or several architects or corporations meeting the requirements of subsection (3) of this section and one or several professional engineers, all duly licensed under the respective provisions of the applicable laws of this state.

(b) It is lawful for such an entity to use in its title the words “architects and engineers”.

(c) No identifying media used by any member of such entity shall mislead the public as to the fact that such member is licensed as an architect or as a professional engineer.

Source: L. 2006: Entire part added with relocated provisions, p. 747, § 15, effective July 1.

Editor's note: Subsections (1), (2), (3), and (4) are similar to former § 12-4-110 (1), (1.5), (2), and (4) as they existed prior to 2006.

ANNOTATION

Law reviews. For article, "Operating a Personal Service Corporation", see 17 Colo. Law. 2011 (1988).

Formerly practice by corporations of architecture was not approved of. Johnson-

Olmosted Realty Co. v. City & County of Denver, 89 Colo. 250, 1 P.2d 928 (1931) (decided under repealed laws antecedent to CSA, C. 10, § 14).

12-25-305. Unauthorized practice - penalties - enforcement. (1) Any person who practices or offers or attempts to practice architecture without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and, for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(a) to (c) Repealed.

(1.5) and (2) Repealed.

(3) The attorney general or the attorney general's assistant shall act as legal advisor to the board and render such timely legal assistance as may be necessary in carrying out this part 3. With the concurrence of the attorney general, the board may employ counsel and assistance necessary to aid in the enforcement of this part 3, and the compensation and expenses therefor shall be paid from the funds of the board.

(4) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public or a person is acting or has acted without the required license, the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (4), the licensee or person alleged to have acted without a license may request a hearing on the question of whether acts or practices in violation of this part 3 have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(5) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other provision of this part 3, then, in addition to any specific powers granted pursuant to this part 3, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (5) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (5) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (5). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (5) does not appear at the hearing, the board may present

evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (5) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify such person, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this part 3, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (5), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(6) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in an unlicensed act or practice, any act or practice constituting a violation of this part 3, any rule promulgated pursuant to this part 3, any order issued pursuant to this part 3, or any act or practice constituting grounds for administrative sanction pursuant to this part 3, the board may enter into a stipulation with such person.

(7) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(8) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order in a court of competent jurisdiction.

Source: L. 2006: Entire part added with relocated provisions, p. 749, § 15, effective July 1; IP(1) amended and (1)(a), (1)(b), (1)(c), (1.5), and (2) repealed, p. 82, §§ 4 to 6, effective August 7.

Editor's note: (1) Certain provisions of § 12-4-113 were repealed and relocated to this section by House Bill 06-1196. Section 12-4-113 (1), (1.5), (2), and (2.5) were renumbered and relocated to subsections (1), (1.5), (2), and (4) respectively of this section. In addition, § 12-4-113 (1), (1.5), and (2) were amended and repealed in House Bill 06-1048. Due to the repeal and relocation of § 12-4-113 in House Bill 06-1196, House Bill 06-1048 was harmonized with House Bill 06-1196 and § 12-4-113 (1), (1.5), and (2) were relocated to subsections (1), (1.5), and (2) respectively of this section.

(2) Subsection (2.5) was amended and subsections (4) to (8) were enacted in House Bill 06-1264. That amendment and those enactments were superseded by the enactment of this section in House Bill 06-1196.

ANNOTATION

Law reviews. For note, "Licensing of Occupations and Professions in Colorado", see 35 Dicta 235 (1958).

12-25-306. Board - composition - appointments - terms. (1) To be eligible for membership on the board, an architect shall be:

- (a) A United States citizen and a resident of Colorado for at least one year; and
- (b) A licensed architect in the state of Colorado and have practiced architecture for at least three years prior to their appointment.

(2) The governor, in making appointments of architects to the board, shall endeavor to stagger the most highly qualified members of the profession willing to serve on the board. Staggered appointments shall be made so that not more than one member's term expires in

any one year, and thereafter appointments shall be for terms of four years each. Appointees shall be limited to two full terms each. Except as otherwise provided in subsection (3) or (4) of this section, each board member shall hold office until the expiration of the term for which such member is appointed or until a successor has been duly appointed, whichever occurs first.

(3) In the event of an architecture vacancy on the board due to resignation, death, or any cause resulting in an unexpired term, the governor shall fill such vacancy promptly.

(4) The governor may remove an architect member of the board for official misconduct, incompetence, or neglect of duty.

Source: L. 2006: Entire part added with relocated provisions, p. 751, § 15, effective July 1.

12-25-307. Powers and duties of the board. (1) The board is authorized to:

(a) Adopt such rules as may be necessary to implement this part 3, including rules for disciplining licensed architects;

(b) Examine and license duly qualified applicants, and renew the licenses of duly qualified architects;

(c) Conduct hearings upon complaints concerning the conduct of architects;

(d) Cause the prosecution of all persons violating this part 3 by the district attorney or by the attorney general pursuant to section 12-25-305;

(e) Require every licensed architect to have a stamp as prescribed by the board.

(2) The board shall:

(a) Keep a record of its proceedings and of all applications for licensing or certification under this part 3. The application record for each applicant shall include:

(I) Name, age, and residence of the applicant;

(II) Date of application;

(III) Place of business;

(IV) Education of the applicant;

(V) Architecture and other applicable experience of the applicant;

(VI) Type of examination required;

(VII) Date and type of action by the board; and

(VIII) Such other information as may be deemed necessary by the board;

(b) Make available through printed or electronic means the following:

(I) The architect statutes administered by the board;

(II) A list of the names and addresses of record of all currently licensed architects;

(III) The rules of conduct for architects adopted pursuant to paragraph (a) of subsection (1) of this section; and

(IV) The rules of the board and such other pertinent information as the board deems necessary.

Source: L. 2006: Entire part added with relocated provisions, p. 752, § 15, effective July 1.

Editor's note: Subsections (1) and (2) are similar to former § 12-4-104 (2) and (5) as they existed prior to 2006.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Board cannot modify statute by rule or regulation. Unless expressly or impliedly authorized by statute the board cannot change or

modify existing statutes by the adoption of rules and regulations. *Lorance v. Colo. State Bd. of Exam'rs of Architects*, 35 Colo. App. 177, 532 P.2d 382 (1974).

Subsection (2)(a) does not include power to create an offense other than those set forth by

the general assembly. *Lorance v. Colo. State Bd. of Exam'rs of Architects*, 35 Colo. App. 177, 532 P.2d 382 (1974).

The determination of facts relating to the consideration of those desiring to practice architecture in Colorado has been entrusted under the statute to the board of examiners. *Neverdahl v. Linder*, 141 Colo. 186, 347 P.2d 512 (1959).

The board of examiners of architects is empowered to conduct hearings upon complaints concerning architects. *Lorance v. Colo. State Bd. of Exam'rs of Architects*, 31 Colo. App. 332, 505 P.2d 47 (1972).

Where the board of examiners of architects, in instituting disciplinary action and in scheduling a hearing on the charges which had been filed against the architect, was carrying out its statutory function, the courts will not interfere with such action of an administra-

tive board until final action has been taken. *Lorance v. Colo. State Bd. of Exam'rs of Architects*, 31 Colo. App. 332, 505 P.2d 47 (1972).

A judicial determination of the validity of the regulation of the board of examiners of architects is not available to an architect against whom charges are pending until final action has been taken by the board. *Lorance v. Colo. State Bd. of Exam'rs of Architects*, 31 Colo. App. 332, 505 P.2d 47 (1972).

It is the duty of the board, following a hearing, to enter detailed findings of fact with respect to the matters presented to it and with relationship to the definitions contained in § 12-4-102. *Neverdahl v. Linder*, 141 Colo. 186, 347 P.2d 512 (1959).

Applied in Emporium, Ltd. v. City of Colo. Springs, 40 Colo. App. 414, 576 P.2d 569 (1978).

12-25-308. Disciplinary actions - grounds for discipline. (1) The board may deny, suspend, revoke, or refuse to renew the license of, place on probation, or limit the scope of practice of a licensee for the following:

(a) Fraud, misrepresentation, deceit, or material misstatement of fact in procuring or attempting to procure a license;

(b) Any act or omission that fails to meet the generally accepted standards of the practice of architecture, as evidenced by conduct that endangers life, health, property, or the public welfare;

(c) Conviction of, or pleading guilty or nolo contendere to, a felony in Colorado concerning the practice of architecture or an equivalent crime outside Colorado. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be presumptive evidence of such conviction or plea in any hearing under this part 3. The board shall be governed by section 24-5-101, C.R.S., in considering such conviction or plea.

(d) Affixing a seal or allowing a seal to be affixed to any document of which the architect was neither the author nor in responsible control of preparation;

(e) Violation of, or aiding or abetting in the violation of, this part 3 or any rule promulgated by the board in conformance with this part 3 or any order of the board issued in conformance with this part 3;

(f) Use of false, deceptive, or misleading advertising;

(g) Performing services beyond one's competency, training, or education;

(h) Failure to render adequate professional control of persons practicing architecture under the responsible control of a licensed architect;

(i) Habitual intemperance with respect to, or excessive use of, any habit-forming drug, any controlled substance as defined in section 18-18-102 (5), C.R.S., or any alcoholic beverage, any of which renders him or her unfit to practice architecture;

(j) Any use of a schedule I controlled substance, as defined in section 18-18-203, C.R.S.;

(k) Violation of the notification requirements in section 12-25-312;

(l) Failure to pay a fine assessed under this part 3;

(m) Failure to report to the board any architect known to have violated any provision of this article or any board order or rule or regulation;

(n) Fraud or deceit in the practice of architecture;

(o) Mental incompetency;

(p) Making or offering to make any gift (other than a gift of nominal value such as reasonable entertainment or hospitality), donation, payment, or other valuable consideration to influence a prospective or existing client or employer regarding the employment of the architect; except that nothing in this paragraph (p) shall restrict an employer's ability to reward an employee for work obtained or performed;

(q) Selling or fraudulently obtaining or furnishing a license or renewal of a license to practice architecture;

(r) Engaging in conduct that is intended or reasonably might be expected to mislead the public into believing that the person is an architect; or

(s) Engaging in the practice of an architect as a corporation or partnership or group of persons, unless such entity meets the requirements of section 12-25-304.

(2) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(b) When a letter of admonition is sent by the board, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(d) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.

(3) Any disciplinary action in another state or jurisdiction on grounds substantially similar to those that would constitute a violation under this part 3 shall be prima facie evidence of grounds for disciplinary action, including denial of licensure, under this section.

(4) (a) In addition to the penalties provided for in subsection (2) of this section, any person violating any provision of this part 3 or any standards or rules promulgated pursuant to this part 3 may be punished upon a finding of misconduct by the board, made pursuant to article 4 of title 24, C.R.S. In an administrative proceeding against a licensee, the board may impose a fine of not more than five thousand dollars.

(b) All fines collected pursuant to this section shall be transferred to the state treasurer, who shall credit such moneys to the general fund.

(5) If, as a result of a proceeding held pursuant to article 4 of title 24, C.R.S., the board determines that a person licensed to practice architecture pursuant to this part 3 has acted in such a manner as to be subject to disciplinary action, the board may, in lieu of or in addition to other forms of disciplinary action that may be authorized by this section, require a licensee to take courses of training or education relating to his or her profession. The board shall determine the conditions that may be imposed on such licensee, including, but not limited to, the type and number of hours of training or education. All training or education courses are subject to approval by the board, and the licensee shall be required to furnish satisfactory proof of completion of any such training or education.

Source: L. 2006: Entire part added with relocated provisions, p. 753, § 15, effective July 1; (2)(d) added, p. 767, § 3, effective July 1; (1)(q) to (1)(s) added with relocated provisions, p. 81, § 3, effective August 7. L. 2012: (1)(i) amended, (HB 12-1311), ch. 281, p. 1610, § 11, effective July 1.

Editor's note: (1) Certain provisions of § 12-4-111 were repealed and relocated to this section by House Bill 06-1196. Section 12-4-111 (2), (3)(b), (2.5), (5), and (4) were renumbered and relocated to subsections (1), (2), (3), (4), and (5) of this section. In addition, § 12-4-113 (1)(a), (1)(b), and (1)(c)(IV) were amended and relocated to § 12-4-111 (2)(p), (2)(q), and (2)(r) in House Bill 06-1048. Due to the repeal and relocation of § 12-4-111 in House Bill 06-1196, House Bill 06-1048 was harmonized with House Bill 06-1196 and § 12-4-111 (2)(p), (2)(q), and (2)(r) were relocated to subsections (1)(q), (1)(r), and (1)(s) of this section.

(2) Subsection (2)(d) is similar to former § 12-4-111 (3)(c) in House Bill 06-1264. Due to the repeal and relocation of § 12-4-111 in House Bill 06-1196, House Bill 06-1264 was harmonized with House Bill 06-1196, and § 12-4-111 (3)(c) was relocated to subsection (2)(d) of this section.

ANNOTATION

Law reviews. For note, "Licensing of Occupations and Professions in Colorado", see 35 Dicta 235 (1958).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Phrase "fraud or deceit" cannot be redefined by board. The phrase "fraud or deceit" as contained in subsection (2)(d) refers to an established legal concept with a definite meaning, and this legal standard cannot be redefined by the board. *Lorance v. Colo. State Bd. of Colo. of Architects*, 35 Colo. App. 177, 532 P.2d 382 (1974).

The general assembly has designated the state board of examiners of architects as the initial authority for issuance, denial, revocation, or suspension of an architect's license.

Lorance v. Colo. State Bd. of Colo. of Architects, 31 Colo. App. 332, 505 P.2d 47 (1972).

Where the board of examiners of architects, in instituting disciplinary action and in scheduling a hearing on the charges which had been filed against architect, was carrying out its statutory function, the courts will not interfere with such action of an administrative board until final action has been taken. *Lorance v. Colo. State Bd. of Colo. of Architects*, 31 Colo. App. 332, 505 P.2d 47 (1972).

The judicial determination of the validity of the regulation of board of examiners of architects is not available to an architect against whom charges are pending until final action has been taken by the board. *Lorance v. Colo. State Bd. of Colo. of Architects*, 31 Colo. App. 332, 505 P.2d 47 (1972).

12-25-309. Disciplinary proceedings - injunctions. (1) The board upon its own motion may, and upon the receipt of a signed complaint in writing from any person shall, investigate the activities of any licensee or other person that present grounds for disciplinary action as specified in this part 3.

(2) Disciplinary hearings shall be conducted by the board or by an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., and shall be held in the manner prescribed in article 4 of title 24, C.R.S.

(3) (a) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board.

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director of the division of professions and occupations within the department of regulatory agencies with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(4) The board may, in the name of the people of the state of Colorado, through the attorney general of the state of Colorado, apply for an injunction in any court of competent jurisdiction to enjoin any person from committing any act declared to be a misdemeanor by this part 3. In order to obtain such injunction the board need not prove irreparable injury.

(5) The court of appeals shall have initial jurisdiction to review all final actions and orders of the board that are subject to judicial review. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

(6) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

Source: L. 2006: Entire part added with relocated provisions, p. 755, § 15, effective July 1.

Editor's note: Subsections (1) and (6) are similar to former § 12-4-111 (1) and (8), subsection (3) is similar to former § 12-4-104 (3), and subsection (4) is similar to former § 12-4-113 (3), as they existed prior to 2006.

12-25-309.5. Reconsideration and review of board actions. The board, on its own motion or upon application, at any time after the imposition of any discipline as provided in this section, may reconsider its prior action and reinstate or restore such license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any such further action, or the holding of a hearing with respect thereto, shall rest in the sole discretion of the board.

Source: L. 2006: Entire part added with relocated provisions, p. 756, § 15, effective July 1.

Editor's note: This section is similar to former § 12-4-111 (6) as it existed prior to 2006.

12-25-310. Application for licensing. (1) An applicant shall submit an application that includes evidence of education and practical experience as required by section 12-25-314 and the rules of the board. Such application shall also include a signed statement that the applicant has never been denied licensure as an architect or been disciplined with regard to the practice of architecture or practiced architecture in violation of the law. If the board determines that an applicant has committed any of the acts specified as grounds for discipline under section 12-25-308 (1), it may deny an application for examination or licensure. If the applicant has not complied with subsection (3) of this section, the board shall deny an application for examination or licensure.

(2) When the board is reviewing or considering conviction of a crime, it shall be governed by section 24-5-101, C.R.S.

(3) No licensee whose license is revoked shall be allowed to apply for licensure earlier than two years after the effective date of the revocation.

Source: L. 2006: Entire part added with relocated provisions, p. 756, § 15, effective July 1.

Editor's note: Subsection (1) is similar to former § 12-4-107 (1), and subsection (3) is similar to former § 12-4-111 (7), as they existed prior to 2006.

ANNOTATION

Annotator's note. Since § 12-25-310 is similar to repealed § 10-1-12, CRS 53, a relevant case construing that provision has been included in the annotations to this section.

The general assembly is authorized to prescribe only such qualifications as are reasonably necessary to protect the public interest. *Linder v. Copeland*, 137 Colo. 53, 320 P.2d 972 (1958).

An administrative board which is charged with a duty to hear and determine applica-

tions for licenses to follow an occupation involving personal skill, specialized training and expert knowledge in a particular field, and which presupposes a period of novitiate, is not thereby empowered to shut the door of opportunity in that field to any person who possesses the required qualifications. *Linder v. Copeland*, 137 Colo. 53, 320 P.2d 972 (1958).

12-25-311. Professional liability. (1) The shareholders, members, or partners of an entity that practices architecture are liable for the acts, errors, and omissions of the employees, members, and partners of the entity except when the entity maintains a qualifying policy of professional liability insurance as set forth in subsection (2) of this section.

(2) (a) A qualifying policy of professional liability insurance shall meet the following minimum standards:

(I) The policy insures the entity against liability imposed upon it by law for damages arising out of the negligent acts, errors, and omissions of all professional and nonprofessional employees, members, and partners; and

(II) The insurance is in a policy amount of at least seventy-five thousand dollars

multiplied by the total number of architects and engineers in or employed by the entity, up to a maximum of five hundred thousand dollars.

(b) In addition, the policy may include:

(I) A provision that it shall not apply to the following:

(A) A dishonest, fraudulent, criminal, or malicious act or omission of the insured entity or any stockholder, employee, member, or partner;

(B) The conduct of a business enterprise that is not the practice of architecture by the insured entity;

(C) The conduct of a business enterprise in which the insured entity may be a partner or that may be controlled, operated, or managed by the insured entity in its own or in a fiduciary capacity, including, but not limited to, the ownership, maintenance, or use of property;

(D) Bodily injury, sickness, disease, or death of a person; or

(E) Damage to, or destruction of, tangible property owned by the insured entity;

(II) Any other reasonable provisions with respect to policy periods, territory, claims, conditions, and ministerial matters.

Source: L. 2006: Entire part added with relocated provisions, p. 757, § 15, effective July 1.

12-25-312. Notification to board. Each architect shall notify the board of any judgment or settlement involving the architect and resulting from a claim concerning the life safety of the occupants of a building. The architect shall notify the board within sixty days after the judgment or settlement.

Source: L. 2006: Entire part added with relocated provisions, p. 758, § 15, effective July 1.

Editor's note: This section is similar to former § 12-4-117 as it existed prior to 2006.

12-25-313. Eligibility for architect. To be eligible for licensing as an architect, an applicant shall provide documentation of technical competence.

Source: L. 2006: Entire part added with relocated provisions, p. 758, § 15, effective July 1.

12-25-314. Qualifications for architect licensure. (1) The board shall set minimum educational and experience requirements for applicants within the following guidelines:

(a) The board may require:

(I) No more than three years of practical experience under the direct supervision of a licensed architect or an architect exempt under the provisions of section 12-25-303 (4) and either:

(A) A professional degree from a program accredited by the national architectural accrediting board or its successor; or

(B) Substantially equivalent education or experience approved by the board, with the board requiring no more than five years of such education and experience; or

(II) No more than ten years of practical experience under the direct supervision of a licensed architect or an architect exempt under the provisions of section 12-25-303 (4); or

(III) A combination of such practical experience and education, which combination shall not exceed ten years.

(b) Up to one year of the required experience may be in on-site building construction operations, physical analyses of existing buildings, or teaching or research in a program accredited by the national architectural accreditation board or its successor.

(c) Full credit shall be given for education obtained in four-year baccalaureate programs in architecture or environmental design.

(2) (a) An applicant shall pass an examination or examinations developed or adopted by the board. The board shall ensure that the passing score for any examination is set to measure the level of minimum competency.

(b) The examination shall be given at least twice a year. The board shall designate a time and location for examinations and shall notify applicants of this time and location in a timely fashion and, as necessary, may contract for assistance in administering the examination.

(3) An applicant for licensure by endorsement shall hold a license in good standing in a jurisdiction requiring qualifications substantially equivalent to those currently required for licensure by examination as provided in section 12-25-310 (1) and subsections (1) and (2) of this section and shall file an application as prescribed by the board. The board shall provide procedures for an applicant to apply directly to the board. The board may also provide an alternative application procedure so that an applicant may, at his or her option, instead apply to a national clearinghouse designated by the board. The national clearinghouse shall then forward the application to the board.

Source: L. 2006: Entire part added with relocated provisions, p. 758, § 15, effective July 1.

Editor's note: Subsections (1), (2), and (3) are similar to former § 12-4-107 (2), (3), and (5) as they existed prior to 2006.

ANNOTATION

Annotator's note. Since § 12-25-314 is similar to repealed § 10-1-12, CRS 53, a relevant case construing that provision has been included in the annotations to this section.

The general assembly is authorized to prescribe only such qualifications as are reasonably necessary to protect the public interest. *Linder v. Copeland*, 137 Colo. 53, 320 P.2d 972 (1958).

An administrative board which is charged with a duty to hear and determine applica-

tions for licenses to follow an occupation involving personal skill, specialized training and expert knowledge in a particular field, and which presupposes a period of novitiate, is not thereby empowered to shut the door of opportunity in that field to any person who possesses the required qualifications. *Linder v. Copeland*, 137 Colo. 53, 320 P.2d 972 (1958).

12-25-315. Licenses. (1) The board shall issue a license whenever an applicant for a license to practice architecture in Colorado successfully qualifies for such license as provided in this part 3.

(2) An architect may renew a license by paying to the board the license renewal fee established pursuant to section 24-34-105, C.R.S., and the board shall then issue a certificate of renewal.

(3) The license of any architect shall be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this part 3 or section 24-34-102 (8), C.R.S.

Source: L. 2006: Entire part added with relocated provisions, p. 759, § 15, effective July 1.

Editor's note: Subsection (1) is similar to former § 12-4-107 (6), and subsections (2) and (3) are similar to former § 12-4-108 (1) and (2), as they existed prior to 2006.

ANNOTATION

Annotator's note. Since § 12-25-315 is similar to repealed § 10-1-12, CRS 53, a relevant case construing that provision has been included in the annotations to this section.

The general assembly is authorized to prescribe only such qualifications as are reasonably necessary to protect the public interest. *Linder v. Copeland*, 137 Colo. 53, 320 P.2d 972 (1958).

An administrative board which is charged with a duty to hear and determine applica-

tions for licenses to follow an occupation involving personal skill, specialized training and expert knowledge in a particular field, and which presupposes a period of novitiate, is not thereby empowered to shut the door of opportunity in that field to any person who possesses the required qualifications. *Linder v. Copeland*, 137 Colo. 53, 320 P.2d 972 (1958).

12-25-315.5. Continuing education - rules. (1) No later than December 31, 2008, the board shall adopt rules establishing requirements for continuing education that an architect shall complete in order to renew a license to practice architecture in Colorado on or after July 1, 2009. The rules shall require the architect to participate in a process or procedure that demonstrates whether the architect retained the material presented in the continuing education program or course.

(2) and (3) Repealed.

Source: L. 2008: Entire section added, p. 1339, § 1, effective August 5. **L. 2010:** (2) and (3) repealed, (HB 10-1148), ch. 68, p. 237, § 1, effective August 11.

12-25-316. Disposition of fees - expenses of board. (1) All moneys collected under this part 3, except as provided in section 12-25-308 (4), shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for expenditures of the board.

(2) The director of the division of professions and occupations within the department of regulatory agencies may employ such technical, clerical, investigative, or other assistance as is necessary for the proper performance of the board's work, subject to section 13 of article XII of the state constitution, and may make expenditures for any purpose that is reasonably necessary for the proper performance of the board's duties under this part 3.

(3) The board may charge fees for licensure by examination, reexamination, endorsement, and recertification. The board may also charge fees for replacement of a license certificate and for the renewal and reinstatement of a license.

Source: L. 2006: Entire part added with relocated provisions, p. 759, § 15, effective July 1.

Editor's note: This section is similar to former § 12-4-105 as it existed prior to 2006.

12-25-317. Architect's stamp - record set of drawings. (1) The use of an architect's stamp shall be subject to the following:

(a) The stamp, signature of the architect whose name appears on the stamp, and date of the signature of such architect shall be placed on drawings to establish a record set of drawings. A record set shall not be reproduced. A record set shall be prominently identified and shall be for the permanent record of the architect, the project owner, and the regulatory authorities who have jurisdiction over the project. This section shall not prohibit the creation of multiple record sets.

(b) The stamp and the date the document is stamped shall be placed on drawings prepared under the direct supervision of the architect and on the cover, title page, and table of contents of specifications. Subsequent issues of addenda, revisions, clarifications, or other modifications shall be properly identified and dated for the record set. Where consultant drawings and specifications are incorporated into the record set, they shall be

clearly identified by consultant stamps or other means and dated in accordance with law to distinguish proper reference to origination.

(c) Except as required for compliance with a federal contract, the stamp shall not be placed on reproducible drawings used for multiple copies or on reproducible drawings that are transferred away from the architect’s possession and supervision.

(d) A stamped record set with an original signature shall be retained in possession of the architect and shall be held for a minimum of three years following beneficial occupancy or beneficial use of the project by the owner or occupant.

(e) One original document may be stamped, signed, and dated pursuant to the requirements of federal government contracts.

(2) No person preparing plans and specifications for or construction contracts for the administration of any alteration, remodeling, or repair of any building shall use the title “architect” unless such person has been licensed as an architect pursuant to this part 3.

Source: L. 2006: Entire part added with relocated provisions, p. 760, § 15, effective July 1.

Editor’s note: Subsection (1) is similar to former § 12-4-116, and subsection (2) is similar to former § 12-4-115 (1), as they existed prior to 2006.

12-25-318. Immunity. Any member of the board, any member of the board’s staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this part 3, and any person who lodges a complaint pursuant to this part 3 shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. A person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this part 3 shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 2006: Entire part added with relocated provisions, p. 760, § 15, effective July 1.

Editor’s note: This section is similar to former § 12-4-104.5 as it existed prior to 2006.

12-25-319. Previous licenses - prior actions. Any person holding a valid license to practice architecture in Colorado before July 1, 2006, shall be licensed under this part 3. All official actions of the state board of examiners of architects made or taken before July 1, 2006, are expressly ratified.

Source: L. 2006: Entire part added with relocated provisions, p. 761, § 15, effective July 1.

Editor’s note: This section is similar to former § 12-4-109 as it existed prior to 2006.

ARTICLE 25.5

Escort Services

12-25.5-101.	Short title.	12-25.5-106.	Application to local licensing authority - minimum qualifications - issuance.
12-25.5-102.	Legislative declaration.		
12-25.5-103.	Definitions.	12-25.5-107.	Refusal of license by local licensing authority.
12-25.5-104.	License required.		
12-25.5-105.	Licensing - general provisions.	12-25.5-108.	Suspension and revocation.

12-25.5-109.	Persons prohibited as licensees.	12-25.5-113.	Violations and penalty.
12-25.5-110.	License fees.	12-25.5-114.	Powers - peace officers - local licensing authority.
12-25.5-111.	Unlawful acts.	12-25.5-115.	Local government regulation.
12-25.5-112.	Duties of escort bureau.		

12-25.5-101. Short title. This article shall be known and may be cited as the “Colorado Escort Service Code”.

Source: L. 80: Entire article added, p. 473, § 1, effective July 1.

12-25.5-102. Legislative declaration. (1) The general assembly hereby declares that this article shall be deemed an exercise of the police powers of the state for the protection of the economic and social welfare and the health, welfare, and safety of the people of this state.

(2) The general assembly further declares that the licensing and regulation of escort bureaus are matters of statewide concern; therefore, this article shall be applicable in every city, town, county, and city and county in this state.

Source: L. 80: Entire article added, p. 473, § 1, effective July 1.

12-25.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Escort” means any person who, for a salary, fee, commission, hire, or profit, makes himself available to the public for the purpose of accompanying other persons for companionship.

(2) “Escort bureau” means any business, agency, or person who, for a fee, commission, hire, or profit, furnishes or arranges for persons to accompany other persons for companionship.

(3) “Escort bureau runner” means any person who, for a salary, fee, hire, or profit, acts in the capacity of an agent for an escort bureau by contacting or meeting with escort patrons whether or not said person is employed by such escort bureau or by another business or is self-employed.

(4) “Escort patron” means any person who seeks the services of an escort, escort bureau, or escort bureau runner.

(5) “Licensed premises” means that single, discrete, identifiable location at which a licensed activity is permitted and, in fact, is conducted under the authority of any one license.

(6) “Local licensing authority” means the governing body of a municipality or city and county, the board of county commissioners of a county, or any authority designated by municipal or county charter, municipal resolution or ordinance, or county resolution or ordinance.

(7) “Person” means a natural person, partnership, association, company, corporation, or organization or a managing agent, servant, officer, partner, owner, operator, or employee of any of them.

Source: L. 80: Entire article added, p. 473, § 1, effective July 1.

12-25.5-104. License required. (1) No person shall hold himself out to the public as an escort, or accept compensation as an escort, without having first secured a license therefor from the local licensing authority.

(2) No person shall conduct, manage, or carry on an escort bureau without having first secured a license therefor from the local licensing authority.

(3) No person shall represent himself as an escort bureau runner, or accept compensation as an escort bureau runner, without having first secured a license therefor from the local licensing authority.

(4) Licenses issued under this article shall be valid only within the boundaries of the local licensing authority.

Source: L. 80: Entire article added, p. 474, § 1, effective July 1.

12-25.5-105. Licensing - general provisions. (1) All licenses granted pursuant to the provisions of this article shall be valid for a period of one year from the date of their issuance unless revoked or suspended pursuant to section 12-25.5-108 or 12-25.5-113.

(2) Application for the renewal of an existing license shall be made to the local licensing authority not less than forty-five days prior to the date of expiration. The local licensing authority may cause a hearing on the application for renewal to be held. No such renewal hearing shall be held by the local licensing authority until a notice of hearing has been conspicuously posted on the licensed premises for a period of ten days and notice of the hearing has been provided the applicant at least ten days prior to the hearing. The local licensing authority may refuse to renew any license for good cause, subject to judicial review.

(3) Each license issued under this article is separate and distinct, and no person shall exercise any of the privileges granted under any license other than that which he holds. A separate license must be obtained by each person wishing to exercise any of the privileges governed by this article and for each geographical location at or from which any person wishes to conduct business as an escort, escort bureau, or escort bureau runner.

(4) No license granted under the provisions of this article may be transferred or assigned, with or without consideration, without the consent of the local licensing authority. Any attempted transfer or assignment without the consent of the local licensing authority shall render the applicable license void.

(5) No changes of location for licensed premises shall be allowed without the consent of the local licensing authority. Any attempted change of location for licensed premises without the consent of the local licensing authority shall render the applicable license void.

(6) When a license has been issued to a husband and wife, the death of a spouse shall not require the surviving spouse to obtain a new license. All rights and privileges granted under the original license shall continue in full force and effect as to such survivor for the balance of the license.

(7) The licenses provided pursuant to this article shall specify the date of issuance, the period which is covered, the name of the licensee, and the premises licensed. Said license shall be conspicuously displayed at all times in the licensed premises of any person thereby licensed.

Source: L. 80: Entire article added, p. 474, § 1, effective July 1.

12-25.5-106. Application to local licensing authority - minimum qualifications - issuance. (1) Application for a license under the provisions of this article shall be made to the local licensing authority on forms prepared and furnished by the local licensing authority which shall set forth such information as the local licensing authority may require to enable the authority to determine whether a license should be granted. Such information shall include the name and address of the applicant and, if a partnership, also the names and addresses of all the partners and, if a corporation, association, or other organization, also the names and addresses of the president, vice-president, secretary, and managing officer, together with all other information deemed necessary by the local licensing authority. Each application shall be verified by the oath or affirmation of such persons as the local licensing authority may prescribe. The local licensing authority may require payment of a reasonable processing fee with each application, which fee shall not exceed three hundred dollars for an escort bureau license application and two hundred dollars for an escort license application.

(2) (a) No individual shall be issued a license as an escort or as an escort bureau runner unless he:

(I) Has attained eighteen years of age;

(II) Is a resident of the state of Colorado.

(b) No person shall be issued a license as an escort bureau, and no person other than an individual shall be issued a license as an escort bureau runner unless:

(I) If an individual, he has attained the age of eighteen years; or

(II) If a partnership or limited partnership, all partners have attained the age of eighteen years; or

(III) If a corporation, the directors and all officers thereof have attained the age of eighteen years; and

(IV) If an individual, he is a resident of this state for six weeks immediately prior to the filing of the application with the local licensing authority; or

(V) If a partnership or limited partnership, all of the partners thereof are residents of this state for six weeks immediately prior to the filing of the application with the local licensing authority; or

(VI) If a corporation, the directors and all of the officers thereof are residents of this state for six weeks immediately prior to the filing of the application with the local licensing authority; and

(VII) If a corporation, the corporation is qualified with the secretary of state to do business in this state or is incorporated under the laws of this state.

(3) (a) Before granting or denying any license renewal or new license for which an application has been made, the local licensing authority or one or more of its agents or inspectors may visit and inspect the premises or property in or from which the applicant proposes to conduct his business and investigate the fitness to conduct such business of any person, including all officers and directors of any corporation, applying for a license. In investigating the fitness of any applicant, licensee, or employee or agent of the licensee or applicant, the local licensing authority may have access to criminal history record information furnished by criminal justice agencies subject to any restrictions imposed by such agencies. In the event the local licensing authority takes into consideration information concerning the applicant's or licensee's criminal history record, the local licensing authority shall also consider any information provided by the applicant or licensee regarding such criminal history record, including, but not limited to, evidence of mitigating factors, rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of his application for a license or license renewal.

(b) As used in this subsection (3), "criminal justice agency" means any federal, state, or municipal court or any governmental agency or subunit of such agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

(4) Every applicant, licensee, or agent or employee of said applicant or licensee, prior to commencing work for, in, or upon the premises of the escort bureau, shall obtain a photographic identity card from the designated law enforcement agency within the licensing jurisdiction in a form prescribed by the local licensing authority and shall carry said identity card at all times while in or upon the licensed premises or while acting as an escort or escort bureau runner.

(5) No escort bureau or escort bureau runner shall employ the services of any person who has not obtained a valid identity card.

Source: L. 80: Entire article added, p. 475, § 1, effective July 1.

12-25.5-107. Refusal of license by local licensing authority. The local licensing authority shall refuse a license if the character of the applicant or any of its officers, directors, or partners is such that violations of this article would be likely to result if a license were granted or if the applicant or any of its officers, directors, or partners has held any license issued pursuant to this article which was suspended or revoked or for which renewal was denied within two years prior to the date of the application being acted upon.

In the event that an otherwise disqualifying refusal, suspension, or revocation is pending judicial review, the local licensing authority shall postpone any action based on the subject matter of the pending review until said review is finally determined.

Source: L. 80: Entire article added, p. 476, § 1, effective July 1.

12-25.5-108. Suspension and revocation. In addition to any other penalties prescribed by this article, the local licensing authority has the power, on its own motion or on complaint, after investigation and public hearing at which the licensee shall be afforded an opportunity to be heard, to suspend or revoke any license issued by such authority for any violation by the licensee or by any of its agents, servants, or employees of the provisions of this article, or of any of the rules or regulations authorized pursuant to this article, or of any of the terms, conditions, or provisions of the license issued by such authority. The local licensing authority has the power to administer oaths and issue subpoenas to require the presence of persons and production of papers, books, and records reasonably necessary to the determination of any hearing which the local licensing authority conducts.

Source: L. 80: Entire article added, p. 477, § 1, effective July 1.

12-25.5-109. Persons prohibited as licensees. (1) No license provided by this article shall be issued to or held by:

- (a) Any corporation, any of whose officers, directors, or stockholders holding over ten percent of the issued or outstanding capital stock thereof are not of good moral character;
 - (b) Any partnership, association, or company, any of whose officers, or any of whose members holding more than ten percent interest therein, are not of good moral character;
 - (c) Any person employing, assisted by, or financed in whole or in part by any other person who is not of good moral character;
 - (d) A peace officer or any of the local licensing authority's inspectors or employees;
 - (e) Any person unless he is of good moral character.
- (2) For purposes of determining good moral character, the local licensing authority may consider the criminal record of all applicants, including, but not limited to, any conviction or guilty plea to a charge based on acts of dishonesty, fraud, deceit, sexual misconduct, or prostitution-related misconduct of any kind, whether or not the acts were committed in this state.

Source: L. 80: Entire article added, p. 477, § 1, effective July 1. **L. 2003:** (1)(d) amended, p. 1632, § 76, effective August 6.

12-25.5-110. License fees. (1) The following license fees shall be paid to the local licensing authority annually in advance:

- (a) For the issuance of a new escort bureau license, an amount to be set by the local licensing authority, but in no event to exceed five thousand dollars;
- (b) For each renewal of an escort bureau license, an amount to be set by the local licensing authority, but in no event to exceed five thousand dollars;
- (c) For the issuance of a new escort or escort bureau runner license, an amount to be set by the local licensing authority, but in no event to exceed five hundred dollars;
- (d) For each renewal of an escort or escort bureau runner license, an amount to be set by the local licensing authority, but in no event to exceed two hundred fifty dollars.

Source: L. 80: Entire article added, p. 477, § 1, effective July 1.

12-25.5-111. Unlawful acts. (1) It is unlawful for any person:

- (a) To operate an escort bureau without holding a currently valid local license;
- (b) To work as an escort or escort bureau runner without a currently valid local license;
- (c) To work as an escort or escort bureau runner without obtaining and carrying a valid identity card pursuant to section 12-25.5-106 (4);

(d) To allow the provision or procurement of any escort service to or for any person under the age of eighteen years without the written consent of such person's parent or legal guardian;

(e) To permit any person under the age of eighteen years to be employed as an employee in an escort bureau. If any person who, in fact, is not eighteen years of age exhibits a fraudulent proof of age, reasonable reliance on such fraudulent proof of age may constitute an affirmative defense to any action seeking the revocation or suspension of any license issued under this article or to any criminal action arising because a person is not at least eighteen years of age.

Source: L. 80: Entire article added, p. 478, § 1, effective July 1.

12-25.5-112. Duties of escort bureau. (1) Every escort bureau shall refer all prospective escorts or escort bureau runners to the local licensing authority for licensing. Upon termination of employment of any escort or escort bureau runner with such escort bureau, the escort bureau shall notify the local licensing authority of such termination within five days.

(2) The escort bureau shall provide to each escort patron a written contract for services. The contract shall clearly state the name and address of the escort and customer, the type of services to be performed, the length of time such services shall be performed, the total amount of money such services will cost the escort patron, and any special terms or conditions relating to the services to be performed. The contract shall include a statement in clear and concise language that prostitution is illegal in this state and that both parties to an act of prostitution may be punished by both fine and imprisonment and that no act of prostitution shall be performed in relation to the services for which contracted. Each contract shall be numbered and utilized in numerical sequence by the escort bureau. The contract shall be signed by the escort patron and a copy furnished to him. The escort bureau shall also retain copies of all such contracts, and one copy of each such contract executed in any calendar month shall be transmitted by the escort bureau to the local licensing authority no later than ten days after the last day of such month. The local licensing authority shall treat such contracts transmitted to them as open public records.

(3) Each escort bureau shall provide to each employee of the escort bureau a written notice that includes:

(a) A statement that human trafficking and coercion of involuntary servitude are prohibited in this state by the provisions of sections 18-3-501, 18-3-502, and 18-3-503, C.R.S.; and

(b) The name, telephone number, and internet web site address of a local, statewide, or national organization that provides assistance to victims of human trafficking and slavery.

Source: L. 80: Entire article added, p. 478, § 1, effective July 1. **L. 2012:** (3) added, (HB 12-1151), ch. 174, p. 622, § 4, effective August 8.

12-25.5-113. Violations and penalty. (1) Any person violating any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars for each offense, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. In addition to any other penalties, the court trying such offense may decree that any license theretofore issued under the provisions of this article be suspended or revoked and may decree that no such license shall thereafter be issued to any such person for a period not to exceed five years.

(2) The penalties provided in this section shall not be affected by the penalties provided in any other section of this article but shall be construed to be an addition to any other penalties.

(3) Any adult who causes a violation of the provisions of section 12-25.5-111 (1) (d) or (1) (e) may be proceeded against pursuant to section 18-6-701, C.R.S., for contributing to the delinquency of a minor.

Source: **L. 80:** Entire article added, p. 478, § 1, effective July 1. **L. 87:** (3) amended, p. 812, § 2, effective October 1.

12-25.5-114. Powers - peace officers - local licensing authority. The peace officers of the city, town, county, or city and county or the duly authorized representatives of the local licensing authority authorized to enforce the provisions of this article, while engaged in performing their duties and while acting under proper orders or regulations, shall have and exercise all the powers vested in peace officers of the state, including the power to arrest and the authority to issue summons for violations of the provisions of this article.

Source: **L. 80:** Entire article added, p. 479, § 1, effective July 1.

12-25.5-115. Local government regulation. This article is intended to provide minimum standards for the licensing of escort bureaus, escorts, and escort bureau runners. Nothing in this article shall prohibit a local government from enacting an ordinance providing more stringent standards for such licensing, but such ordinance shall meet the minimum standards established by this article. To the extent that this article directs implementation by local governments, all such implementing actions may be accomplished by resolution or by ordinance; and such implementing action shall be required upon a request to the local governing body for an application for a license to operate within the jurisdiction of said local governing body. Such a request shall not be acted upon until the implementing action by resolution or ordinance has been accomplished.

Source: **L. 80:** Entire article added, p. 479, § 1, effective July 1.

ARTICLE 26

Firearms - Dealers

Cross references: For offenses relating to firearms, see article 12 of title 18.

12-26-101.	Definitions.	12-26-103.	Record - failure to make -
12-26-102.	Retail dealers - record - in- specimen.		penalty.
		12-26-104.	Jurisdiction - county courts.

12-26-101. Definitions. As used in this article, unless the context otherwise requires:

(1) (a) “Firearms” means a pistol, revolver, or other weapon of any description, loaded or unloaded, from which any shot, bullet, or other missile can be discharged, the length of the barrel of which, not including any revolving, detachable, or magazine breech, does not exceed twelve inches.

(b) “Firearms” does not include firearms, as defined in paragraph (a) of this subsection (1), for which ammunition is not sold or which there is reasonable ground for believing are not capable of being effectually used.

Source: **L. 11:** p. 408, § 1. **C.L.** § 5490. **CSA:** C. 68, § 1. **CRS 53:** § 53-3-1. **C.R.S. 1963:** § 53-3-1. **L. 75:** Entire section R&RE, p. 208, § 17, effective July 16.

ANNOTATION

Law reviews. For article on martial law in Colorado, see 5 Den. B. Ass’n Rec. 10 (No. 219).

The definition of firearms in this section, which regulates the sale of firearms, is limited

by its terms to matters relating to the sale of firearms and is not applicable to the concealed weapons statute. *Cokley v. People*, 168 Colo. 280, 450 P.2d 1013 (1969).

12-26-102. Retail dealers - record - inspection. Every individual, firm, or corporation engaged, within this state, in the retail sale, rental, or exchange of firearms, pistols, or revolvers shall keep a record of each pistol or revolver sold, rented, or exchanged at retail. The record shall be made at the time of the transaction in a book kept for that purpose and shall include the name of the person to whom the pistol or revolver is sold or rented or with whom exchanged; his age, occupation, residence, and, if residing in a city, the street and number therein where he resides; the make, caliber, and finish of said pistol or revolver, together with its number and serial letter, if any; the date of the sale, rental, or exchange of said pistol or revolver; and the name of the employee or other person making such sale, rental, or exchange. The record book shall be open at all times to the inspection of any duly authorized police officer.

Source: L. 11: p. 408, § 3. C.L. § 5492. CSA: C. 68, § 3. CRS 53: § 53-3-2. C.R.S. 1963: § 53-3-2.

12-26-103. Record - failure to make - penalty. Every individual, firm, or corporation who fails to keep the record provided for in section 12-26-102 or who refuses to exhibit such record when requested by a police officer and any purchaser, lessee, or exchanger of a pistol or revolver who, in connection with the making of such record, gives false information is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Source: L. 11: p. 409, § 4. C.L. § 5493. CSA: C. 68, § 4. CRS 53: § 53-3-3. C.R.S. 1963: § 53-3-3.

12-26-104. Jurisdiction - county courts. County courts, within their respective counties, have jurisdiction to hear and determine all cases arising under the provisions of this article, and appeal from judgment shall be to the district courts in the respective counties in the same manner as is now provided by law for appeals from judgments of the county courts in the cases of misdemeanors.

Source: L. 11: p. 409, § 5. C.L. § 5494. CSA: C. 68, § 5. CRS 53: § 53-3-4. C.R.S. 1963: § 53-3-4. L. 64: p. 267, § 159.

ARTICLE 26.1

Background Checks - Gun Shows

Editor's note: (1) This article was added as an initiated measure that was adopted by the people at the general election, November 7, 2000. The measure enacting this article was effective upon the proclamation of the Governor, December 28, 2000. However, section 12-26.1-108 provides that the effective date of article 26.1 is March 31, 2001.

(2) The vote count on the measure at the general election held November 7, 2000, was as follows:

FOR:	1,197,593
AGAINST:	512,084

12-26.1-101.	Background checks at gun shows - penalty.	12-26.1-104.	Posted notice - penalty.
12-26.1-102.	Records - penalty.	12-26.1-105.	Exemption.
12-26.1-103.	Fees imposed by licensed gun dealers.	12-26.1-106.	Definitions.
		12-26.1-107.	Appropriation.
		12-26.1-108.	Effective date.

12-26.1-101. Background checks at gun shows - penalty. (1) Before a gun show vendor transfers or attempts to transfer a firearm at a gun show, he or she shall:

(a) require that a background check, in accordance with section 24-33.5-424, C.R.S., be conducted of the prospective transferee; and

(b) obtain approval of a transfer from the Colorado Bureau of Investigation after a background check has been requested by a licensed gun dealer, in accordance with section 24-33.5-424, C.R.S.

(2) A gun show promoter shall arrange for the services of one or more licensed gun dealers on the premises of the gun show to obtain the background checks required by this article.

(3) If any part of a firearm transaction takes place at a gun show, no firearm shall be transferred unless a background check has been obtained by a licensed gun dealer.

(4) Any person violating the provisions of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: Initiated 2000: Entire article added, effective March 31, 2001, proclamation of the Governor issued December 28, 2000. **L. 2002:** (4) amended, p. 1476, § 63, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (4), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-26.1-102. Records - penalty. (1) A licensed gun dealer who obtains a background check on a prospective transferee shall record the transfer, as provided in section 12-26-102, C.R.S., and retain the records, as provided in section 12-26-103, C.R.S., in the same manner as when conducting a sale, rental, or exchange at retail.

(2) Any individual who gives false information in connection with the making of such records commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: Initiated 2000: Entire article added, effective March 31, 2001, proclamation of the Governor issued December 28, 2000. **L. 2002:** (2) amended, p. 1476, § 64, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-26.1-103. Fees imposed by licensed gun dealers. For each background check conducted at a gun show, a licensed gun dealer may charge a fee not to exceed ten dollars.

Source: Initiated 2000: Entire article added, effective March 31, 2001, proclamation of the Governor issued December 28, 2000.

12-26.1-104. Posted notice - penalty. (1) A gun show promoter shall post prominently a notice, in a form to be prescribed by the executive director of the department of public safety or his or her designee, setting forth the requirement for a background check as provided in this article.

(2) Any person violating the provisions of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: Initiated 2000: Entire article added, effective March 31, 2001, proclamation of the Governor issued December 28, 2000. **L. 2002:** (2) amended, p. 1476, § 65, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-26.1-105. Exemption. The provisions of this article shall not apply to the transfer of an antique firearm, as defined in 18 U.S.C. sec. 921(a)(16), as amended, or a curio or relic, as defined in 27 CFR sec. 178.11, as amended.

Source: Initiated 2000: Entire article added, effective March 31, 2001, proclamation of the Governor issued December 28, 2000.

12-26.1-106. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Collection" means a trade, barter, or in-kind exchange for one or more firearms.
- (2) "Firearm" means any handgun, automatic, revolver, pistol, rifle, shotgun, or other instrument or device capable or intended to be capable of discharging bullets, cartridges, or other explosive charges.
- (3) "Gun show" means the entire premises provided for an event or function, including but not limited to parking areas for the event or function, that is sponsored to facilitate, in whole or in part, the purchase, sale, offer for sale, or collection of firearms at which:
 - (a) twenty-five or more firearms are offered or exhibited for sale, transfer, or exchange; or
 - (b) not less than three gun show vendors exhibit, sell, offer for sale, transfer, or exchange firearms.
- (4) "Gun show promoter" means a person who organizes or operates a gun show.
- (5) "Gun show vendor" means any person who exhibits, sells, offers for sale, transfers, or exchanges, any firearm at a gun show, regardless of whether the person arranges with a gun show promoter for a fixed location from which to exhibit, sell, offer for sale, transfer, or exchange any firearm.
- (6) "Licensed gun dealer" means any person who is a licensed importer, licensed manufacturer, or dealer licensed pursuant to 18 U.S.C. sec. 923, as amended, as a federally licensed firearms dealer.

Source: Initiated 2000: Entire article added, effective March 31, 2001, proclamation of the Governor issued December 28, 2000.

12-26.1-107. Appropriation. The General Assembly shall appropriate funds necessary to implement this article.

Source: Initiated 2000: Entire article added, effective March 31, 2001, proclamation of the Governor issued December 28, 2000.

12-26.1-108. Effective date. This article shall take effect March 31, 2001.

Source: Initiated 2000: Entire article added, effective March 31, 2001, proclamation of the Governor issued December 28, 2000.

ARTICLE 26.5

Handguns - Statewide Instant Criminal Background Check System

12-26.5-101 to 12-26.5-109. (Repealed)

Editor's note: (1) This article was added in 1994. For amendments to this article prior to its repeal in 1998, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 12-26.5-109 as enacted by section 1 of chapter 5, Session Laws of Colorado 1994, and as amended by chapter 115, Session Laws of Colorado 1998, provided for the repeal of this article upon the implementation of the federal national instant criminal background check system. The revisor of statutes was notified that the system was implemented on November 30, 1998.

ARTICLE 27

Firearms - Purchase in Contiguous State

Cross references: For offenses relating to firearms, see article 12 of title 18; for the federal “Gun Control Act of 1968”, see 82 Stat. 1214, 18 U.S.C.A. § 921 et seq.

12-27-101.	Legislative declaration - non-resident.	12-27-103.	Definitions.
12-27-102.	Legislative declaration - residents.	12-27-104.	Article does not apply - when.

12-27-101. Legislative declaration - nonresident. (1) It is declared by the general assembly that it is lawful for a licensed importer, licensed manufacturer, licensed dealer, or a licensed collector (licensed under the federal “Gun Control Act of 1968”) whose place of business is in this state to sell or deliver a rifle or shotgun to a resident of a state contiguous to this state, subject to the following restrictions and requirements:

- (a) The purchaser’s state of residence must permit such sale or delivery by law.
- (b) The sale must fully comply with the legal conditions of sale in both such contiguous states.
- (c) The purchaser and the licensee must have complied, prior to the sale or delivery for sale of the rifle or shotgun, with all of the requirements of section 922 (c) of the federal “Gun Control Act of 1968” applicable to interstate transactions other than those at the licensee’s business premises.

Source: L. 69: p. 365, § 2. C.R.S. 1963: § 53-6-2.

12-27-102. Legislative declaration - residents. (1) It is declared by the general assembly that it is lawful for a resident of this state, otherwise qualified, to purchase or receive delivery of a rifle or shotgun in a state contiguous to this state, subject to the following restrictions and requirements:

- (a) The sale must fully comply with the legal conditions of sale in both such contiguous states;
- (b) The purchaser and the licensee must have complied, prior to the sale or delivery for sale of the rifle or shotgun, with all of the requirements of section 922 (c) of the federal “Gun Control Act of 1968”, applicable to interstate transactions other than at the licensee’s business premises.

Source: L. 69: p. 365, § 3. C.R.S. 1963: § 53-6-3.

12-27-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “A state contiguous to this state” means any state having a common border with this state.

(2) All other terms shall be construed as such terms are defined in the federal “Gun Control Act of 1968”.

Source: L. 69: p. 365, § 1. C.R.S. 1963: § 53-6-1.

12-27-104. Article does not apply - when. (1) The provisions of this article do not apply to:

- (a) Transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors;
- (b) The loan or rental of a firearm to any person for temporary use for lawful sporting purposes;
- (c) A person who is participating in any organized rifle or shotgun match or contest, or is engaged in hunting, in a state other than his state of residence and whose rifle or shotgun has been lost or stolen or has become inoperative in such other state, and who purchases a

rifle or shotgun in such other state from a licensed dealer if such person presents to such dealer a sworn statement:

- (I) That his rifle or shotgun was lost or stolen or became inoperative while participating in such a match or contest, or while engaged in hunting, in such other state; and
- (II) Identifying the chief law enforcement officer of the locality in which such person resides, to whom such licensed dealer shall forward such statement by registered mail.

Source: L. 69: p. 366, § 4. C.R.S. 1963: § 53-6-4.

ARTICLE 28

Fireworks

Editor's note: This article was numbered as article 5 of chapter 53, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1991, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1991, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

12-28-101.	Definitions.	12-28-106.	Exportation of fireworks.
12-28-102.	Unlawful use or sale of fireworks - exceptions.	12-28-107.	Regulation by municipalities and counties.
12-28-103.	Permits - exceptions to permit requirements.	12-28-108.	Storage of fireworks.
12-28-104.	Licensing - application - fee - fireworks licensing cash fund - creation.	12-28-109.	Seizure of fireworks.
12-28-105.	Importation of fireworks - duties of licensees - retention of invoices for inspection.	12-28-110.	Violations - penalty.
		12-28-111.	Denial, suspension, or revocation of or refusal to renew license.
		12-28-112.	Repeal of article. (Repealed)
		12-28-113.	Licensing transition - secretary of state to license until July 15, 1991. (Repealed)

12-28-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Articles pyrotechnic" means pyrotechnic special effects materials and pyrotechnic devices for professional use that are similar to consumer fireworks in chemical composition and construction but are intended for theatrical performances and not intended for consumer use. "Articles pyrotechnic" shall also include pyrotechnic devices meeting the weight limits for consumer fireworks but are not labeled as such and are classified as UN0431 or UN0432 pursuant to 49 CFR 172.101, as amended.

(1.5) "Display fireworks" means large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation and includes, but is not limited to, salutes containing more than one hundred thirty milligrams of explosive material, aerial shells containing more than forty grams of pyrotechnic compositions, and other display pieces that exceed the limits of explosive materials for classification as consumer fireworks as defined in 16 CFR 1500.1 to 1500.272 and 16 CFR 1507.1 to 1507.12 and are classified as fireworks UN0333, UN0334, or UN0335 pursuant to 49 CFR 172.101, as amended, and including fused set pieces containing components that exceed fifty milligrams of salute powder.

(1.7) "Display retailer" means a person, including a manufacturer, who is licensed as a display retailer under the provisions of section 12-28-104 and who sells, delivers, consigns, gives, or otherwise furnishes display fireworks or articles pyrotechnic to a person authorized by section 12-28-103 to discharge fireworks in Colorado.

(2) "Exporter" means any person, including a manufacturer, licensed as an exporter under the provisions of section 12-28-104 and who sells, delivers, consigns, gives, or otherwise furnishes fireworks for export outside of the state of Colorado.

(3) (a) "Fireworks" means any composition or device designed to produce a visible or

audible effect by combustion, deflagration, or detonation, and that meets the definition of articles pyrotechnic, permissible fireworks, or display fireworks.

(b) "Fireworks" does not include:

(I) Toy caps, party poppers, and items similar to toy caps and party poppers that do not contain more than sixteen milligrams of pyrotechnic composition per item and snappers that do not contain more than one milligram of explosive composition per item;

(II) Highway flares, railroad fusees, ship distress signals, smoke candles, and other emergency signal devices;

(III) Educational rockets and toy propellant device type engines used in such rockets when such rockets are of nonmetallic construction and utilize replaceable engines or model cartridges containing less than two ounces of propellant and when such engines or model cartridges are designed to be ignited by electrical means;

(IV) Fireworks which are used in testing or research by a licensed explosives laboratory.

(3.5) "Fireworks display operator" includes an individual who, by experience and training, has demonstrated the required skill and ability to safely set up and discharge display fireworks.

(4) "Fund" means the fireworks licensing cash fund created in section 12-28-104 (6) (b).

(5) "Governing body" means:

(a) The city council, town council, board of trustees, or other governing body of any city or town, as to the area within the corporate limits of such city or town;

(b) The board of directors of any fire protection district organized pursuant to part 1 of article 1 of title 32, C.R.S., as to the area within the boundaries of such fire protection district; and

(c) The board of county commissioners as to the area within a county outside the corporate limits of any city or town or the boundaries of any fire protection district.

(6) "Local authority" means the duly authorized fire department, police department, or sheriff's department of a local jurisdiction.

(7) "Manufacturer" means any person who manufactures, makes, constructs, or produces fireworks.

(8) (a) "Permissible fireworks" means the following small fireworks devices designed to produce audible or visual effects by combustion, complying with the requirements of the United States consumer product safety commission as set forth in 16 CFR 1500.1 to 1500.272 and 1507.1 to 1507.12, and classified as consumer fireworks UN0336 and UN0337 pursuant to 49 CFR 172.101:

(I) Cylindrical fountains, total pyrotechnic composition not to exceed seventy-five grams each for a single tube or, when more than one tube is mounted on a common base, a total pyrotechnic composition of no more than two hundred grams;

(II) Cone fountains, total pyrotechnic composition not to exceed fifty grams each for a single cone or, when more than one cone is mounted on a common base, a total pyrotechnic composition of no more than two hundred grams;

(III) Wheels, total pyrotechnic composition not to exceed sixty grams for each driver unit or two hundred grams for each complete wheel;

(IV) Ground spinner, a small device containing not more than twenty grams of pyrotechnic composition venting out of an orifice usually in the side of the tube, similar in operation to a wheel, but intended to be placed flat on the ground;

(V) Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed two hundred grams each;

(VI) Dipped sticks and sparklers, the total pyrotechnic composition of which does not exceed one hundred grams, of which the composition of any chlorate or perchlorate shall not exceed five grams;

(VII) Any of the following that do not contain more than fifty milligrams of explosive composition:

(A) Explosive auto alarms;

(B) Toy propellant devices;

(C) Cigarette loads;

- (D) Strike-on-box matches; or
- (E) Other trick noise makers;
- (VIII) Snake or glow worm pressed pellets of not more than two grams of pyrotechnic composition and packaged in retail packages of not more than twenty-five units;
- (IX) Fireworks that are used exclusively for testing or research by a licensed explosives laboratory;
- (X) Multiple tube devices with:
 - (A) Each tube individually attached to a wood or plastic base;
 - (B) The tubes separated from each other on the base by a distance of at least one-half of one inch;
 - (C) The effect limited to a shower of sparks to a height of no more than fifteen feet above the ground;
 - (D) Only one external fuse that causes all of the tubes to function in sequence; and
 - (E) A total pyrotechnic composition of no more than five hundred grams.
- (b) "Permissible fireworks" do not include aerial devices or audible ground devices, including, but not limited to, firecrackers.
- (9) "Person" includes an individual, partnership, firm, company, association, corporation, or governmental entity.
- (9.5) "Pyrotechnic operator" includes an individual who, by experience and training, has demonstrated the required skill and ability to safely set up and discharge articles of pyrotechnics.
- (10) "Retailer" means any person who sells, delivers, consigns, or furnishes permissible fireworks to another person not for resale.
- (11) "Storage" means the possession of fireworks for safe custody, where the safe-keeping is the principal object of deposit, and not the consumption or sale.
- (12) "Wholesaler" means any person, including a manufacturer, who is licensed as a wholesaler under section 12-28-104 and who sells, delivers, consigns, gives, or otherwise furnishes permissible fireworks to a retailer for resale in Colorado.

Source: L. 91: Entire article R&RE, p. 1480, § 1, effective June 4. **L. 2004:** (1), (3)(a), (3)(b)(I), and (8) amended and (1.5), (1.7), (3.5), and (9.5) added, p. 1961, § 1, effective August 4.

Editor's note: This section is similar to former § 12-28-101 as it existed prior to 1991.

ANNOTATION

- I. General Consideration.
- II. Fireworks Defined.
- III. Items Excluded as Fireworks.

I. GENERAL CONSIDERATION.

Law reviews. For article, "A Review of the 1959 Constitutional and Administrative Law Decisions", see 37 Dicta 81 (1960).

The subject is a valid one for legislative action under the police power. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

Therefore, this statute prohibiting the use or sale of fireworks is constitutional and valid. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

This statute is not so vague, indefinite, uncertain and ambiguous as to render it void and unenforceable, thus subjecting violators to deprivation of life, liberty and property without due process of law by reason of its failure to specify with more particularity the forbidden

areas. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

Colorado by statute has made illegal the sale of fireworks and therein enumerated the broad categories of prohibited items. *Standard Marine Ins. Co. v. Peck*, 140 Colo. 56, 342 P.2d 661 (1959).

Because the discernible legislative intent is the protection of life and property from the injury and damage resulting from indiscriminate firing and exploding of fireworks, and the protection as well of the ear drums and nervous systems of the citizenry of Colorado. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

II. FIREWORKS DEFINED.

The selection and use by the general assembly of the term "fireworks" was proper since it has a common and well understood meaning. *People v. Young*, 139 Colo. 357, 339 P.2d

672 (1959); *Standard Marine Ins. Co. v. Peck*, 140 Colo. 56, 342 P.2d 661 (1959).

It calls to mind the many products and devices prepared for display or celebration purposes and which explode, or burn and explode, and traditionally are used in the celebration of Independence Day or other holidays. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959); *Standard Marine Ins. Co. v. Peck*, 140 Colo. 56, 342 P.2d 661 (1959).

Fireworks is a device for producing a striking display, as of light, noise, or smoke, by the combustion of explosive or inflammable composition. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

Fireworks include items which produce a visual or auditory sensation by combustion or explosion. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

Webster's New Collegiate Dictionary defines fireworks as devices for producing a striking display, as of light, noise, or smoke, by the combustion of explosive or inflammable composition. This definition is not unlike the legal one which has been adopted by the general assembly. *Standard Marine Ins. Co. v. Peck*, 140 Colo. 56, 342 P.2d 661 (1959).

Both are inclusive of items which produce a visual or auditory sensation by combustion or explosion. *Standard Marine Ins. Co. v. Peck*, 140 Colo. 56, 342 P.2d 661 (1959).

The list of examples contained in this section is by way of illustration and not of limitation and is not to be given a strained construction. *Standard Marine Ins. Co. v. Peck*, 140 Colo. 56, 342 P.2d 661 (1959); *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

The failure of this section to include firearms, ammunition and dynamite does not render the section vague or unreasonable and therefore invalid, since such items are not commonly used for celebration or amusement purposes. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

The general assembly is not required to legislate completely and exhaustively in the entire field. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

Toy cannons clearly come within the statutory definition of fireworks, and the prohibition of their sale is directly related to the promotion of the health, safety, and general welfare of the public. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

It is a matter of common knowledge that the keeping and storage of gunpowder in a building increases the risk of fire, and if so kept in violation of law and in violation of the terms of an insurance policy, the insurer is not liable under a contract of insurance. *Standard Marine Ins. Co. v. Peck*, 140 Colo. 56, 342 P.2d 661 (1959).

Where a fire insurance policy provides that coverage thereunder would not be had if loss resulted from illegal trade, and loss resulted from a display of prohibited fireworks, a conclusion of a trial court that the legality or illegality of such display is immaterial and irrelevant is erroneous. *Standard Marine Ins. Co. v. Peck*, 140 Colo. 56, 342 P.2d 661 (1959).

III. ITEMS EXCLUDED AS FIREWORKS.

There is a reasonable and proper delineation between harmful and nonharmful fireworks. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

In adopting a statute prohibiting the sale of fireworks it is proper for the general assembly to exclude from the category of prohibited items such devices as it deemed not to be dangerous. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

This classification is not ambiguous or indefinite. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

Each item so excluded has a specific and well understood meaning in common usage and no ordinary person could be misled concerning the import of toy pistols, toy guns, sparklers, etc., *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

The list of excluded items are not set forth in this section as examples of a broad class. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959); *Standard Marine Ins. Co. v. Peck*, 140 Colo. 56, 342 P.2d 661 (1959).

This is a list of items which would normally be embraced within the definition of fireworks. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

The assembly has declared that they are not to be included, and in view of the fact that these sparklers, torches, etc., are listed as exceptions, the list must be construed strictly and cannot be enlarged by construction. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959); *Standard Marine Ins. Co. v. Peck*, 140 Colo. 56, 342 P.2d 661 (1959).

12-28-102. Unlawful use or sale of fireworks - exceptions. (1) Except as provided for in subsection (6) of this section, it shall be unlawful for any person to knowingly furnish to any person who is under sixteen years of age, by gift, sale, or any other means, any fireworks, including those defined as permissible fireworks in section 12-28-101 (8).

(2) Except as provided for in subsection (6) of this section, it shall be unlawful for any person who is under sixteen years of age to purchase any fireworks, including those defined as permissible fireworks in section 12-28-101 (8).

(3) Nothing in this section shall be construed to prohibit any statutory or home-rule municipality from enacting any ordinance which prohibits a person under sixteen years of age from purchasing any fireworks, including those defined as permissible fireworks in section 12-28-101 (8).

(4) Any person who sells or offers to sell any fireworks, including those defined as permissible fireworks in section 12-28-101 (8), shall display a warning sign, as specified in this subsection (4). Said warning sign shall be displayed in a prominent place on the premises at all times, shall have a minimum height of eight and one-half inches and a minimum width of eleven inches, and shall read as follows:

WARNING

IT IS ILLEGAL FOR ANY PERSON UNDER SIXTEEN YEARS OF AGE TO PURCHASE ANY FIREWORKS. VIOLATORS MAY BE PUNISHED BY A FINE OF UP TO \$750.00, BY IMPRISONMENT FOR UP TO SIX MONTHS, OR BY BOTH SUCH FINE AND IMPRISONMENT.

(5) Except as provided in this section and in section 12-28-103, it shall be unlawful for any person to possess or discharge any fireworks, other than permissible fireworks, anywhere in this state.

(6) At all times that it is lawful for any person over the age of sixteen years to possess and discharge permissible fireworks, it shall also be lawful for a person under the age of sixteen years to possess and discharge permissible fireworks, if such person is under adult supervision.

(7) (a) Except as provided in this section, it shall be unlawful for any person who is not licensed as a retailer under this article, in retail transactions with the public, to offer for sale, expose for sale, sell, or have in such person's possession with the intent to offer for sale any permissible fireworks.

(b) Repealed.

(8) (a) Except as provided in this section, it shall be unlawful for any person who is not licensed as a display retailer, wholesaler, or exporter under this article, in transactions other than retail transactions with the public, to offer for sale, expose for sale, sell, or have in such person's possession with the intent to offer for sale any fireworks including permissible fireworks.

(b) Repealed.

(9) Nothing in this article shall prevent or regulate:

(a) The use of fireworks by railroads or other transportation agencies for signal purposes or illumination;

(b) The sale or use of blank cartridges for a show or theater, for signal or ceremonial purposes in athletics or sports, or for use by military organizations;

(c) The sale, purchase, possession, or use of fireworks distributed by the division of parks and wildlife for agricultural purposes under conditions approved by the division; or

(d) The sale, delivery, consignment, gift, or furnishing of fireworks among display retailers, wholesalers, or exporters licensed under this article.

Source: L. 91: Entire article R&RE, p. 1483, § 1, effective June 4. **L. 2003:** (7)(b) and (8)(b) repealed, p. 910, § 6, effective August 6.

Editor's note: This section is similar to former § 12-28-102 as it existed prior to 1991.

ANNOTATION

Law reviews. For article, "A Review of the 1959 Constitutional and Administrative Law Decisions", see 37 Dicta 81 (1960).

It is the legislative intent that the explosion of fireworks should be proscribed as a danger to health and safety and as a nuisance resulting

from the unreasonable audible effect. *People v. Young*, 139 Colo. 357, 339 P.2d 672 (1959).

The definition of "use" as shown generally in recognized dictionaries fails to include any reference which, by the use of the most liberal rules of construction, would encompass a gift or

the act of giving. *Calkins v. Albi*, 163 Colo. 370, 431 P.2d 17 (1967).

The giving of or a gift from one to another is not one of the prohibited acts under this section. *Calkins v. Albi*, 163 Colo. 370, 431 P.2d 17 (1967).

A violation of any of the provisions of the fireworks statute is a misdemeanor and punishable by a fine, or imprisonment, or both. *Calkins v. Albi*, 163 Colo. 370, 431 P.2d 17 (1967).

It is axiomatic that a criminal or penal statute be strictly construed in favor of the one against whom it is sought to be enforced. *Calkins v. Albi*, 163 Colo. 370, 431 P.2d 17 (1967).

The fact that negligence per se or statutory negligence is involved in a case rather than criminal responsibility makes no difference in

construing a criminal or penal statute. *Calkins v. Albi*, 163 Colo. 370, 431 P.2d 17 (1967).

Where negligence per se or statutory negligence is an issue, a penal statute has no different meaning and is not subject to a liberal construction as opposed to the meaning it must be given in a criminal case where the rule of strict construction is applicable. *Calkins v. Albi*, 163 Colo. 370, 431 P.2d 17 (1967).

To hold this section applicable to minors who have not reached the age of understanding or to those mentally unable to comprehend its requirements is carrying the law of negligence to a point which is unreasonable and is establishing a doctrine abhorrent to all principles of equity and justice. *Calkins v. Albi*, 163 Colo. 370, 431 P.2d 17 (1967).

12-28-103. Permits - exceptions to permit requirements. (1) Any governing body has the power to grant nontransferable and nonassignable permits within the area under its jurisdiction for the storage of fireworks or for the facilities used for the retail sales of fireworks, including permissible fireworks, by any person and to adopt reasonable rules for the granting of such permits. The fee for a permit issued pursuant to this subsection (1) shall be limited to what is reasonable and necessary to cover the direct and indirect costs associated with the granting and enforcement of such permits.

(2) Any governing body has the power to grant nontransferable and nonassignable permits within the area under its jurisdiction for displays of fireworks or pyrotechnic special effects performances by any person, fair association, amusement park, or other organizations or groups and to adopt reasonable rules for the granting of such permits.

(3) No permit shall be required for the display of fireworks at the state fair grounds by the board of commissioners of the Colorado state fair authority, at any duly authorized county or district fair, or at any display by any governing body or local authority.

(4) The discharge of fireworks pursuant to a permit provided for in subsection (2) of this section, or as otherwise provided in subsection (3) of this section, shall be lawful in Colorado, if the display or pyrotechnic special effects performance is performed in accordance with the requirements of the national fire protection association as stated in NFPA-1123, code for the outdoor display of fireworks or NFPA-1126, standard for the use of pyrotechnics before a proximate audience.

Source: L. 91: Entire article R&RE, p. 1484, § 1, effective June 4. L. 2004: (1), (2), and (4) amended, p. 1964, § 2, effective August 4.

Editor's note: This section is similar to former §§ 12-28-103 and 12-28-105 as they existed prior to 1991.

ANNOTATION

No federal preemption. Subsection (1)(c), which effectively precludes the sale of fireworks to persons in cars bearing Colorado license plates, is not preempted by federal statutes or regulations. *Colo. Pyrotechnic Assn. v. Meyer*, 740 F. Supp. 792 (D. Colo. 1990) (decided prior to 1991 repeal and reenactment.)

Section does not preempt the authority of "governing bodies", other than municipalities, to restrict or prohibit the use of fireworks within their jurisdictions. *Starr Fireworks, Inc. v. W. Adams County Fire Dept.*, 903 P.2d 1202 (Colo. App. 1995).

12-28-104. Licensing - application - fee - fireworks licensing cash fund - creation. (1) No person shall sell, offer for sale, expose for sale, or possess with intent to sell permissible fireworks for retail until that person first obtains a retailer of fireworks license

from the director of the division of fire prevention and control within the department of public safety and the permit, if any, required by section 12-28-103 (1). Such retailer's license is valid only for the calendar year in which it is issued, applies to only one retail location, and shall at all times be displayed at the place of business of such licensed retailer.

(2) No person shall sell, deliver, consign, give, or furnish fireworks to a person authorized by section 12-28-103 to discharge fireworks in Colorado until that person first obtains a display retailer of fireworks license from the director of the division of fire prevention and control and the permit, if any, required by section 12-28-103 (1).

(3) No person shall sell, deliver, consign, give, or furnish permissible fireworks to a retailer for resale in Colorado until that person first obtains a wholesaler of fireworks license from the director of the division of fire prevention and control and the permit, if any, required by section 12-28-103 (1).

(4) No person shall sell, deliver, consign, give, or furnish fireworks for export outside of Colorado until that person first obtains an exporter of fireworks license from the director of the division of fire prevention and control and the permit, if any, required by section 12-28-103 (1).

(5) Applications for each display, retail, wholesale, and export license shall be filed with the director of the division of fire prevention and control at least thirty days before the start of activities for which the license is required. Each such license is valid through September 1 of the year following the date on which the license was issued.

(6) (a) The director of the division of fire prevention and control shall collect all fees pursuant to this article.

(b) All moneys received by the director pursuant to the administration of this article and all interest earned on the moneys shall be deposited in the state treasury in the fireworks licensing cash fund, which fund is hereby created, and the moneys shall be used, subject to annual appropriations by the general assembly, for the purposes set forth in this article, and shall not be deposited in or transferred to the general fund of the state of Colorado or any other fund.

(c) (I) The executive director of the department of public safety shall set reasonable fees pursuant to this article at such rates as are necessary to provide for the actual direct and indirect costs and expenses of the department of public safety in the administration of this article; except that the fee for a:

(A) Retailer of fireworks license shall not exceed fifty dollars;

(B) Display retailer of fireworks license, a wholesaler of fireworks license, or an exporter of fireworks license shall not exceed one thousand five hundred dollars; and

(II) Such rates shall be reviewed annually by the executive director of the department of public safety.

(7) The executive director of the department of public safety shall promulgate rules to implement the provisions of this article. Such rules may include requirements for the certification of fireworks display operators and pyrotechnic operators, and any other requirements that are reasonably necessary for the safety of workers and the public and the protection of property. The procedure for the promulgation of such rules shall be in accordance with the provisions of section 24-4-103, C.R.S.

(8) Any person aggrieved by a decision or order of the director of the department of public safety may seek judicial review pursuant to the provisions of section 24-4-106, C.R.S.

(9) Repealed.

(10) This section shall take effect July 15, 1991.

Source: L. 91: Entire article R&RE, p. 1485, § 1, effective June 4. L. 96: (6)(c) amended, p. 1265, § 177, effective August 7. L. 2003: (9) repealed, p. 910, § 7, effective August 6. L. 2004: (1) to (7) amended, p. 1965, § 3, effective August 4. L. 2011: (6)(c) amended, (SB 11-251), ch. 240, p. 1042, § 1, effective June 30. L. 2012: (1) to (5) and (6)(a) amended, (HB 12-1283), ch. 240, p. 1129, § 32, effective July 1.

Editor's note: This section is similar to former § 12-28-106 as it existed prior to 1991.

Cross references: For the legislative declaration contained in the 1996 act amending subsection (6)(c), see section 1 of chapter 237, Session Laws of Colorado 1996. For the legislative declaration in the 2012 act amending subsections (1) to (5) and (6)(a), see section 1 of chapter 240, Session Laws of Colorado 2012.

12-28-105. Importation of fireworks - duties of licensees - retention of invoices for inspection. (1) It shall be unlawful for any person not licensed as a display retailer, wholesaler, or exporter under the provisions of section 12-28-104 to bring any fireworks including permissible fireworks into this state. Retail purchasers shall not purchase fireworks by mail order or receive any fireworks in Colorado by mail, parcel service, or other carrier. All fireworks sales and deliveries to retail purchasers in Colorado shall be made in Colorado and shall be conducted only by persons licensed pursuant to this article.

(2) It shall be unlawful for any retailer to sell, offer for sale, expose for sale, or possess with intent to sell any permissible fireworks in this state which have not been purchased from a wholesaler licensed under the provisions of section 12-28-104.

(3) It shall be unlawful for a person to conduct any fireworks display or pyrotechnic special effects performance using fireworks that have not been purchased from a display retailer licensed under the provisions of section 12-28-104.

(4) Any retailer licensed under the provisions of section 12-28-104 (1), and any person who discharges fireworks pursuant to section 12-28-103 (2) or (3), shall keep available, for inspection by local authorities, a copy of each invoice for fireworks purchased as long as any fireworks included on such invoice are held in such person's possession. Such invoice shall show the license number of the wholesaler or display retailer from whom such fireworks were purchased.

(5) This section shall take effect July 15, 1991.

Source: L. 91: Entire article R&RE, p. 1487, § 1, effective June 4. **L. 2004:** (3) amended, p. 1966, § 4, effective August 4.

12-28-106. Exportation of fireworks. (1) It shall be unlawful to export fireworks, other than permissible fireworks, from the state of Colorado, unless such fireworks are transported in accordance with the regulations of the United States department of transportation regulating the transportation of explosives, fireworks, and other dangerous articles by motor, rail, air, and water and the exporter obtains a signed bill of lading from each person transporting such fireworks, which shall show the quantity and types of fireworks transported and the recipient's full legal name and address.

(2) The exporter may transport such fireworks by common carrier or by the exporter's vehicle; except that the sale of such fireworks for transport in the purchaser's vehicle is unlawful unless:

(a) The exporter requires the purchaser to display a valid motor vehicle driver's license issued by a state other than the state of Colorado and records the number and state of issue of such driver's license on the bill of lading pertaining to such sale, and further requires the purchaser to display a valid motor vehicle registration showing that the purchaser owns a motor vehicle licensed in a state other than the state of Colorado, which license plate number and state of issue shall be recorded on the bill of lading pertaining to such sale; or

(b) The exporter requires the purchaser to display a valid motor vehicle driver's license issued by the state of Colorado and records the number and state of issue of such driver's license on the bill of lading pertaining to such sale, and further requires the purchaser to furnish a valid wholesale or retail license number or resale license number issued by the governing body of a state or local authority located outside of the state of Colorado, which number and state of issue shall be recorded on the bill of lading pertaining to such sale.

(3) The bills of lading required by this section shall be retained by the exporter for a period of three years from the date of such sale.

Source: L. 91: Entire article R&RE, p. 1487, § 1, effective June 4.

12-28-107. Regulation by municipalities and counties. (1) This article shall not be construed to prohibit the imposition by municipal ordinance of further regulations and prohibitions upon the sale, use, and possession of fireworks, including permissible fireworks, within the corporate limits of any city or town, but no such city or town shall permit or authorize the sale, use, or possession of any fireworks in violation of this article.

(2) This article shall not be construed to prohibit the imposition by county ordinance of further regulations and prohibitions upon the sale, use, and possession of fireworks, including permissible fireworks, within all or any part of the unincorporated areas of a county, but no county shall permit or authorize the sale, use, or possession of any fireworks in violation of this article.

Source: L. 91: Entire article R&RE, p. 1488, § 1, effective June 4. L. 2007: Entire section amended, p. 492, § 1, effective August 3.

Editor's note: This section is similar to former § 12-28-107 as it existed prior to 1991.

12-28-108. Storage of fireworks. All storage of fireworks shall be in accordance with the building and fire codes adopted by the governing body. If the governing body has not adopted a fire code, all storage of fireworks shall be in accordance with the fire code adopted by the director of the division of fire prevention and control within the department of public safety pursuant to section 24-33.5-1203.5, C.R.S.

Source: L. 91: Entire article R&RE, p. 1488, § 1, effective June 4. L. 2011: Entire section amended, (SB 11-251), ch. 240, p. 1042, § 2, effective June 30. L. 2012: Entire section amended, (HB 12-1283), ch. 240, p. 1130, § 33, effective July 1.

Cross references: For the legislative declaration in the 2012 act amending this section, see section 1 of chapter 240, Session Laws of Colorado 2012.

12-28-109. Seizure of fireworks. The local authorities shall seize, take, and remove, at the expense of the owner, all stocks of fireworks, including permissible fireworks, offered or exposed for sale, stored, or held in violation of this article.

Source: L. 91: Entire article R&RE, p. 1488, § 1, effective June 4.

Editor's note: This section is similar to former § 12-28-108 as it existed prior to 1991.

12-28-110. Violations - penalty. Any person who violates any provision of this article commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 91: Entire article R&RE, p. 1488, § 1, effective June 4. L. 2002: Entire section amended, p. 1476, § 66, effective October 1.

Editor's note: This section is similar to former § 12-28-109 as it existed prior to 1991.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-28-111. Denial, suspension, or revocation of or refusal to renew license. (1) The executive director of the department of public safety may deny, suspend, revoke, or refuse to renew any license issued or applied for under the provisions of this article for any of the following reasons:

- (a) Violations of any of the provisions of this article;
- (b) A conviction of any felony, but subject to the provisions of section 24-5-101, C.R.S.;

(c) A conviction pursuant to section 12-28-110;

(d) Any material misstatement, misrepresentation, or fraud in obtaining a license.

(2) Such revocation or suspension proceedings shall be brought by the Colorado executive director of the department of public safety pursuant to the provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

Source: L. 91: Entire article R&RE, p. 1489, § 1, effective June 4. L. 2002: IP(1) and (2) amended, p. 1014, § 11, effective June 1.

Editor's note: This section was amended in House Bill 91-1078. Those amendments were superseded by the repeal and reenactment of this article in Senate Bill 91-51. For the amendments to this section that were in effect from April 20, 1991, to June 4, 1991, see chapter 113, Session Laws of Colorado 1991. (L. 91, p. 681.)

12-28-112. Repeal of article. (Repealed)

Source: L. 91: Entire article R&RE, p. 1489, § 1, effective June 4. L. 92: Entire section amended, p. 2007, § 1, effective April 3. L. 94: Entire section amended, p. 1457, § 8, effective May 25. L. 96: Entire section repealed, p. 284, § 1, effective April 11.

Editor's note: This section was similar to former § 12-28-111 as it existed prior to 1991.

12-28-113. Licensing transition - secretary of state to license until July 15, 1991. (Repealed)

Source: L. 91: Entire article R&RE, p. 1489, § 1, effective June 4.

Editor's note: Subsection (7) provided for the repeal of this section, effective July 15, 1991. (See L. 91, p. 1489.)

HEALTH CARE

ARTICLE 29

Basic Sciences

12-29-101 to 12-29-119. (Repealed)

Source: L. 76: Entire article repealed, p. 416, § 13, effective July 1.

Editor's note: This article was numbered as article 5 of chapter 91, C.R.S. 1963. For amendments to this article prior to its repeal in 1976, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 29.1

Professional Review Proceedings

12-29.1-101.	Legislative declaration.	12-29.1-102.	Solicitation of accident victims - waiting period.
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12-29.1-101. Legislative declaration. The general assembly hereby finds and declares that the proper practice of the healing arts professions requires the supervision and discipline of licensed practitioners for the benefit of the public, and, to this end, the licensing boards and their duly constituted professional review committees shall have the

power, duty, and responsibility to conduct proceedings to determine facts so that the boards may invoke discipline fairly and progressively where required, and that such proceedings shall accommodate the requirements of full professional and technical disclosure, as well as due process of law for the licensee under investigation.

Source: L. 77: Entire article added, p. 660, § 1, effective July 1.

12-29.1-102. Solicitation of accident victims - waiting period. (1) Except as permitted by subsection (2) of this section, no health care practitioner licensed under articles 29.5 to 43 of this title or his or her agent shall engage in solicitation for professional employment concerning a personal injury unless the incident for which employment is sought occurred more than thirty days prior to the solicitation.

(2) This section shall not apply to any person providing emergency health care at the time of the incident or follow-up referrals to physicians from the emergency health care providers.

(3) As used in this section, “solicitation” means an initial contact initiated in person, through any form of electronic or written communication, or by telephone, telegraph, or facsimile, any of which is directed to a specific individual, unless said contact is requested by the individual, a member of the individual’s family, or the individual’s authorized representative. “Solicitation” does not include radio, television, newspaper, or yellow pages advertisements.

(4) Any agreement made in violation of this section is voidable at the option of the individual suffering the personal injury or the individual’s authorized representative.

Source: L. 97: Entire section added, p. 323, § 1, effective July 1.

ARTICLE 29.3

Uniform Emergency Volunteer
Health Practitioners Act

12-29.3-101.	Short title.	12-29.3-108.	Provision of volunteer health or veterinary services - administrative sanctions.
12-29.3-102.	Definitions.		
12-29.3-103.	Applicability to volunteer health practitioners.	12-29.3-109.	Relation to other laws.
12-29.3-104.	Regulation of services during emergency.	12-29.3-110.	Rules.
12-29.3-105.	Volunteer health practitioner registration systems.	12-29.3-111.	Civil liability for volunteer health practitioners - vicarious liability.
12-29.3-106.	Recognition of volunteer health practitioners licensed in other states.	12-29.3-112.	Workers’ compensation coverage. (Reserved)
12-29.3-107.	No effect on credentialing and privileging.	12-29.3-113.	Uniformity of application and construction.

12-29.3-101. Short title. This article shall be known and may be cited as the “Uniform Emergency Volunteer Health Practitioners Act”.

Source: L. 2007: Entire article added, p. 1006, § 1, effective May 22.

12-29.3-102. Definitions. In this article:

(1) “Disaster management agency” means the department of public health and environment.

(2) “Disaster relief organization” means an entity that provides emergency or disaster relief services that include health or veterinary services provided by volunteer health practitioners and that:

(A) Is designated or recognized as a provider of those services pursuant to a disaster

response and recovery plan adopted by an agency of the federal government or the disaster management agency; or

(B) Regularly plans and conducts its activities in coordination with an agency of the federal government or the disaster management agency.

(3) "Emergency" means an event or condition that is an emergency, disaster, incident of bioterrorism, emergency epidemic, pandemic influenza, or other public health emergency under section 24-32-2104, C.R.S.

(4) "Emergency declaration" means a declaration of emergency issued by the governor pursuant to section 24-32-2104, C.R.S.

(5) "Emergency management assistance compact" means the interstate compact approved by congress by Pub.L. 104-321, 110 Stat. 3877, part 29 of article 60 of title 24, C.R.S.

(6) "Entity" means a person other than an individual.

(7) "Health facility" means an entity licensed under the laws of this or another state to provide health or veterinary services.

(8) "Health practitioner" means an individual licensed under the laws of this or another state to provide health or veterinary services.

(9) "Health services" means the provision of treatment, care, advice or guidance, or other services, or supplies, related to the health or death of individuals or human populations, to the extent necessary to respond to an emergency, including:

(A) The following, concerning the physical or mental condition or functional status of an individual or affecting the structure or function of the body:

(i) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; and

(ii) Counseling, assessment, procedures, or other services;

(B) Sale or dispensing of a drug, a device, equipment, or another item to an individual in accordance with a prescription; and

(C) Funeral, cremation, cemetery, or other mortuary services.

(10) "Host entity" means an entity operating in this state which uses volunteer health practitioners to respond to an emergency.

(11) "License" means authorization by a state to engage in health or veterinary services that are unlawful without the authorization. The term includes authorization under the laws of this state to an individual to provide health or veterinary services based upon a national certification issued by a public or private entity.

(12) "Person" means an individual, corporation, business trust, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) "Scope of practice" means the extent of the authorization to provide health or veterinary services granted to a health practitioner by a license issued to the practitioner in the state in which the principal part of the practitioner's services are rendered, including any conditions imposed by the licensing authority.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(15) "Veterinary services" means the provision of treatment, care, advice or guidance, or other services, or supplies, related to the health or death of an animal or to animal populations, to the extent necessary to respond to an emergency, including:

(A) Diagnosis, treatment, or prevention of an animal disease, injury, or other physical or mental condition by the prescription, administration, or dispensing of vaccine, medicine, surgery, or therapy;

(B) Use of a procedure for reproductive management; and

(C) Monitoring and treatment of animal populations for diseases that have spread or demonstrate the potential to spread to humans.

(16) "Volunteer health practitioner" means a health practitioner who provides health or veterinary services, whether or not the practitioner receives compensation for those services. The term does not include a practitioner who receives compensation pursuant to

a preexisting employment relationship with a host entity or affiliate which requires the practitioner to provide health services in this state, unless the practitioner is not a resident of this state and is employed by a disaster relief organization providing services in this state while an emergency declaration is in effect.

Source: L. 2007: Entire article added, p. 1006, § 1, effective May 22.

12-29.3-103. Applicability to volunteer health practitioners. This article applies to volunteer health practitioners registered with a registration system that complies with section 12-29.3-105 and who provide health or veterinary services in this state for a host entity while an emergency declaration is in effect.

Source: L. 2007: Entire article added, p. 1008, § 1, effective May 22.

12-29.3-104. Regulation of services during emergency. (a) While an emergency declaration is in effect, the disaster management agency, in consultation with the department of agriculture with regard to veterinary services, may limit, restrict, or otherwise regulate:

- (1) The duration of practice by volunteer health practitioners;
- (2) The geographical areas in which volunteer health practitioners may practice;
- (3) The types of volunteer health practitioners who may practice; and
- (4) Any other matters necessary to coordinate effectively the provision of health or veterinary services during the emergency.

(b) An order issued pursuant to subsection (a) of this section may take effect immediately, without prior notice or comment, and is not a rule within the meaning of the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(c) A host entity that uses volunteer health practitioners to provide health or veterinary services in this state shall:

(1) Consult and coordinate its activities with the disaster management agency and, with regard to veterinary services, the department of agriculture, to the extent practicable to provide for the efficient and effective use of volunteer health practitioners; and

(2) Comply with any laws other than this article relating to the management of emergency health or veterinary services, including articles 29.1 to 43 of this title.

Source: L. 2007: Entire article added, p. 1008, § 1, effective May 22.

12-29.3-105. Volunteer health practitioner registration systems. (a) To qualify as a volunteer health practitioner registration system, a system must:

(1) Accept applications for the registration of volunteer health practitioners before or during an emergency;

(2) Include information about the licensure and good standing of health practitioners which is accessible by authorized persons;

(3) Be capable of confirming the accuracy of information concerning whether a health practitioner is licensed and in good standing before health services or veterinary services are provided under this article; and

(4) Meet one of the following conditions:

(A) Be an emergency system for advance registration of volunteer health-care practitioners established by a state and funded through the health resources services administration under section 319I of the "Public Health Service Act", 42 U.S.C. sec. 247d-7b, as amended;

(B) Be a local unit consisting of trained and equipped emergency response, public health, and medical personnel formed pursuant to section 2801 of the "Public Health Service Act", 42 U.S.C. sec. 300hh, as amended;

(C) Be operated by a:

(i) Disaster relief organization;

(ii) Licensing board;

(iii) National or regional association of licensing boards or health practitioners;

(iv) Health facility that provides comprehensive inpatient and outpatient health-care services, including a tertiary care and teaching hospital; or

(v) Governmental entity; or

(D) Be designated by the disaster management agency as a registration system for purposes of this article.

(b) While an emergency declaration is in effect, the disaster management agency, a person authorized to act on behalf of the disaster management agency, or a host entity, may confirm whether volunteer health practitioners utilized in this state are registered with a registration system that complies with subsection (a) of this section. Confirmation is limited to obtaining identities of the practitioners from the system and determining whether the system indicates that the practitioners are licensed and in good standing.

(c) Upon request of a person in this state authorized under subsection (b) of this section, or a similarly authorized person in another state, a registration system located in this state shall notify the person of the identities of volunteer health practitioners and whether the practitioners are licensed and in good standing.

(d) A host entity is not required to use the services of a volunteer health practitioner even if the practitioner is registered with a registration system that indicates that the practitioner is licensed and in good standing.

Source: L. 2007: Entire article added, p. 1009, § 1, effective May 22.

12-29.3-106. Recognition of volunteer health practitioners licensed in other states.

(a) While an emergency declaration is in effect, a volunteer health practitioner, registered with a registration system that complies with section 12-29.3-105 and licensed and in good standing in the state upon which the practitioner's registration is based, may practice in this state to the extent authorized by this article as if the practitioner were licensed in this state.

(b) A volunteer health practitioner qualified under subsection (a) of this section is not entitled to the protections of this article if the practitioner is licensed in more than one state and any license of the practitioner is suspended, revoked, or subject to an agency order limiting or restricting practice privileges, or has been voluntarily terminated under threat of sanction.

Source: L. 2007: Entire article added, p. 1010, § 1, effective May 22.

12-29.3-107. No effect on credentialing and privileging. (a) In this section:

(1) "Credentialing" means obtaining, verifying, and assessing the qualifications of a health practitioner to provide treatment, care, or services in or for a health facility.

(2) "Privileging" means the authorizing by an appropriate authority, such as a governing body, of a health practitioner to provide specific treatment, care, or services at a health facility subject to limits based on factors that include licensure, education, training, experience, competence, health status, and specialized skill.

(b) This article does not affect credentialing or privileging standards of a health facility and does not preclude a health facility from waiving or modifying those standards while an emergency declaration is in effect.

Source: L. 2007: Entire article added, p. 1011, § 1, effective May 22.

12-29.3-108. Provision of volunteer health or veterinary services - administrative sanctions. (a) Subject to subsections (b) and (c) of this section, a volunteer health practitioner shall adhere to the scope of practice for a similarly licensed practitioner established by the licensing provisions, practice acts, or other laws of this state.

(b) Except as otherwise provided in subsection (c) of this section, this article does not authorize a volunteer health practitioner to provide services that are outside the practitioner's scope of practice, even if a similarly licensed practitioner in this state would be permitted to provide the services.

(c) The disaster management agency may modify or restrict the health or veterinary services that volunteer health practitioners may provide pursuant to this article, and, with regard to emergencies that require only veterinary services, the department of agriculture may modify or restrict the veterinary services that volunteer health practitioners may provide pursuant to this article. An order under this subsection (c) may take effect immediately, without prior notice or comment, and is not a rule within the meaning of the “State Administrative Procedure Act”, article 4 of title 24, C.R.S.

(d) A host entity may restrict the health or veterinary services that a volunteer health practitioner may provide pursuant to this article.

(e) A volunteer health practitioner does not engage in unauthorized practice unless the practitioner has reason to know of any limitation, modification, or restriction under this section or that a similarly licensed practitioner in this state would not be permitted to provide the services. A volunteer health practitioner has reason to know of a limitation, modification, or restriction or that a similarly licensed practitioner in this state would not be permitted to provide a service if:

(1) The practitioner knows the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service; or

(2) From all the facts and circumstances known to the practitioner at the relevant time, a reasonable person would conclude that the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service.

(f) In addition to the authority granted by law of this state other than this article to regulate the conduct of health practitioners, a licensing board or other disciplinary authority in this state:

(1) May impose administrative sanctions upon a health practitioner licensed in this state for conduct outside of this state in response to an out-of-state emergency;

(2) May impose administrative sanctions upon a practitioner not licensed in this state for conduct in this state in response to an in-state emergency; and

(3) Shall report any administrative sanctions imposed upon a practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state in which the practitioner is known to be licensed.

(g) In determining whether to impose administrative sanctions under subsection (f) of this section, a licensing board or other disciplinary authority shall consider the circumstances in which the conduct took place, including any exigent circumstances, and the practitioner’s scope of practice, education, training, experience, and specialized skill.

Source: L. 2007: Entire article added, p. 1011, § 1, effective May 22.

12-29.3-109. Relation to other laws. (a) This article does not limit rights, privileges, or immunities provided to volunteer health practitioners by laws other than this article. Except as otherwise provided in subsection (b) of this section, this article does not affect requirements for the use of health practitioners pursuant to the emergency management assistance compact.

(b) The office of emergency management created in section 24-33.5-705, C.R.S., pursuant to the emergency management assistance compact, may incorporate into the emergency forces of this state volunteer health practitioners who are not officers or employees of this state, a political subdivision of this state, or a municipality or other local government within this state.

Source: L. 2007: Entire article added, p. 1012, § 1, effective May 22. **L. 2012:** (b) amended, (HB 12-1283), ch. 240, p. 1130, § 34, effective July 1.

Cross references: For the legislative declaration in the 2012 act amending subsection (b), see section 1 of chapter 240, Session Laws of Colorado 2012.

12-29.3-110. Rules. The executive director of the department of public health and environment may promulgate rules to implement this article. In doing so, the executive

director shall consult with and consider the recommendations of the department of agriculture with regard to veterinary services and the entity established to coordinate the implementation of the emergency management assistance compact and shall also consult with and consider rules promulgated by similarly empowered agencies in other states to promote uniformity of application of this article and make the emergency response systems in the various states reasonably compatible.

Source: L. 2007: Entire article added, p. 1012, § 1, effective May 22.

12-29.3-111. Civil liability for volunteer health practitioners - vicarious liability. A volunteer health practitioner’s immunity from civil liability may be affected by section 13-21-115.5, C.R.S.

Source: L. 2007: Entire article added, p. 1013, § 1, effective May 22.

12-29.3-112. Workers’ compensation coverage. (Reserved)

12-29.3-113. Uniformity of application and construction. In applying and construing this article, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: L. 2007: Entire article added, p. 1013, § 1, effective May 22.

ARTICLE 29.5

Acupuncturists

12-29.5-101.	Legislative declaration.	12-29.5-108.	Unauthorized practice - penalties.
12-29.5-102.	Definitions.	12-29.5-109.	Civil penalties.
12-29.5-103.	Mandatory disclosure of information to patients - retention of records of disclosure.	12-29.5-109.5.	Immunity.
		12-29.5-110.	Director - powers and duties.
		12-29.5-111.	Powers and duties of the executive director of the department of public health and environment.
12-29.5-104.	Requirement for licensure with the division of registrations - annual fee - required disclosures.	12-29.5-112.	Insurance coverage - not affected.
12-29.5-104.5.	Licensure by endorsement.	12-29.5-113.	Scope of article.
12-29.5-105.	Unlawful acts - exceptions.	12-29.5-114.	Division of registrations cash fund.
12-29.5-106.	Grounds for disciplinary action.	12-29.5-115.	Effective date - applicability.
12-29.5-107.	Disciplinary authority and proceedings.	12-29.5-116.	Repeal of article - termination of functions.

12-29.5-101. Legislative declaration. While recognizing that the rendering of acupuncture services is not part of the traditional practice of western medicine, it is the intent of the general assembly that those citizens who wish to obtain acupuncture services be allowed to do so and, in addition, that such citizens have available certain information to assist them in making informed choices when seeking such services. It is also the intent of the general assembly that the providers or practitioners of acupuncture should not misrepresent their qualifications, harm their clients, practice in an unhealthy manner, or otherwise deceive insurers or the recipients of acupuncture services.

Source: L. 89: Entire article added, p. 656, § 1, effective June 6.

12-29.5-102. Definitions. As used in this article, unless the context otherwise requires:
(1) “Acupuncture” means a system of health care based upon traditional oriental

medical concepts that employs oriental methods of diagnosis, treatment, and adjunctive therapies for the promotion, maintenance, and restoration of health and the prevention of disease.

(2) "Acupuncturist" means any person who provides for compensation, or holds himself out to the public as providing, acupuncture services.

(3) "Director" means the director of the division of professions and occupations in the department of regulatory agencies.

(3.2) "Guest acupuncturist" means an acupuncturist who is:

(a) Licensed, registered, certified, or regulated as an acupuncturist in another jurisdiction;

(b) In this state for the purpose of instruction or education for not more than seven days within a three-month period; and

(c) Under the direct supervision of a Colorado licensed acupuncturist or licensed chiropractor while performing such instruction or education.

(3.3) "Licensee" means an acupuncturist licensed pursuant to section 12-29.5-104.

(3.5) "Practice of acupuncture" means the insertion and removal of acupuncture needles, the application of heat therapies to specific areas of the human body, and traditional oriental adjunctive therapies. Traditional oriental adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment, the recommendation of oriental therapeutic exercises, and, subject to federal law, the recommendation of herbs and dietary guidelines. The "practice of acupuncture" shall be defined by traditional oriental medical concepts and shall not include the utilization of western medical diagnostic tests and procedures, such as magnetic resonance imaging, radiographs (X rays), computerized tomography scans, and ultrasound. "Practice of acupuncture" does not mean:

(a) Osteopathic medicine and osteopathic manipulative treatment;

(b) "Chiropractic" or "chiropractic adjustment" as defined in section 12-33-102 or therapies allowed as part of the practice of chiropractic or chiropractic adjustment;

(c) Physical therapy as defined in section 12-41-103 or therapies allowed as part of the practice of physical therapy.

(4) (Deleted by amendment, L. 2002, p. 33, § 1, effective March 13, 2002.)

Source: L. 89: Entire article added, p. 656, § 1, effective June 6. L. 95: (1) amended and (3.2) and (3.5) added, p. 482, § 1, effective January 1, 1996. L. 2002: (3.2)(c) and (4) amended and (3.3) added, p. 33, § 1, effective March 13.

12-29.5-103. Mandatory disclosure of information to patients - retention of records of disclosure. (1) Every acupuncturist shall provide the following information in writing to each patient during the initial patient contact:

(a) The name, business address, and business phone number of the acupuncturist;

(b) A fee schedule;

(c) A statement indicating that:

(I) The patient is entitled to receive information about the methods of therapy, the techniques used, and the duration of therapy, if known;

(II) The patient may seek a second opinion from another health care professional or may terminate therapy at any time;

(III) In a professional relationship, sexual intimacy is never appropriate and should be reported to the director of the division of professions and occupations in the department of regulatory agencies;

(d) A listing of the acupuncturist's education, experience, degrees, membership in a professional organization whose membership includes not less than one-third of the persons licensed pursuant to this article, certificates or credentials related to acupuncture awarded by such organizations, the length of time required to obtain said degrees or credentials, and experience;

(e) A statement indicating any license, certificate, or registration in acupuncture or any other health care profession which was issued to the acupuncturist by any local, state, or

national health care agency, and indicating whether any such license, certificate, or registration was suspended or revoked;

(f) A statement that the acupuncturist is complying with any rules and regulations promulgated by the department of public health and environment with respect to this article, including those related to the proper cleaning and sterilization of needles used in the practice of acupuncture and the sanitation of acupuncture offices;

(g) A statement indicating that the practice of acupuncture is regulated by the department of regulatory agencies and the address and phone number of the director of the division of professions and occupations in the department of regulatory agencies; and

(h) A statement indicating the acupuncturist's training and experience in the recommendation and application of adjunctive therapies and herbs as defined by traditional oriental medical concepts.

(2) Any changes in the information required by paragraphs (a) to (f) of subsection (1) of this section shall be made in the mandatory disclosure within five days of the said change.

(3) The acupuncturist shall retain a copy of the written information specified in subsection (1) of this section, dated and signed by the patient, from the time of the initial evaluation until at least three years after the termination of treatment.

Source: L. 89: Entire article added, p. 657, § 1, effective June 6. L. 92: (1) amended and (3) added, p. 1992, § 3, effective July 1. L. 94: (1)(f) amended, p. 2725, § 326, effective July 1. L. 95: (1)(g) amended and (1)(h) added, p. 483, § 2, effective January 1, 1996. L. 2002: (1)(d) amended, p. 33, § 2, effective March 13.

12-29.5-104. Requirement for licensure with the division of registrations - annual fee - required disclosures. (1) Every acupuncturist shall apply for licensure with the division of professions and occupations by providing an application to the director in the form the director shall require. Said application shall include the information specified in section 12-29.5-103 (1) (a) and (1) (d) to (1) (g), and shall include the disclosure of any act that would be grounds for disciplinary action against a licensed acupuncturist under this article.

(2) Any changes in the information required by subsection (1) of this section shall be reported within thirty days of said change to the division of professions and occupations in the manner prescribed by the director.

(3) In order to qualify for licensure, an acupuncturist shall have:

(a) Successfully completed an education program for acupuncturists that conforms to standards approved by the director, which standards may be established by utilizing the assistance of any professional organization whose membership includes not less than one-third of the persons licensed pursuant to this article; or

(b) Qualifications based on education, experience, or training which are substantially similar to those provided by paragraph (a) of this subsection (3) which are documented in the form required by the director and accepted by him in lieu of such education program.

(4) Every applicant for licensure shall pay license, renewal, and reinstatement fees to be established by the director in the same manner as is authorized by section 24-34-105, C.R.S. All licenses shall be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(5) Every acupuncturist shall report to the director every judgment or administrative action, as well as the terms of any settlement or other disposition of any such judgment or action, against the acupuncturist involving malpractice or improper practice of acupuncture, whether occurring in Colorado or in any other jurisdiction. The acupuncturist shall make

such report either within thirty days after the judgment or action or upon application for licensure or reinstatement, whichever occurs earlier.

(6) As a condition of licensure, every acupuncturist shall purchase and maintain commercial professional liability insurance with an insurance company authorized to do business in this state in a minimum indemnity amount of:

(a) Fifty thousand dollars per incident and fifty thousand dollars per year, if practicing as a sole proprietor or general partnership;

(b) Three hundred thousand dollars per incident and three hundred thousand dollars per year, if practicing as a limited liability company or a corporation.

(7) The director shall issue a license to practice acupuncture to any acupuncturist who is registered to practice acupuncture in this state prior to March 13, 2002.

Source: L. 89: Entire article added, p. 657, § 1, effective June 6. L. 92: (1) and (4) amended and (5) added, p. 1993, § 4, effective July 1. L. 95: (6) added, p. 483, § 3, effective January 1, 1996. L. 2002: (1), IP(3), (3)(a), (4), (5), and IP(6) amended and (7) added, p. 34, § 3, effective March 13. L. 2004: (4) amended, p. 1818, § 55, effective August 4.

12-29.5-104.5. Licensure by endorsement. (1) The director shall issue a license by endorsement to engage in the practice of acupuncture in this state to any applicant who has a license in good standing as an acupuncturist under the laws of another jurisdiction if the applicant presents satisfactory proof to the director that, at the time of application for a license by endorsement, the applicant possesses substantially equivalent credentials and qualifications to those required for licensure pursuant to this article.

(2) The director shall specify by rule what shall constitute “substantially equivalent credentials and qualifications” for the purposes of this section.

(3) The director shall establish a fee to be paid by any applicant for licensure by endorsement.

(4) For the purposes of this section, “in good standing” means a license that has not been revoked or suspended, or against which there are no disciplinary or adverse actions.

Source: L. 2002: Entire section added, p. 35, § 4, effective March 13.

12-29.5-105. Unlawful acts - exceptions. (1) Nothing in this article shall interfere with, or be interpreted to interfere with or prevent, any other licensed health care professional from practicing within the scope of his or her practice, as defined in this title.

(1.5) (a) It is unlawful for any person to practice acupuncture without a valid and current license on file with the division of professions and occupations, unless the acupuncturist is practicing pursuant to section 12-36-106 (3) (I) or has met the requirements of subsection (2) of this section.

(b) It is unlawful for any person to:

(I) Engage in the practice of acupuncture without being licensed; or

(II) Use the title “licensed acupuncturist”, “registered acupuncturist”, or “diplomat of acupuncture”, or use the designation “L.Ac.”, “R.Ac.”, or “Dipl. Ac.”, unless such person is practicing pursuant to section 12-36-106 (3).

(2) Notwithstanding the provisions of this section to the contrary, a person in training may practice acupuncture without a valid and current license on file with the division if such practice takes place in the course of a bona fide training program and:

(a) All acupuncture acts and services performed by such persons are performed under the direct, on-site supervision of a licensed acupuncturist, who shall be responsible for all such acts and services as though the licensed acupuncturist had personally performed them; and

(b) The names and current residence addresses of all of such persons have been reported to the director by or on behalf of the licensed acupuncturist supervising such persons.

Source: **L. 89:** Entire article added, p. 658, § 1, effective June 6. **L. 92:** Entire section amended, p. 1994, § 5, effective July 1. **L. 95:** Entire section amended, p. 484, § 4, effective January 1, 1996. **L. 2002:** (1.5) and (2) amended, p. 35, § 5, effective March 13.

12-29.5-106. Grounds for disciplinary action. (1) The director may deny licensure to or take disciplinary action against an acupuncturist pursuant to section 24-4-105, C.R.S., if the director finds that the acupuncturist has committed any of the following acts:

- (a) Violated the provisions of section 12-29.5-105;
- (b) Failed to provide the mandatory disclosure required by section 12-29.5-103 or provided false, deceptive, or misleading information to patients in the said disclosure;
- (c) Failed to provide the information required by section 12-29.5-104 (1) or provided false, deceptive, or misleading information to the division of professions and occupations;
- (d) Committed, or advertised in any manner that he or she will commit, any act constituting an abuse of health insurance as prohibited by section 18-13-119, C.R.S., or a fraudulent insurance act as defined in section 10-1-128, C.R.S.;
- (e) Failed to refer a patient to an appropriate practitioner when the problem of the patient is beyond the training, experience, or competence of the acupuncturist;
- (f) Accepted commissions or rebates or other forms of remuneration for referring clients to other professional persons;
- (g) Offered or gave commissions, rebates, or other forms of remuneration for the referral of clients; except that, notwithstanding the provisions of this paragraph (g), an acupuncturist may pay an independent advertising or marketing agent compensation for advertising or marketing services rendered on his behalf by such agent, including compensation which is paid for the results of performance of such services, on a per patient basis;
- (h) Failed to comply with, or aided or abetted a failure to comply with, the requirements of this article or any lawful rules or regulations adopted by the executive director of the department of public health and environment, including those regulations governing the proper cleaning and sterilization of acupuncture needles or the sanitary conditions of acupuncture offices, or any lawful orders of the department of public health and environment or of court;
- (i) Failed to comply with, or aided or abetted a failure to comply with, the requirements of this article or any lawful rules or regulations governing the practice of acupuncture adopted by the director, or any lawful orders of the director or of court;
- (j) Engaged in sexual contact, sexual intrusion, or sexual penetration, as defined in section 18-3-401, C.R.S., with a patient during the period of time beginning with the initial patient evaluation and ending with the termination of treatment;
- (k) Departed from, or failed to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;
- (l) Continued in the practice of acupuncture while subject to any physical or mental disability which renders the acupuncturist unable to treat patients with reasonable skill and safety or which may endanger a patient's health or safety, or continued in the practice of acupuncture while afflicted with a communicable, infectious, or contagious disease of such a serious nature as to render the acupuncturist unable to treat patients with reasonable skill and safety or which may endanger a patient's health or safety;
- (m) Continued in the practice of acupuncture while addicted to or dependent upon alcohol or upon any habit-forming drug or while abusing or habitually or excessively using any such habit-forming drug or any controlled substance as defined in section 18-18-102 (5), C.R.S.;
- (n) Committed and been convicted of a felony or entered a plea of guilty or nolo contendere to a felony; and
- (o) Published or circulated, directly or indirectly, any fraudulent, false, deceitful, or misleading claims or statements relating to acupuncture or to the acupuncturist's practice, capabilities, services, methods, or qualifications.

(2) The director may accept, as prima facie evidence of the commission of any act enumerated in subsection (1) of this section, evidence of disciplinary action taken by another jurisdiction against an acupuncturist's license or other authorization to practice if

such disciplinary action was based upon acts or practices substantially similar to those enumerated in subsection (1) of this section.

(3) (a) The director or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the director pursuant to this article. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the director.

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

Source: L. 89: Entire article added, p. 658, § 1, effective June 6. L. 92: Entire section amended, p. 1994, § 6, effective July 1. L. 94: (1)(h) amended, p. 2725, § 327, effective July 1. L. 2002: IP(1) amended, p. 36, § 6, effective March 13. L. 2003: (1)(d) amended, p. 620, § 25, effective July 1. L. 2004: (1)(m) amended, p. 1193, § 32, effective August 4; (3) added, p. 1819, § 56, effective August 4. L. 2012: (1)(m) amended, (HB 12-1311), ch. 281, p. 1610, § 12, effective July 1.

12-29.5-107. Disciplinary authority and proceedings. (1) A proceeding for discipline of a licensee may be commenced by the director when the director has reasonable grounds to believe that a licensee has committed any act prohibited by section 12-29.5-106 (1).

(2) Disciplinary actions may consist of the following:

(a) Revocation or suspension of licensure;

(b) Placement of the licensee on probation and setting the terms of that probation; and

(c) (I) Issuance of letters of admonition. When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(II) When a letter of admonition is sent by the director, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(III) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(2.5) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, the complaint should be dismissed, but the director has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.

(3) Complaints of record on file with the director and the results of investigations shall be closed to public inspection during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee. The director's records and papers shall be subject to the provisions of sections 24-72-203 and 24-72-204, C.R.S.

(4) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(5) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent

threat to the health and safety of the public or a person is acting or has acted without the required license, the director may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (5), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(6) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the director may issue to such person an order to show cause as to why the director should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (6) shall be promptly notified by the director of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (6) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (6). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (6) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (6) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the director reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (6), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(7) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the director may enter into a stipulation with such person.

(8) If any person fails to comply with a final cease-and-desist order or a stipulation, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(9) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order in a court of competent jurisdiction.

Source: **L. 89:** Entire article added, p. 659, § 1, effective June 6. **L. 2002:** (1), (2)(a), (2)(b), and (3) amended, p. 36, § 7, effective March 13. **L. 2004:** (2)(c) amended and (4) added, p. 1819, § 57, effective August 4. **L. 2006:** (2.5) and (5) to (9) added, p. 787, § 20, effective July 1.

12-29.5-108. Unauthorized practice - penalties. (1) Any person who practices or offers or attempts to practice acupuncture without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and, for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Any person who violates the provision of section 12-29.5-106 (1) (j) by engaging in sexual contact with a patient during the course of patient care commits a class 1 misdemeanor and shall be referred for criminal prosecution.

(3) Any person who violates the provisions of section 12-29.5-106 (1) (j) by engaging in sexual intrusion or sexual penetration with a patient during the course of patient care commits a class 4 felony and shall be referred for criminal prosecution.

Source: **L. 89:** Entire article added, p. 659, § 1, effective June 6. **L. 2002:** Entire section amended, p. 1476, § 67, effective October 1. **L. 2006:** Entire section amended, p. 86, § 22, effective August 7.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-29.5-109. Civil penalties. (1) No action may be maintained against a recipient of acupuncture services for breach of a contract involving the rendering of acupuncture services provided under such contract by an acupuncturist who has committed, with respect to such recipient, any act prohibited by section 12-29.5-106 (1).

(2) When a patient, his insurer, or his legal guardian or representative has paid for acupuncture services rendered by an acupuncturist who has committed, with respect to such patient, any act prohibited by section 12-29.5-106 (1), whether or not said patient knew that said act or acts were illegal, he, his insurer, or his legal guardian or representative may recover, in an action at law, the amount of any fees paid for the acupuncture services and reasonable attorney fees.

(3) The criminal and civil penalties specified under this article are not exclusive but cumulative and in addition to any other causes of action, rights, or remedies a patient may have under law.

Source: **L. 89:** Entire article added, p. 660, § 1, effective June 6.

12-29.5-109.5. Immunity. The director, the director's staff, any person acting as a witness or consultant to the director, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: **L. 92:** Entire section added, p. 1996, § 7, effective July 1. **L. 2004:** Entire section amended, p. 1820, § 58, effective August 4.

12-29.5-110. Director - powers and duties. (1) In addition to any other powers and duties conferred by this article, the director shall have the following powers and duties:

(a) To adopt such rules and regulations as may be necessary to carry out the provisions of this article;

(b) To establish the fees for licensure and renewal of licenses in the same manner as is authorized by section 24-34-105, C.R.S.;

(c) To accept or deny applications for licensure and to collect the annual license fees authorized by this article;

(d) To inspect on a complaint basis any premises where acupuncture services are provided to ensure compliance with this article and the rules and regulations adopted pursuant thereto;

(e) To contract with the department of public health and environment or others to provide appropriate services as needed to carry out the inspections authorized with respect to the proper cleaning and sterilization of needles and the sanitation of acupuncture offices;

(f) To make investigations, hold hearings, and take evidence with respect to any complaint against any licensee when the director has reasonable cause to believe that the licensee is violating any of the provisions of this article and to subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers, and records relevant to those investigations or hearings. Any subpoena issued pursuant to this article shall be enforceable by the district court.

(g) To conduct any other meetings or hearings necessary to carry out the provisions of this article;

(h) Through the department of regulatory agencies, and subject to appropriations made to the department of regulatory agencies, to employ administrative law judges on a full-time or part-time basis to conduct any hearings required by this article. The administrative law judges shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S.

(i) To seek, through the office of the attorney general, an injunction in any court of competent jurisdiction to enjoin any person from committing any act prohibited by this article. When seeking an injunction under this paragraph (i), the director shall not be required to allege or prove the inadequacy of any remedy at law or that substantial or irreparable damage is likely to result from a continued violation of this article.

(j) To order the physical or mental examination of an acupuncturist if the director has reasonable cause to believe that the acupuncturist is subject to a physical or mental disability which renders the acupuncturist unable to treat patients with reasonable skill and safety or which may endanger a patient's health or safety; and the director may order such an examination whether or not actual injury to a patient is established;

(k) To report to the United States department of health and human services, pursuant to applicable federal law and regulations, any adverse action taken against the license of any acupuncturist.

Source: **L. 89:** Entire article added, p. 660, § 1, effective June 6. **L. 92:** (1)(d) amended and (1)(j) and (1)(k) added, p. 1997, §§ 8, 9, effective July 1. **L. 94:** (1)(e) amended, p. 2726, § 328, effective July 1. **L. 2002:** (1)(b), (1)(c), (1)(f), and (1)(k) amended, p. 36, § 8, effective March 13.

12-29.5-111. Powers and duties of the executive director of the department of public health and environment. The executive director of the department of public health and environment shall promulgate rules and regulations relating to the proper cleaning and sterilization of needles to be used in the practice of acupuncture and the sanitation of acupuncture offices.

Source: **L. 89:** Entire article added, p. 661, § 1, effective June 6. **L. 94:** Entire section amended, p. 2726, § 329, effective July 1.

12-29.5-112. Insurance coverage - not affected. Nothing in this article shall be construed to affect any present or future provision of law or contract or other agreement concerning insurance or insurance coverage with respect to the provision of acupuncture services.

Source: L. 89: Entire article added, p. 661, § 1, effective June 6.

12-29.5-113. Scope of article. The provisions of this article shall not apply to those persons who are otherwise licensed by the state of Colorado under this title if the provision of acupuncture services is within the scope of such licensure. It is not intended nor shall it be interpreted that the practice of acupuncture constitutes the practice of medicine within the scope of the “Colorado Medical Practice Act”, article 36 of this title.

Source: L. 89: Entire article added, p. 661, § 1, effective June 6. L. 95: Entire section amended, p. 484, § 5, effective January 1, 1996.

12-29.5-114. Division of professions and occupations cash fund. It is the intention of the general assembly that all direct and indirect costs incurred in the implementation of this article be funded by annual registration and license fees. All fees collected by the director shall be transmitted to the state treasurer, who shall credit the same to the division of professions and occupations cash fund, created by section 24-34-105, C.R.S.

Source: L. 89: Entire article added, p. 661, § 1, effective June 6. L. 2002: Entire section amended, p. 37, § 9, effective March 13.

12-29.5-115. Effective date - applicability. This article shall take effect July 1, 1989, and shall apply to practicing acupuncturists on or after January 1, 1990.

Source: L. 89: Entire article added, p. 661, § 1, effective June 6.

12-29.5-116. Repeal of article - termination of functions. (1) This article is repealed, effective July 1, 2013.

(2) The licensing functions of the director of the division of professions and occupations as set forth in this article are terminated on July 1, 2013. Prior to such termination, the licensing functions shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 89: Entire article added, p. 661, § 1, effective June 6. L. 93: Entire section amended, p. 1460, § 3, effective June 6. L. 2002: Entire section amended, p. 37, § 10, effective March 13.

ARTICLE 29.7

Athletic Trainer Practice Act

12-29.7-101.	Short title.		
12-29.7-102.	Legislative declaration.	12-29.7-109.	authority for clinical setting.
12-29.7-103.	Definitions.		Grounds for discipline - disciplinary proceedings.
12-29.7-104.	Use of titles restricted.	12-29.7-110.	Mental or physical examination of registrants.
12-29.7-105.	Limitations on authority.		Unauthorized practice - penalties.
12-29.7-106.	Registration required.	12-29.7-111.	Rule-making authority.
12-29.7-107.	Requirements for registration	12-29.7-112.	Severability.
	- registration by endorsement - denial - renewal - fees.	12-29.7-113.	Repeal of article - review of functions.
12-29.7-108.	Scope of article - exclusions -	12-29.7-114.	

12-29.7-101. Short title. This article shall be known and may be cited as the “Athletic Trainer Practice Act”.

Source: L. 2009: Entire article added, (SB 09-026), ch. 373, p. 2020, § 1, effective July 1.

12-29.7-102. Legislative declaration. The general assembly hereby finds and declares that the practice of athletic training by a person who does not possess a valid registration issued pursuant to this article is not in the best interests of the people of the state of Colorado. It is not, however, the intent of this article to restrict the practice of a person duly registered pursuant to any article of this title or other laws of this state from practicing within the person’s scope of practice and authority pursuant to those laws.

Source: L. 2009: Entire article added, (SB 09-026), ch. 373, p. 2020, § 1, effective July 1.

12-29.7-103. Definitions. As used in this article, unless the context otherwise requires: (1) “Accredited athletic training education program” means a program of instruction in athletic training that is offered by an institution of higher education and accredited by a national, regional, or state agency recognized by the United States secretary of education, or another program accredited and approved by the director.

(2) “Athlete” means a person who, in association with an educational institution, an organized community sports program or event, or a professional, amateur, or recreational organization or sports club, participates in games, sports, recreation, or exercise requiring physical strength, flexibility, range of motion, speed, stamina, or agility.

(3) “Athletic trainer” means a person registered to practice athletic training under this article.

(4) (a) “Athletic training” means the performance, pursuant to the direction of a Colorado licensed or otherwise lawfully practicing physician, dentist, or health care professional of those services that require the education, training, and experience required by this article for registration as an athletic trainer pursuant to section 12-29.7-107. “Athletic training” includes services appropriate for the prevention, recognition, assessment, management, treatment, rehabilitation, and reconditioning of injuries and illnesses sustained by an athlete:

(I) Engaged in sports, games, recreation, or exercise requiring physical strength, flexibility, range of motion, speed, stamina, or agility; or

(II) That affect an athlete’s participation or performance in such sports, games, recreation, or exercise.

(b) “Athletic training” includes:

(I) The planning, administration, evaluation, and modification of methods for prevention and risk management of injuries and illnesses;

(II) The identification and appropriate care and referral of medical conditions and disabilities associated with athletes;

(III) The recognition, assessment, treatment, management, prevention, rehabilitation, reconditioning, and appropriate referral of injuries and illnesses;

(IV) The use of therapeutic modalities for which the athletic trainer has received appropriate training and education;

(V) The use of conditioning and rehabilitative exercise;

(VI) The use of topical pharmacological agents, in conjunction with the administration of therapeutic modalities and pursuant to prescriptions issued in accordance with the laws of this state, for which the athletic trainer has received appropriate training and education;

(VII) The education and counseling of athletes concerning the prevention and care of injuries and illnesses;

(VIII) The education and counseling of the general public with respect to athletic training services;

(IX) The referral of an athlete receiving athletic training services to appropriate health care personnel as needed; and

(X) The planning, organization, administration, and evaluation of the practice of athletic training.

(c) As used in this subsection (4), “injuries and illnesses” includes those conditions in an athlete for which athletic trainers, as the result of their education, training, and competency, are qualified to provide care.

(5) “Direction of a physician, dentist, or health care professional” means the planning of services with a physician, dentist, or health care professional; the development and approval by the physician, dentist, or health care professional of procedures and protocols to be followed in the event of an injury or illness; the mutual review of the protocols on a periodic basis; and the appropriate consultation and referral between the physician, dentist, or health care professional and the athletic trainer.

(6) “Director” means the director of the division of professions and occupations or his or her designee.

(7) “Division” means the division of professions and occupations in the department of regulatory agencies created in section 24-34-102, C.R.S.

(8) “National certifying agency” means a nationally recognized agency that certifies the competency of athletic trainers through the use of an examination.

(9) “Registrant” means an athletic trainer registered pursuant to this article.

Source: L. 2009: Entire article added, (SB 09-026), ch. 373, p. 2020, § 1, effective July 1.

12-29.7-104. Use of titles restricted. Only a person registered as an athletic trainer may use the title “athletic trainer” or “registered athletic trainer”, the letters “A.T.”, or any other generally accepted terms, letters, or figures that indicate that the person is an athletic trainer.

Source: L. 2009: Entire article added, (SB 09-026), ch. 373, p. 2022, § 1, effective July 1.

12-29.7-105. Limitations on authority. (1) Nothing in this article shall be construed to authorize an athletic trainer to perform the practice of medicine, as defined in article 36 of this title; physical therapy, as defined in article 41 of this title; chiropractic, as defined in article 33 of this title; occupational therapy, as defined in article 40.5 of this title; or any other form of healing except as authorized by this article.

(2) Nothing in this article shall be construed to authorize an athletic trainer to treat a disease or condition that is not related to a person’s participation in sports, games, recreation, or exercise, but the athletic trainer shall take such disease or condition into account in providing athletic training services and shall consult with a physician as appropriate regarding such disease or condition.

(3) Nothing in this article shall be construed to prohibit a person from recommending weight management or exercise to improve strength, conditioning, flexibility, and cardiovascular performance to a person in normal health as long as the person recommending the weight management or exercise does not represent himself or herself as an athletic trainer and the person does not engage in athletic training as defined in this article.

Source: L. 2009: Entire article added, (SB 09-026), ch. 373, p. 2022, § 1, effective July 1.

12-29.7-106. Registration required. Except as otherwise provided in this article, a person shall not practice athletic training or represent himself or herself as being able to practice athletic training in this state without possessing a valid registration issued by the director in accordance with this article and any rules adopted under this article.

Source: L. 2009: Entire article added, (SB 09-026), ch. 373, p. 2023, § 1, effective July 1.

12-29.7-107. Requirements for registration - registration by endorsement - denial - renewal - fees. (1) Every applicant for a registration to practice athletic training shall have:

- (a) Earned a baccalaureate degree from an accredited college or university;
- (b) Successfully completed an accredited athletic training education program;
- (c) (I) Passed a competency examination administered by a national certifying agency that has been approved by the director and provided evidence of certification within the past three years by the agency; or
- (II) Passed a competency examination developed and administered by the director;
- (d) Submitted an application in the form and manner designated by the director;
- (e) Paid a fee in an amount determined by the director; and
- (f) Submitted additional information as requested by the director to fully and fairly evaluate the applicant's qualifications for registration and to protect the public health and safety.

(2) When an applicant has fulfilled the requirements of subsection (1) of this section, the director shall issue a registration to the applicant. The director may deny registration if the applicant has committed an act that would be grounds for disciplinary action under section 12-29.7-109.

(3) (a) An applicant for registration by endorsement shall file an application and pay a fee as prescribed by the director and shall hold a current, valid license or registration in a jurisdiction that requires qualifications substantially equivalent to those required for registration by subsection (1) of this section.

(b) An applicant for registration shall submit with the application verification that the applicant has actively practiced for a period of time determined by rules of the director or has otherwise maintained continued competency as determined by the director.

(c) Upon receipt of all documents required by paragraphs (a) and (b) of this subsection (3), the director shall review the application and make a determination of the applicant's qualification to be registered by endorsement.

(d) The director may deny the registration if the applicant has committed an act that would be grounds for disciplinary action under section 12-29.7-109.

(4) (a) A registrant shall be required to renew the registration issued pursuant to this article according to a schedule of renewal dates established by the director. The registrant shall submit an application in the form and manner designated by the director and shall pay a renewal fee in an amount determined by the director.

(b) Registrations shall be renewed or reinstated in accordance with the schedule established by the director, and such renewal or reinstatement shall be granted pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a registrant fails to renew his or her registration pursuant to the schedule established by the director, the registration shall expire. A person whose registration has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S., for reinstatement.

(c) The registrant shall submit additional information as may be requested by the director to fully and fairly evaluate the applicant's qualifications for registration and to protect the public health and safety.

(5) All fees collected pursuant to this article shall be determined, collected, and appropriated in the same manner as set forth in section 24-34-105, C.R.S., and periodically adjusted in accordance with section 24-75-402, C.R.S.

Source: L. 2009: Entire article added, (SB 09-026), ch. 373, p. 2023, § 1, effective July 1.

12-29.7-108. Scope of article - exclusions - authority for clinical setting. (1) Nothing contained in this article shall prohibit:

(a) The practice of athletic training that is an integral part of a program of study by students enrolled in an accredited athletic training education program. Students enrolled in an accredited athletic training education program shall be identified as “student athletic trainers” and shall only practice athletic training under the direction and immediate supervision of an athletic trainer currently registered under this article. A student athletic trainer shall not hold himself or herself out as an athletic trainer.

(b) The practice of athletic training by a person who is certified by a national certifying agency and who is employed by the United States government or any bureau, division, or agency of the federal government while acting in the course and scope of such employment;

(c) The practice of athletic training by a person who resides in another state or country, is currently licensed or registered in another state, or is currently certified by a national certifying agency, and is:

(I) Administering athletic training services to an athlete who is a member of a bona fide professional or amateur sports organization or to an athlete who is a member of a sports team of an accredited educational institution, if the person acts in accordance with rules established by the director and engages in the unregistered practice of athletic training for no more than ninety days in any calendar year; or

(II) Participating in an educational program of not more than twelve weeks’ duration. Upon written application by the person prior to the expiration of such twelve-week period, the director may grant an extension of time.

(d) The practice of any health care profession other than athletic training by a person licensed or registered under any other article of this title in accordance with the lawful scope of practice of the other profession or the performance of activities described in subsection (2) of this section, if the person does not hold himself or herself out as an athletic trainer or as engaging in the practice of athletic training;

(e) Athletic training by a patient for himself or herself or gratuitous athletic training by a friend or family member who does not represent himself or herself to be an athletic trainer.

(2) Nothing in this article shall be construed to limit or prohibit the administration of routine assistance or first aid by a person who is not a registered athletic trainer for injuries or illnesses sustained at an athletic event or program.

(3) Nothing in this article shall be construed to require an entity offering or sponsoring an athletic event or regular athletic activity to employ a registered athletic trainer.

(4) A registered athletic trainer may provide athletic training services in a clinical setting to a person who is not an athlete if the athletic trainer is under the direction and supervision of a Colorado licensed or otherwise lawfully practicing physician, dentist, or licensed health care professional who treats sports or musculoskeletal injuries. As used in this subsection (4), “direction and supervision” means the issuance of written or oral directives by the physician, dentist, or licensed health care professional to the registered athletic trainer pertaining to the athletic training services to be provided.

Source: L. 2009: Entire article added, (SB 09-026), ch. 373, p. 2024, § 1, effective July 1.

12-29.7-109. Grounds for discipline - disciplinary proceedings. (1) The director may take disciplinary action against a person registered under this article if the director finds that the person registered has represented himself or herself as a registered athletic trainer after the expiration, suspension, or revocation of his or her registration.

(2) The director may revoke, deny, suspend, or refuse to renew a registration, or issue a cease-and-desist order in accordance with this section upon reasonable grounds that the registrant:

(a) Has engaged in a sexual act with a person receiving services while a therapeutic relationship existed or within six months immediately following termination of the therapeutic relationship. For the purposes of this paragraph (a):

(I) "Sexual act" means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.

(II) "Therapeutic relationship" means the period beginning with the initial evaluation and ending upon the written termination of treatment. When an individual receiving services is an athlete participating on a sports team operated under the auspices of a bona fide amateur sports organization or an accredited educational institution that employs the registrant, the therapeutic relationship exists from the time the athlete becomes affiliated with the team until the affiliation ends or the athletic trainer terminates the provision of athletic training services to the team, whichever occurs first.

(b) Has falsified information in an application or has attempted to obtain or has obtained a registration by fraud, deception, or misrepresentation;

(c) Is an excessive or habitual user or abuser of alcohol or habit-forming drugs or is a habitual user of a controlled substance, as defined in section 18-18-102 (5), C.R.S., or other drugs having similar effects; except that the director has the discretion not to discipline the registrant if he or she is participating in good faith in a program approved by the director to end such use or abuse;

(d) Has a physical or mental condition or disability that renders the registrant unable to provide athletic training services with reasonable skill and safety or that may endanger the health or safety of individuals receiving services;

(e) Has had a registration or license suspended or revoked for actions that are a violation of this article;

(f) Has been convicted of or pled guilty or nolo contendere to a felony or any crime defined in title 18, C.R.S. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea shall be prima facie evidence of the conviction or plea. In considering the disciplinary action, the director shall be governed by section 24-5-101, C.R.S.

(g) Has practiced athletic training without a registration;

(h) Has failed to notify the director of any disciplinary action in regard to the person's past or currently held license, certificate, or registration required to practice athletic training in this state or any other jurisdiction;

(i) Has refused to submit to a physical or mental examination when so ordered by the board pursuant to section 12-29.7-110; or

(j) Has otherwise violated any provision of this article.

(3) Except as otherwise provided in subsection (2) of this section, the director need not find that the actions that are grounds for discipline were willful but may consider whether such actions were willful when determining the nature of disciplinary sanctions to be imposed.

(4) (a) The director may commence a proceeding to discipline a registrant when the director has reasonable grounds to believe that the registrant has committed an act enumerated in this section.

(b) In any proceeding held under this section, the director may accept as evidence of grounds for disciplinary action any disciplinary action taken against a registrant in another jurisdiction if the violation that prompted the disciplinary action in the other jurisdiction would be grounds for disciplinary action under this article.

(5) Disciplinary proceedings shall be conducted in accordance with article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to that article by the director or by an administrative law judge, at the director's discretion. The director has the authority to exercise all powers and duties conferred by this article during the disciplinary proceedings.

(6) (a) The director may request the attorney general to seek an injunction, in any court of competent jurisdiction, to enjoin a person from committing an act prohibited by this article. When seeking an injunction under this paragraph (a), the attorney general shall not be required to allege or prove the inadequacy of any remedy at law or that substantial or irreparable damage is likely to result from a continued violation of this article.

(b) (I) The director is authorized to investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director.

(II) In order to aid the director in any hearing or investigation instituted pursuant to this section, the director or an administrative law judge appointed pursuant to paragraph (c) of this subsection (6) is authorized to administer oaths, take affirmations of witnesses, and issue subpoenas compelling the attendance of witnesses and the production of all relevant records, papers, books, documentary evidence, and materials in any hearing, investigation, accusation, or other matter before the director or an administrative law judge.

(III) Upon failure of any witness or registrant to comply with a subpoena or process, the district court of the county in which the subpoenaed person or registrant resides or conducts business, upon application by the director with notice to the subpoenaed person or registrant, may issue to the person or registrant an order requiring the person or registrant to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. If the person or registrant fails to obey the order of the court, the person or registrant may be held in contempt of court.

(c) The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings, take evidence, make findings, and report such findings to the director.

(7) (a) The director, the director's staff, any person acting as a witness or consultant to the director, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts.

(b) A person participating in good faith in making a complaint or report or in an investigative or administrative proceeding pursuant to this section shall be immune from any civil or criminal liability that otherwise might result by reason of the participation.

(8) A final action of the director is subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S. A judicial proceeding to enforce an order of the director may be instituted in accordance with section 24-4-106, C.R.S.

(9) An employer of an athletic trainer shall report to the director any disciplinary action taken against the athletic trainer or the resignation of the athletic trainer in lieu of disciplinary action for conduct that violates this article.

(10) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(11) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a registrant is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required registration, the director may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (11), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. The hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(12) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, in addition to any specific powers granted pursuant to this article, the director may issue to the person an order to show cause as to why the director should not issue a final order directing the person to cease and desist from the unlawful act or unregistered practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (12) shall be notified promptly by the director of the

issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. The notice may be served on the person against whom the order has been issued by personal service, by first-class, postage-prepaid United States mail, or in another manner as may be practicable. Personal service or mailing of an order or document pursuant to this paragraph (b) shall constitute notice of the order to the person.

(c) (I) The hearing on an order to show cause shall be held no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (12). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing be held later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (12) does not appear at the hearing, the director may present evidence that notification was properly sent or served on the person pursuant to paragraph (b) of this subsection (12) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the director reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required registration, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing the person to cease and desist from further unlawful acts or unregistered practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (12), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(13) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged or is about to engage in an unregistered act or practice; an act or practice constituting a violation of this article, a rule promulgated pursuant to this article, or an order issued pursuant to this article; or an act or practice constituting grounds for administrative sanction pursuant to this article, the director may enter into a stipulation with the person.

(14) If any person fails to comply with a final cease-and-desist order or a stipulation, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(15) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order as provided in subsection (8) of this section.

Source: L. 2009: Entire article added, (SB 09-026), ch. 373, p. 2026, § 1, effective July 1.

12-29.7-110. Mental or physical examination of registrants. (1) If the director has reasonable cause to believe that a person registered under this article is unable to practice with reasonable skill and safety, the director may order the person to take a mental or physical examination administered by a physician or other licensed health care professional

designated by the director. Unless due to circumstances beyond the registrant's control, if the registrant refuses to undergo a mental or physical examination, the director may suspend the person's registration until the results of the examination are known and the director has made a determination of the registrant's fitness to practice. The director shall proceed with an order for examination and shall make his or her determination in a timely manner.

(2) An order requiring a registrant to undergo a mental or physical examination shall contain the basis of the director's reasonable cause to believe that the registrant is unable to practice with reasonable skill and safety. For purposes of a disciplinary proceeding authorized under this article, the registrant shall be deemed to have waived all objections to the admissibility of the examining physician's or licensed health care professional's testimony or examination reports on the ground that they are privileged communications.

(3) The registrant may submit to the director testimony or examination reports from a physician chosen by the registrant and pertaining to any condition that the director has alleged may preclude the registrant from practicing with reasonable skill and safety. The testimony and reports submitted by the registrant may be considered by the director in conjunction with, but not in lieu of, testimony and examination reports of the physician designated by the director.

(4) The results of a mental or physical examination ordered by the director shall not be used as evidence in any proceeding other than one before the director and shall not be deemed a public record or made available to the public.

Source: L. 2009: Entire article added, (SB 09-026), ch. 373, p. 2030, § 1, effective July 1.

12-29.7-111. Unauthorized practice - penalties. A person who practices or offers or attempts to practice athletic training without an active registration issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense. For the second or any subsequent offense, the person commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 2009: Entire article added, (SB 09-026), ch. 373, p. 2031, § 1, effective July 1.

12-29.7-112. Rule-making authority. The director shall promulgate rules that may be necessary for the administration of this article.

Source: L. 2009: Entire article added, (SB 09-026), ch. 373, p. 2031, § 1, effective July 1.

12-29.7-113. Severability. If any provision of this article is held to be invalid, such invalidity shall not affect other provisions of this article that can be given effect without the invalid provision.

Source: L. 2009: Entire article added, (SB 09-026), ch. 373, p. 2031, § 1, effective July 1.

12-29.7-114. Repeal of article - review of functions. This article is repealed, effective July 1, 2015, and the powers, duties, and functions of the director specified in this article are repealed on said date. Prior to the repeal, such powers, duties, and functions shall be reviewed as provided in section 24-34-104, C.R.S.

Source: L. 2009: Entire article added, (SB 09-026), ch. 373, p. 2031, § 1, effective July 1.

ARTICLE 30**Cancer Cure Control**

12-30-101.	Definitions.	12-30-108.	Findings - cease-and-desist order.
12-30-102.	Application of article.	12-30-109.	Injunction.
12-30-103.	Powers and duties of department.	12-30-110.	Investigation by executive director.
12-30-104.	Investigation by department.	12-30-111.	Reports of investigation.
12-30-105.	Creation of advisory council - reports. (Repealed)	12-30-112.	Investigation not an endorsement.
12-30-106.	Failure to comply with request of department.	12-30-113.	Exceptions.
12-30-107.	Unlawful acts.		

12-30-101. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Cancer" means all malignant neoplasms regardless of the tissue of origin including malignant lymphoma and leukemia.
- (2) Repealed.
- (3) "Department" means the department of public health and environment.
- (4) "Licensed dentist" means a person licensed to practice dentistry under the provisions of article 35 of this title, by the state board of dental examiners or its successor.
- (5) "Licensed physician or osteopath" means a person licensed to practice medicine under article 36 of this title by the Colorado medical board or its successor.

Source: L. 61: p. 562, § 1. CRS 53: § 91-7-1. C.R.S. 1963: § 91-7-1. L. 79: (2) repealed, p. 1628, § 1, effective July 1. L. 94: (3) amended, p. 2726, § 330, effective July 1. L. 2010: (5) amended, (HB 10-1260), ch. 403, p. 1979, § 53, effective July 1.

12-30-102. Application of article. The provisions of this article shall not be construed in any manner to authorize any licensed physician, osteopath, or dentist to practice medicine or dentistry beyond the limits imposed by the applicable statutes of the state.

Source: L. 61: p. 563, § 3. CRS 53: § 91-7-3. C.R.S. 1963: § 91-7-3.

12-30-103. Powers and duties of department. (1) The department shall:

- (a) Prescribe reasonable rules and regulations with respect to the administration of this article;
- (b) Investigate violations of the provisions of this article and report such violations to the appropriate enforcement authority;
- (c) Secure the investigation and testing of the content, method of preparation, efficacy, or use of drugs, medicines, compounds, or devices, held out by any individual, person, firm, association, or other entity in the state as of value in the diagnosis, treatment, or cure of cancer, prescribe reasonable regulations with respect to such investigation and testing, and make findings of fact and recommendations upon completion of any such investigation and testing;
- (d) Hold hearings in respect to the investigations made under the provisions of paragraph (c) of this subsection (1), and subpoena witnesses and documents. Prior to issuance of a cease-and-desist order under section 12-30-108, a hearing shall be held by the department. The person furnishing a sample under section 12-30-104 shall be given due notice of such hearing and an opportunity to be heard.
- (e) Contract with independent scientific consultants for specialized services and advice.
- (2) Repealed.

Source: L. 61: p. 564, § 5. CRS 53: § 91-7-5. C.R.S. 1963: § 91-7-5. L. 79: (2) repealed, p. 1628, §§ 1, 2, effective June 6.

12-30-104. Investigation by department. On written request by the department, delivered personally or by mail, any individual, person, firm, association, or other entity, which holds out either expressly or impliedly any drug, medicine, compound, or device as being of a value in the diagnosis, treatment, alleviation, or cure of cancer, shall furnish the department with such sample as the department may deem necessary for adequate testing of any such drug, medicine, compound, or device and shall specify the formula of any drug or compound and name all ingredients by their common or usual names, and, upon like request by the department, shall furnish such further necessary information as it may request as to the composition and method of preparation of and the manner in which any such drug, compound, or device is of value in diagnosis, treatment, alleviation, or cure of cancer.

Source: L. 61: p. 564, § 6. CRS 53: § 91-7-6. C.R.S. 1963: § 91-7-6.

12-30-105. Creation of advisory council - reports. (Repealed)

Source: L. 61: p. 563, § 4. CRS 53: § 91-7-4. C.R.S. 1963: § 91-7-4. L. 64: p. 153, § 96. L. 79: Entire section repealed, p. 1628, § 1, effective July 1.

12-30-106. Failure to comply with request of department. (1) If there is failure to either provide the sample, disclose the formula, or name the ingredients as required by this article, it shall be conclusively presumed that the drug, medicine, compound, or device which is the subject of the department's request has no value in the diagnosis, treatment, alleviation, or cure of cancer.

(2) Any individual, person, firm, association, or other entity that fails to comply with any of the provisions of this article, or with any order of the department validly issued under this article, is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 18-1.3-505, C.R.S.

Source: L. 61: p. 565, § 7. CRS 53: § 91-7-7. C.R.S. 1963: § 91-7-7. L. 79: (1) amended, p. 1632, § 8, effective July 19. L. 2002: (2) amended, p. 1476, § 68, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-30-107. Unlawful acts. (1) It is a misdemeanor for an individual, person, firm, association, or other entity, other than a licensed physician, licensed advanced practice nurse within his or her scope of practice, licensed osteopath, or licensed dentist to diagnose, treat, or prescribe for the treatment of cancer or to hold himself or herself out to any person as being able to cure, diagnose, treat, or prescribe for the treatment of the disease of cancer. A licensed chiropractor shall not treat cancer or prescribe for the treatment of cancer. Such chiropractor may treat any person for human ailments within the scope of his or her license even though the person has or may have cancer at the time, but if a chiropractor knows or has reason to believe that any patient has or may have cancer, he or she must refer the patient to a medical doctor or an osteopath.

(2) It is a misdemeanor for any individual, person, firm, association, or other entity willfully and falsely to represent a device, substance, or treatment as being of a value in the treatment, alleviation, or cure of cancer. Nothing in this section shall abridge the existent rights of the press. Any person who is convicted of a third or any subsequent violation of this article commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 61: p. 563, § 2. CRS 53: § 91-7-2. C.R.S. 1963: § 91-7-2. L. 77: (2) amended, p. 876, § 37, effective July 1, 1979. L. 89: (2) amended, p. 825, § 22, effective July 1. L. 2002: (2) amended, p. 1477, § 69, effective October 1. L. 2008: (1) amended, p. 123, § 2, effective January 1, 2009.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See *People v. McKenna*, 199 Colo. 452, 611 P.2d 54 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-30-108. Findings - cease-and-desist order. (1) Following an investigation or testing of the content or composition of any drug, medicine, compound, or device held out either expressly or impliedly by any individual, person, firm, association, or other entity to be of value in the diagnosis, treatment, alleviation, or cure of cancer and after a hearing as provided in section 12-30-103, the department may direct that any such individual, person, firm, association, or other entity shall cease and desist any further holding out, either expressly or impliedly, that any such drug, medicine, compound, or device, or any substantially similar drug, medicine, compound, or device, is of value in the diagnosis or treatment of cancer.

(2) In the investigation or testing required by this article to determine the value or lack of value of any drug, medicine, compound, or device in the diagnosis, treatment, or cure of cancer, the department, as it deems necessary or advisable, shall utilize the facilities and findings of its own laboratories or other appropriate laboratories, clinics, hospitals, and nonprofit cancer research institutes recognized by the national cancer institute within this state or the facilities and findings of the federal government or of the national cancer institute. The department may arrange, by contract, for investigation by and submission to it of findings, conclusions, or opinions of trained scientists in the appropriate departments of universities, medical schools, clinics, hospitals, and nonprofit cancer research institutes recognized by the national cancer institute and the submission to it of findings, conclusions, or opinions of other qualified scientists. Prior to the issuance of a cease-and-desist order under this section, the department shall make a written finding of fact based on such investigation that the drug, medicine, compound, or device so investigated has been found to be either definitely harmful or of no value in the diagnosis, treatment, alleviation, or cure of cancer, and the department shall be satisfied beyond a reasonable doubt that the written findings of fact are true.

Source: L. 61: p. 565, § 8. CRS 53: § 91-7-8. C.R.S. 1963: § 91-7-8. L. 79: Entire section amended, p. 1628, § 3, effective July 1.

12-30-109. Injunction. (1) If an individual, person, firm, association, or other entity, after service upon him or it of a cease-and-desist order issued by the department under section 12-30-108, persists in prescribing, recommending, or using the drug, medicine, compound, or device described in said cease-and-desist order, or a substantially similar drug, medicine, compound, or device, the district court in any county, on application of the department and when satisfied by a preponderance of the evidence that the written findings of fact required of the department by section 12-30-108 are true, may issue an order to show cause why there should not be issued an injunction or other appropriate order restraining such individual, person, firm, association, or other entity from holding out either expressly or impliedly such drug, medicine, compound, or device, or any substantially similar drug, medicine, compound, or device, as being of a value in the treatment, diagnosis, alleviation, or cure of cancer. After a hearing on such order to show cause, an injunction or other appropriate restraining order may be issued.

(2) Any person against whom an injunction has been issued, under subsection (1) of this section, may not undertake to use in the diagnosis, treatment, or cure of cancer any new, experimental, untested, or secret drug, medicine, compound, or device without first submitting it to the department for investigation and testing.

Source: L. 61: p. 566, § 9. CRS 53: § 91-7-9. L. 64: p. 290, § 227. C.R.S. 1963: § 91-7-9. L. 79: (1) amended, p. 1629, § 4, effective July 1.

12-30-110. Investigation by executive director. (1) The executive director shall investigate possible violations of this article and report violations to the appropriate enforcement authority.

(2) County or district health officers, district attorneys, and the attorney general shall cooperate with the executive director in the enforcement of this article.

Source: L. 61: p. 566, § 10. CRS 53: § 91-7-10. C.R.S. 1963: § 91-7-10.

12-30-111. Reports of investigation. The department, in accordance with the provisions of section 24-1-136, C.R.S., may publish reports based on its investigation or testing of any drug, medicine, compound, or device prescribed, recommended, or used by any individual, person, firm, association, or other entity; and, when the use of any drug, medicine, compound, or device constitutes an imminent danger to health or a gross deception of the public, the department may take appropriate steps to publicize the same.

Source: L. 61: p. 566, § 11. CRS 53: § 91-7-11. C.R.S. 1963: § 91-7-11. L. 64: p. 154, § 97. L. 79: Entire section amended, p. 1629, § 5, effective July 1. L. 83: Entire section amended, p. 829, § 16, effective July 1.

12-30-112. Investigation not an endorsement. The investigation or testing of any product shall not be deemed to imply or indicate any endorsement of the qualifications or value of any such product. No person shall make any representation that investigation or testing under this article constitutes any approval or endorsement of his, or its, activities by the department. The investigation or testing of any product shall not be deemed to imply or indicate that such product is useless or harmful, and during testing no person shall make any representation, except to the department, that the product under test is discredited or that it has been found useless or harmful.

Source: L. 61: p. 567, § 12. CRS 53: § 91-7-12. C.R.S. 1963: § 91-7-12. L. 79: Entire section amended, p. 1630, § 6, effective July 1.

12-30-113. Exceptions. (1) This article shall not apply to the use of any drug, medicine, compound, or device intended solely for legitimate and bona fide investigational purposes by experts qualified by scientific training and experience to investigate the safety and therapeutic value thereof unless the department finds that such drug, medicine, compound, or device is being used in diagnosis or treatment for compensation and profit.

(2) The provisions of this article shall not apply to any person who depends exclusively upon prayer for healing in accordance with the teachings of a bona fide religious sect, denomination, or organization, nor practitioner thereof.

(3) The provisions of this article shall except any drug which is being clinically investigated as a cure, treatment, or as an aid to the diagnosis of cancer according to the regulations of the "Federal Food, Drug, and Cosmetic Act".

(4) (a) (I) The provisions of this article shall not apply to the compound known as laetrile when manufactured in Colorado and prescribed by a licensed physician after fully disclosing to his patient the known adverse effects and reactions and the known reliability or unreliability in cancer treatment of such compound.

(II) In prescribing the use of laetrile, the licensed physician shall do so only upon a request by the patient.

(III) In complying with a patient's request concerning the use of laetrile, a licensed physician, pharmacist, hospital, or health care facility shall be immune from any civil or criminal liability for prescribing or administering laetrile as provided for in this subsection (4), but nothing in this subparagraph (III) shall preclude any cause of action brought by a patient against a licensed physician, pharmacist, hospital, or health care facility which does not arise from the prescription or administration of laetrile in accordance with the provisions of this subsection (4).

(b) It is the intent of the general assembly that the exception granted by this subsection (4) does not constitute an endorsement of the use of laetrile nor does it in any way encourage its use.

Source: L. 61: p. 567, § 13. CRS 53: § 91-7-13. C.R.S. 1963: § 91-7-13. L. 79: (4) added, p. 481, § 1, effective July 1. L. 2000: (3) amended, p. 1841, § 16, effective August 2.

ARTICLE 31

Child Health Associates

12-31-101 to 12-31-116. (Repealed)

Editor’s note: (1) This article was numbered as article 10 of chapter 91, C.R.S. 1963. For amendments to this article prior to its repeal in 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 12-31-116 provided for the repeal of this article, effective July 1, 1990. (See L. 86, p. 638.)

Cross references: For certification of child health associates as physician assistants on and after July 1, 1990, see 12-36-106.5.

ARTICLE 32

Podiatrists

Cross references: For provisions of this article that relate to the practice of medicine, see article 36 of this title.

PART 1		12-32-108.5.	Reconsideration and review of action of board.
GENERAL PROVISIONS		12-32-108.7.	Judicial review.
12-32-101.	Definitions.	12-32-109.	Unauthorized practice - penalties.
12-32-101.5.	Podiatric surgery.	12-32-109.3.	Use of physician assistants.
12-32-102.	Podiatry license required - professional liability insurance required - exceptions.	12-32-109.5.	Professional service corporations, limited liability companies, and registered limited liability partnerships for the practice of podiatry - definitions.
12-32-103.	Appointment of members of podiatry board - terms - repeal of article.		
12-32-104.	Powers and duties of board.	12-32-110.	Penalties for practicing without license. (Repealed)
12-32-104.5.	Limitation on authority.	12-32-111.	Renewal of license.
12-32-105.	Examination as to qualifications.	12-32-112.	Existing licenses and proceedings. (Repealed)
12-32-106.	Fees for examination - passing grade - date of examination. (Repealed)	12-32-113.	Injunctive proceedings.
12-32-107.	Issuance, revocation, or suspension of license - probation - immunity in professional review.	12-32-114.	Duplicates of license.
12-32-107.2.	Volunteer podiatrist license.	12-32-115.	Procedure - registration - fees. (Repealed)
12-32-107.4.	Podiatry training license.	12-32-116.	Certification of licensing. (Repealed)
12-32-107.5.	Prescriptions - requirement to advise patients.	12-32-117.	Division of fees.
12-32-108.	Licensure by endorsement.	12-32-118.	Recovery of fees illegally paid.
12-32-108.3.	Disciplinary action by board.	12-32-119.	Existing licenses and proceedings. (Repealed)

PART 2

SAFETY TRAINING FOR
UNLICENSED X-RAY TECHNICIANS

- 12-32-201. Legislative declaration.
12-32-202. Board authorized to issue rules.

PART 1

GENERAL PROVISIONS

12-32-101. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Podiatric medicine" means the practice of podiatry.
- (2) "Podiatric physician" or "podiatrist" means any person who practices podiatry.
- (3) (a) "Practice of podiatry" means:

(I) Holding out one's self to the public as being able to treat, prescribe for, palliate, correct, or prevent any disease, ailment, pain, injury, deformity, or physical condition of the human toe, foot, ankle, tendons that insert into the foot, and soft tissue below the mid-calf, by the use of any medical, surgical, mechanical, manipulative, or electrical treatment, including complications thereof consistent with such scope of practice;

(II) Suggesting, recommending, prescribing, or administering any podiatric form of treatment, operation, or healing for the intended palliation, relief, or cure of any disease, ailment, injury, condition, or defect of the human toe, foot, ankle, tendons that insert into the foot, and soft tissue wounds below the mid-calf, including complications thereof consistent with such scope of practice; and

(III) Maintaining an office or other place for the purpose of examining and treating persons afflicted with disease, injury, or defect of the human toe, foot, ankle, tendons that insert into the foot, and soft tissue wounds below the mid-calf, including the complications thereof consistent with such scope of practice.

(b) The "practice of podiatry" does not include the amputation of the foot or the administration of an anesthetic other than a local anesthetic.

(c) A podiatrist may only treat a soft tissue wound below the mid-calf if the patient is being treated by a physician for his or her underlying medical condition or if the podiatrist refers the patient to a physician for further treatment of the underlying medical condition.

(4) "Soft tissue wound" means a lesion to the musculoskeletal junction that include dermal and sub-dermal tissue that do not involve bone removal or repair or muscle transfer.

Source: L. 43: p. 427, § 2. L. 47: p. 654, § 1. CSA: C. 109, § 26(2). CRS 53: § 91-2-2. C.R.S. 1963: § 91-2-2. L. 67: p. 246, § 2. L. 73: p. 1023, § 1. L. 79: (2) repealed and (8.5) and (8.7) added, pp. 483, 486, §§ 1, 12, effective July 1. L. 85: Entire section R&RE, p. 485, § 2, effective July 1. L. 90: (3) R&RE, p. 805, § 1, effective July 1. L. 2010: (3) amended and (4) added, (HB 10-1224), ch. 420, p. 2146, § 3, effective July 1.

ANNOTATION

Law reviews. For note, "Acts of Diagnosis by Nurses and the Colorado Professional Nursing Practice Act", see 45 Den. L.J. 467 (1968).

In defining the "practice of podiatry", it was the intent of the general assembly to narrowly limit such definition to practice upon the human foot, toe, ankle, and tendons inserting

into the foot and to require podiatrists to confine their practice strictly to the scope of their licenses. Thus, surgical and nonsurgical procedures performed by a podiatrist above the level of the ankle were outside the scope of podiatry. Snyder v. Colo. Podiatry Bd., 100 P.3d 496 (Colo. App. 2004).

12-32-101.5. Podiatric surgery. (1) Surgical procedures on the ankle below the level of the dermis may be performed by a podiatrist licensed before July 1, 2010, in this state who:

- (a) Is certified by the American board of podiatric surgery or its successor organization;
 - (b) Is performing surgery under the direct supervision of a licensed podiatrist certified by the American board of podiatric surgery or its successor organization; except that, if the supervising podiatrist is licensed on or after July 1, 2010, the supervising podiatrist shall be certified in reconstructive rearfoot/ankle surgery or foot and ankle surgery by the American board of podiatric surgery or its successor organization; or
 - (c) Is performing surgery under the direct supervision of a person licensed to practice medicine and certified by the American board of orthopedic surgery or its successor organization or by the American osteopathic board of orthopedic surgery or its successor organization.
- (2) Surgical procedures on the ankle below the level of the dermis may be performed by a podiatrist licensed on or after July 1, 2010, in this state who:
- (a) Is certified in reconstructive rearfoot/ankle surgery or foot and ankle surgery by the American board of podiatric surgery or its successor organization;
 - (b) Is performing surgery under the direct supervision of a licensed podiatrist certified by the American board of podiatric surgery or its successor organization; except that, if the supervising podiatrist is licensed on or after July 1, 2010, the supervising podiatrist shall be certified in reconstructive rearfoot/ankle surgery or foot and ankle surgery by the American board of podiatric surgery or its successor organization;
 - (c) Is performing surgery under the direct supervision of a person licensed to practice medicine and certified by the American board of orthopedic surgery or its successor organization or by the American osteopathic board of orthopedic surgery or its successor organization; or
 - (d) Has completed a three-year surgical residency approved by the Colorado podiatry board.

Source: L. 90: Entire section added, p. 806, § 2, effective July 1. L. 2010: Entire section amended, (HB 10-1224), ch. 420, p. 2147, § 4, effective July 1.

12-32-102. Podiatry license required - professional liability insurance required - exceptions. (1) It is unlawful for any person to practice podiatry within the state of Colorado who does not hold a license to practice medicine issued by the Colorado medical board or a license to practice podiatry issued by the Colorado podiatry board as provided by this article. A podiatry training license is required for a person serving an approved residency program. Such persons shall be licensed by the Colorado podiatry board pursuant to section 12-32-107.4. As used in this section, an “approved residency” is a residency in a hospital conforming to the minimum standards for residency training established or approved by the Colorado podiatry board, which has the authority, upon its own investigation, to approve any residency.

(2) It is unlawful for any person to practice podiatry within the state of Colorado unless such person purchases and maintains professional liability insurance as follows:

- (a) If such person performs surgical procedures, professional liability insurance shall be maintained in an amount not less than one million dollars per claim and three million dollars per year for all claims;
- (b) The Colorado podiatry board shall by rule establish financial responsibility standards for podiatrists who do not perform podiatric surgical procedures and who sign an affidavit attesting to such fact. The board may determine that no professional liability insurance requirements apply to such persons or may impose standards which shall not in any event exceed those prescribed in paragraph (a) of this subsection (2).

Source: L. 43: p. 427, § 1. CSA: C. 109, § 26(1). CRS 53: § 91-2-1. C.R.S. 1963: § 91-2-1. L. 67: p. 246, § 1. L. 79: Entire section amended, p. 483, § 2, effective July 1. L. 82: Entire section amended, p. 622, § 11, effective April 2. L. 85: Entire section

amended, p. 486, § 3, effective July 1. **L. 95:** Entire section amended, p. 219, § 1, effective July 1. **L. 2010:** (1) and (2)(a) amended, (HB 10-1224), ch. 420, p. 2148, § 5, effective July 1; (1) amended, (HB 10-1260), ch. 403, p. 1979, § 54, effective July 1.

Editor's note: Amendments to subsection (1) by House Bill 10-1224 and House Bill 10-1260 were harmonized.

12-32-103. Appointment of members of podiatry board - terms - repeal of article.

(1) The governor shall appoint the members of the Colorado podiatry board. The board shall consist of four podiatrist members and one member from the public at large. The member from the public shall not be a licensed health care professional or be employed by or benefit financially from the health care industry. The terms of the members of the board shall be four years. The governor may remove any member of the board for misconduct, incompetency, or neglect of duty. Members of the board shall remain in office until their successors are appointed.

(2) The Colorado podiatry board shall elect biennially from its membership a president and a vice-president. A majority of the board shall constitute a quorum for the transaction of all business.

(3) Members of the Colorado podiatry board shall be immune from suit in any action, civil or criminal, based upon any disciplinary proceedings or other official acts performed in good faith as members of such board.

(4) (a) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the Colorado podiatry board created by this section.

(b) This article is repealed, effective July 1, 2019.

Source: **L. 43:** p. 430, § 9. **CSA:** C. 109, § 26(9). **CRS 53:** § 91-2-9. **C.R.S. 1963:** § 91-2-9. **L. 71:** p. 1032, § 3. **L. 73:** p. 1024, § 3. **L. 79:** Entire section amended, p. 483, § 3, effective July 1; entire section amended, p. 909, § 8, effective July 1. **L. 85:** Entire section amended, p. 486, § 4, effective July 1. **L. 87:** Entire section amended, p. 903, § 5, effective June 15. **L. 91:** (4) amended, p. 682, § 23, effective April 20. **L. 95:** (4)(b) amended, p. 220, § 2, effective July 1. **L. 2003:** (1) amended, p. 910, § 8, effective August 6. **L. 2010:** (1), (2), and (4)(b) amended, (HB 10-1224), ch. 420, p. 2149, § 6, effective July 1.

Editor's note: Amendments to this section by Senate Bill 79-43 and Senate Bill 79-264 were harmonized.

12-32-104. Powers and duties of board. (1) The Colorado podiatry board shall regulate the practice of podiatry. The board shall exercise, subject to the provisions of this article, the following powers and duties:

(a) Adopt, promulgate, and from time to time revise such rules and regulations as may be necessary to enable it to carry out the provisions of this article;

(b) Examine, license, and renew licenses of duly qualified podiatric applicants;

(c) Conduct hearings upon complaints concerning the disciplining of podiatrists;

(d) (I) Make investigations, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the board.

(II) The board or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board.

(III) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear

before the board or director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(e) Cause the prosecution of and seek injunctions against all persons violating this article;

(f) Approve or refuse to approve podiatric colleges; and

(g) Adopt regulations governing advertising by licensees to prevent the use of advertising which is misleading, deceptive, or false.

(2) Repealed.

Source: L. 43: p. 430, § 10. L. 47: p. 657, § 5. CSA: C. 109, § 26(10). CRS 53: § 91-2-10. C.R.S. 1963: § 91-2-10. L. 64: p. 151, § 92. L. 85: Entire section R&RE, p. 487, § 5, effective July 1. L. 96: (2) amended, p. 1228, § 44, effective August 7. L. 2004: (1)(d) amended, p. 1820, § 59, effective August 4. L. 2010: (2) repealed, (HB 10-1224), ch. 420, p. 2149, § 7, effective July 1.

Cross references: For the legislative declaration contained in the 1996 act amending subsection (2), see section 1 of chapter 237, Session Laws of Colorado 1996.

12-32-104.5. Limitation on authority. The authority granted the board under the provisions of this article shall not be construed to authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

Source: L. 89: Entire section added, p. 670, § 4, effective July 1.

Cross references: For the legislative declaration contained in the 1989 act enacting this section, see section 1 of chapter 111, Session Laws of Colorado 1989.

12-32-105. Examination as to qualifications. (1) Every person desiring to practice podiatry in this state shall be examined as to his or her qualifications, except as otherwise provided in this article. Each applicant shall submit, in a manner approved by the Colorado podiatry board, an application containing satisfactory proof that said applicant:

(a) Is twenty-one years of age;

(b) Is a graduate of a school of podiatry at which not less than a two-year prepodiatry course and a four-year course of podiatry is required and that is recognized and approved by the Colorado podiatry board;

(c) Has completed one year of a residency program approved by the Colorado podiatry board as established by rules promulgated by the board; and

(d) In the two years immediately preceding the date the application is received by the Colorado podiatry board, has been enrolled in podiatric medical school or in a residency program, has passed the national examination, has been engaged in the active practice of podiatry as defined by the board, or can otherwise demonstrate competency as determined by the board.

(2) and (3) (Deleted by amendment, L. 2010, (HB 10-1224), ch. 420, p. 2149, § 8, effective July 1, 2010.)

Source: L. 43: p. 428, § 3. L. 47: p. 655, § 2. CSA: C. 109, § 26(3). CRS 53: § 91-2-3. C.R.S. 1963: § 91-2-3. L. 73: pp. 526, 1023, §§ 52, 2. L. 76: (2) amended, p. 411, § 2, effective July 1. L. 79: (1) amended, p. 484, § 4, effective July 1. L. 85: Entire section amended, p. 488, § 6, effective July 1. L. 2001: (1) amended and (3) added, p. 107, § 1, effective March 23. L. 2003: (1)(c) amended, p. 910, § 9, effective August 6. L. 2010: Entire section amended, (HB 10-1224), ch. 420, p. 2149, § 8, effective July 1.

12-32-106. Fees for examination - passing grade - date of examination. (Repealed)

Source: L. 43: p. 428, § 4. CSA: C. 109, § 26(4). CRS 53: § 91-2-4. C.R.S. 1963: § 91-2-4. L. 71: p. 1031, § 1. L. 79: Entire section R&RE, p. 484, § 5, effective July 1. L. 83: Entire section amended, p. 528, § 1, effective June 10. L. 90: Entire section amended, p. 806, § 3, effective July 1. L. 2010: Entire section repealed, (HB 10-1224), ch. 420, p. 2150, § 9, effective July 1.

12-32-107. Issuance, revocation, or suspension of license - probation - immunity in professional review. (1) (a) If the Colorado podiatry board determines that an applicant possesses the qualifications required by this article, has paid a fee to be determined and collected pursuant to section 24-34-105, C.R.S., and is entitled to a license to practice podiatry, the board shall issue such license.

(b) If the Colorado podiatry board determines that an applicant for a license to practice podiatry does not possess the qualifications required by this article or that he or she has done any of the acts defined in subsection (3) of this section as unprofessional conduct, it may refrain from issuing a license, and the applicant may proceed as provided in section 24-4-104 (9), C.R.S.

(2) The Colorado podiatry board may refuse to issue or may revoke, suspend, or refuse to renew the license to practice podiatry issued to any person; or the board may issue a letter of admonition or a letter of concern to or place on probation any person who, while holding such a license, is guilty of any unprofessional conduct.

(3) "Unprofessional conduct" as used in this article means:

(a) Repealed.

(b) Resorting to fraud, misrepresentation, or material deception, or making a misleading omission, in applying for, securing, renewing, or seeking reinstatement of a license to practice podiatry in this state or any other state, in applying for professional liability coverage required pursuant to section 12-32-109.5 or for privileges at a hospital or other health care facility, or in taking the examination required in this article;

(c) and (d) Repealed.

(e) Conviction of a felony or any crime that would constitute a violation of this article. For purposes of this paragraph (e), "conviction" includes the entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence.

(f) Habitual or excessive use or abuse of alcohol or controlled substances;

(g) Repealed.

(h) Aiding or abetting in the practice of podiatry any person not licensed to practice podiatry or any person whose license to practice podiatry is suspended;

(i) Any act or omission which fails to meet generally accepted standards of the practice of podiatry;

(j) Except as otherwise provided in section 25-3-103.7, C.R.S., practicing podiatry as the partner, agent, or employee of, or in joint venture with, any person who does not hold a license to practice podiatry within this state, or practicing podiatry as an employee of, or in joint venture with, any partnership or association any of whose partners or associates do not hold a license to practice podiatry within this state, or practicing podiatry as an employee of, or in joint venture with, any corporation other than a professional service corporation for the practice of podiatry as provided for in sections 12-32-109 (4) and 12-32-109.5. Any licensee holding a license to practice podiatry in this state may accept employment from any person, partnership, association, or corporation to examine and treat the employees of such person, partnership, association, or corporation.

(k) Violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this article, any rule or regulation promulgated by the board pursuant to this article, or any final agency order;

(l) Repealed.

(m) Procuring, or aiding or abetting in procuring, criminal abortion;

(n) Administering, dispensing, or prescribing any habit-forming drug or any controlled substance, as defined in section 18-18-102 (5), C.R.S., other than in the course of legitimate

professional practice, which includes only prescriptions related to the scope of podiatric medicine as defined in section 12-32-101 (3) (a);

(o) Conviction of violation of any federal or state law regulating the possession, distribution, or use of any controlled substance, as defined in section 18-18-102 (5), C.R.S., and, for the purposes of this paragraph (o), a plea of guilty or a plea of nolo contendere accepted by the court shall be considered as a conviction;

(p) Such physical or mental disability as to render the licensee unable to perform podiatry with reasonable skill and with safety to the patient;

(q) Advertising which is misleading, deceptive, or false;

(r) (I) Violation or abuse of health insurance pursuant to section 18-13-119, C.R.S.; or

(II) Advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the licensee will perform any act prohibited by section 18-13-119 (3), C.R.S.;

(s) Engaging in a sexual act with a patient during the course of patient care or during the six-month period immediately following the termination of such care. "Sexual act", as used in this paragraph (s), means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.

(t) Performing any procedure in the course of patient care beyond the podiatrist's training and competence. This paragraph (t) shall not be construed to authorize a licensed podiatrist to act beyond the scope of podiatry as defined by section 12-32-101 (3).

(u) Engaging in any of the following activities and practices: Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies; the administration, without clinical justification, of treatment which is demonstrably unnecessary; the failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care for the profession; or ordering or performing, without clinical justification, any service, X ray, or treatment which is contrary to recognized standards of the practice of podiatry as interpreted by the board;

(v) Falsifying or repeatedly making incorrect essential entries or repeatedly failing to make essential entries on patient records;

(w) Committing a fraudulent insurance act, as defined in section 10-1-128, C.R.S.;

(x) (Deleted by amendment, L. 95, p. 220, § 3, effective July 1, 1995.)

(y) Refusing to complete and submit the renewal questionnaire, or failing to report all of the relevant facts, or falsifying any information on the questionnaire as required pursuant to section 12-32-111;

(z) Failing to report to the board any podiatrist known to have violated or, upon information or belief, believed to have violated any of the provisions of this subsection (3);

(aa) Dividing fees or compensation or billing for services performed by an unlicensed person as prohibited by section 12-32-117;

(bb) Failing to report to the Colorado podiatry board within thirty days any adverse action taken against the licensee by another licensing agency in another state, territory, or country, any peer review body, any health care institution, any professional or medical society or association, any governmental agency, any law enforcement agency, or any court for acts of conduct that would constitute grounds for action as described in this article;

(cc) Failing to report to the board the surrender of a license or other authorization to practice medicine in another state or jurisdiction or the surrender of membership on any medical staff or in any medical or professional association or society while under investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this article;

(dd) Violating the provisions of section 8-42-101 (3.6), C.R.S.;

(ee) Any violation of the provisions of section 12-32-202 or any rule or regulation of the board adopted pursuant to said section;

(ff) Failing to respond in an honest, materially responsive, and timely manner to a complaint issued pursuant to section 12-32-108.3.

(3.5) The discipline of a licensee for acts related to the practice of podiatry in another state, territory, or country shall be deemed unprofessional conduct. For purposes of this subsection (3.5), "discipline" includes any sanction required to be reported pursuant to 45 CFR 60.8. This subsection (3.5) shall apply only to disciplinary action based upon acts or

omissions in such other state, territory, or country substantially as defined as unprofessional conduct pursuant to subsection (3) of this section.

(4) (a) If a professional review committee is established pursuant to this section to investigate the quality of care being given by a person licensed pursuant to this article, it shall include in its membership at least three persons licensed under this article, but such committee may be authorized to act only by:

(I) The Colorado podiatry board; or

(II) A society or an association of persons licensed pursuant to this article whose membership includes not less than one-third of the persons licensed pursuant to this article residing in this state if the licensee whose services are the subject of review is a member of such society or association.

(b) Any member of the board or professional review committee, any member of the board's staff, any member of the professional review committee's staff, any person acting as a witness or consultant to the board or committee, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, committee member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

(5) To prevent the use of advertising which is misleading, deceptive, or false, the Colorado podiatry board may adopt regulations governing advertising by podiatrists.

Source: **L. 43:** p. 430, § 8. **CSA: C. 109,** § 26(8). **CRS 53:** § 91-2-8. **C.R.S. 1963:** § 91-2-8. **L. 67:** p. 247, § 3. **L. 71:** p. 1031, § 2. **L. 73:** p. 526, § 53. **L. 77:** (4) added, p. 661, § 3, effective July 1. **L. 79:** (1) amended, (3)(l) repealed, and (5) added, pp. 485, 486, 522, §§ 6, 12, 25, effective July 1. **L. 83:** (3)(a), (3)(c), (3)(d), and (3)(g) repealed, (3)(f), (3)(i), and (3)(j) amended, and (3)(m) to (3)(q) and (3.5) added, pp. 530, 531, 532, §§ 1, 2, 4, effective April 29. **L. 85:** (1), (2), (3)(e), (3)(n), (3)(o), (4)(a)(I), (4)(b), and (5) amended and (3)(r) to (3)(t) added, pp. 489, 681, §§ 7, 2, effective July 1. **L. 86:** (3)(j) amended, p. 1216, § 6, effective May 30. **L. 89:** (3)(u) to (3)(w) added, p. 670, § 5, effective July 1. **L. 90:** (2), (3)(i) to (3)(k), (3)(n), (3)(o), (3)(r)(I), and (3.5) amended, (3)(x) to (3)(cc) added, p. 806, § 4, effective July 1. **L. 91:** (3)(dd) added, p. 1336, § 49, effective July 1; (3)(ee) added, p. 1615, § 5, effective January 1, 1993. **L. 93:** (3)(j) amended, p. 722, § 3, effective May 6. **L. 95:** (3)(b), (3)(e), (3)(s), and (3)(x) amended, p. 220, § 3, effective July 1. **L. 2003:** (3)(w) amended, p. 620, § 26, effective July 1. **L. 2004:** (3)(f) amended, p. 1193, § 33, effective August 4; (4)(b) amended, p. 1821, § 60, effective August 4. **L. 2005:** (3)(n) amended, p. 763, § 18, effective June 1. **L. 2010:** (1), (3)(b), (3)(f), (3)(y), (3)(bb), and (3.5) amended and (3)(ff) added, (HB 10-1224), ch. 420, p. 2151, § 10, effective July 1. **L. 2012:** (3)(n) and (3)(o) amended, (HB 12-1311), ch. 281, p. 1610, § 13, effective July 1.

Cross references: (1) For an alternative disciplinary action for persons licensed pursuant to this article, see § 24-34-106; for an exception to the provisions of subsection (3)(j) of this section, see § 6-18-303.

(2) For the legislative declaration contained in the 1989 act enacting subsection (3)(u) to (3)(w), see section 1 of chapter 111, Session Laws of Colorado 1989.

12-32-107.2. Volunteer podiatrist license. (1) Any person licensed to practice podiatry pursuant to this article may apply to the Colorado podiatry board for volunteer licensure status. Any such application shall be in the form and manner designated by the board. The board may grant such status by issuing a volunteer license, or it may deny the

application if the licensee has been disciplined for any of the causes set forth in section 12-32-107.

- (2) Any person applying for a license under this section shall:
 - (a) Attest that, after a date certain, the applicant no longer earns income as a podiatrist;
 - (b) Pay the license fee authorized by section 24-34-105, C.R.S. The volunteer podiatrist license fee shall be reduced from the license fee.
 - (c) Maintain liability insurance as provided in section 12-32-102.
- (3) The volunteer status of a licensee shall be plainly indicated on the face of any volunteer license issued pursuant to this section.
- (4) The Colorado podiatry board is authorized to conduct disciplinary proceedings pursuant to section 12-32-108.3 against any person licensed under this section for an act committed while such person was licensed pursuant to this section.
- (5) Any person licensed under this section may apply to the Colorado podiatry board for a return to active licensure status by filing an application in the form and manner designated by the board. The board may approve such application and issue a license to practice podiatry or may deny the application if the licensee has been disciplined for or engaged in any of the activities set forth in section 12-32-107.
- (6) A podiatrist with a volunteer license shall only provide podiatry services if the services are performed on a limited basis for no fee or other compensation.

Source: L. 2010: Entire section added, (HB 10-1224), ch. 420, p. 2152, § 11, effective July 1. L. 2011: (2)(b) amended, (HB 11-1303), ch. 264, p. 1150, § 10, effective August 10.

12-32-107.4. Podiatry training license. (1) The Colorado podiatry board shall issue a podiatry training license to an applicant who has:

- (a) Graduated from a podiatric medical school approved by the Colorado podiatry board;
 - (b) Passed the part I and part II examinations by the national board of podiatric medical examiners or its successor organization; and
 - (c) Been accepted into a podiatric residency program in Colorado.
- (2) At least thirty days prior to the date the applicant begins the residency program, the applicant shall submit a statement to the Colorado podiatry board from the residency director of an approved residency program in Colorado that states the applicant meets the necessary qualifications and that the residency program accepts responsibility for the applicant's training while in the program.
- (3) Where feasible, the applicant shall submit a completed application, on a form approved by the Colorado podiatry board, on or before the date on which the applicant begins the approved residency. A podiatry training license granted pursuant to this section shall expire if a completed application is not received by the board within sixty days after the applicant begins the approved residency.
- (4) The Colorado podiatry board may refuse to issue a podiatric training license to an applicant who does not have the necessary qualifications, who has engaged in unprofessional conduct pursuant to section 12-32-107, or who has been disciplined by a licensing board in another jurisdiction.
- (5) A person with a podiatric training license shall only practice podiatry under the supervision of a licensed podiatrist or a physician licensed to practice medicine within the residency program. A person with a podiatry training license shall not delegate podiatric or medical services to a person who is not licensed to practice podiatry or medicine and shall not have the authority to supervise physician assistants.
- (6) The podiatry training license shall not be renewed and shall expire:
- (a) No later than three years after the date the license is issued;
 - (b) If the training licensee is no longer participating in the residency program; or
 - (c) When the training licensee receives a license to practice podiatry pursuant to section 12-32-107.

Source: L. 2010: Entire section added, (HB 10-1224), ch. 420, p. 2152, § 11, effective July 1.

12-32-107.5. Prescriptions - requirement to advise patients. (1) A podiatrist licensed under this article may advise the podiatrist's patients of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.

(2) A podiatrist's failure to advise a patient under subsection (1) of this section shall not be grounds for any disciplinary action against the podiatrist's professional license issued under this article. Failure to advise a patient pursuant to subsection (1) of this section shall not be grounds for any civil action against a podiatrist in a negligence or tort action, nor shall such failure be evidence in any civil action against a podiatrist.

Source: L. 2003: Entire section added, p. 764, § 4, effective March 25.

12-32-108. Licensure by endorsement. (1) The Colorado podiatry board may issue a license by endorsement to engage in the practice of podiatry in this state to any applicant who has a license in good standing as a podiatrist under the laws of another jurisdiction if the applicant presents proof satisfactory to the board that, at the time of application for a Colorado license by endorsement, the applicant possesses credentials and qualifications that are substantially equivalent to requirements in Colorado for licensure by examination, and that in the two years immediately preceding the date of the application the applicant has been engaged in the active practice of podiatry as defined by the board or can otherwise demonstrate competency as determined by the board. The board may specify by rule what shall constitute substantially equivalent credentials and qualifications.

(2) A fee to be set by the board shall be charged for registration by endorsement.

(3) "In good standing", as used in subsection (1) of this section, means a license that has not been revoked or suspended or against which there are no current disciplinary or adverse actions.

Source: L. 43: p. 430, § 7. **L. 47:** p. 656, § 4. **CSA:** C. 109, § 26(7). **CRS 53:** § 91-2-7. **L. 55:** p. 596, § 1. **C.R.S. 1963:** § 91-2-7. **L. 79:** (2) amended, p. 485, § 7, effective July 1. **L. 83:** (1)(b) to (1)(f) amended, p. 529, § 2, effective June 10. **L. 85:** IP(1) amended, p. 490, § 8, effective July 1. **L. 90:** Entire section R&RE, p. 808, § 5, effective July 1. **L. 2010:** (1) and (3) amended, (HB 10-1224), ch. 420, p. 2153, § 12, effective July 1.

12-32-108.3. Disciplinary action by board. (1) In the discharge of its duties, the Colorado podiatry board may enlist the assistance of other persons licensed to practice podiatry or medicine in this state. Podiatrists have the duty to report to the board any podiatrist known, or upon information and belief, to have violated any of the provisions of section 12-32-107 (3).

(2) (a) Complaints in writing relating to the conduct of any podiatrist licensed or authorized to practice podiatry in this state may be made by any person or may be initiated by the Colorado podiatry board on its own motion. The podiatrist complained of shall be given notice by first-class mail of the nature of all matters complained of within thirty days of the receipt of the complaint or initiation of the complaint by the Colorado podiatry board and shall be given thirty days to make explanation or answer thereto.

(b) The Colorado podiatry board shall cause an investigation to be made when the board is informed of:

(I) Disciplinary actions taken by hospitals to suspend or revoke the privileges of a podiatrist and reported to such board pursuant to section 25-3-107, C.R.S.;

(II) Disciplinary actions taken by a professional review committee established pursuant to section 12-32-107 (4) against a podiatrist;

(III) An instance of a malpractice settlement or judgment against a podiatrist reported to the board pursuant to section 10-1-124, C.R.S.; or

(IV) Podiatrists who have been allowed to resign from hospitals for unprofessional conduct. Such hospitals shall report to the board.

(c) On completion of an investigation, the board shall make a finding that:

(I) The complaint is without merit and no further action need be taken with reference thereto;

(II) There is no reasonable cause to warrant further action with reference thereto;

(III) (A) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(B) When a letter of admonition is sent by the board, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(C) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(IV) (A) The investigation discloses facts that warrant further proceedings by formal complaint, as provided in subsection (3) of this section, in which event the complaint shall be referred to the attorney general for preparation and filing of a formal complaint;

(B) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(V) The investigation discloses an instance of conduct which, in the opinion of the board, does not warrant formal action but in which the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, in which case, a confidential letter of concern shall be sent to the podiatrist against whom a complaint was made. If the board learns of second or subsequent actions of the same or similar nature by the licensee, the board shall not issue a confidential letter of concern but shall take such other course of action as it deems appropriate.

(d) Repealed.

(3) (a) All formal complaints seeking disciplinary action against a podiatrist shall be filed with the Colorado podiatry board. A formal complaint shall set forth the charges with sufficient particularity as to inform the podiatrist clearly and specifically of the acts of unprofessional conduct with which he or she is charged.

(b) The board may include in any disciplinary order placing a podiatrist on probation such conditions as the board may deem appropriate to assure that the podiatrist is physically, mentally, and otherwise qualified to practice podiatry in accordance with generally accepted professional standards of practice, including any or all of the following:

(I) Submission by the podiatrist to such examinations as the board may order to determine his or her physical or mental condition or his or her professional qualifications;

(II) The taking by him or her of such therapy or courses of training or education as may be needed to correct deficiencies found either in the hearing or by such examinations;

(III) The review or supervision of his or her practice as may be necessary to determine the quality of his or her practice and to correct deficiencies therein; and

(IV) The imposition of restrictions upon the nature of his or her practice to assure that he or she does not practice beyond the limits of his or her capabilities.

(c) Upon the failure of a licensee to comply with any conditions imposed by the Colorado podiatry board pursuant to paragraph (b) of this subsection (3), unless compliance is beyond the control of the licensee, the board may suspend the license of the licensee until the licensee complies with the conditions of the board.

(4) The board, through the department of regulatory agencies, may employ administrative law judges, on a full-time or part-time basis, to conduct hearings as provided by this article or on any matter within the board's jurisdiction upon such conditions and terms as the board may determine.

(5) The attendance of witnesses and the production of books, patient records, papers, and other pertinent documents at the hearing may be summoned by subpoenas issued by the

board, which shall be served in the manner provided by the Colorado rules of civil procedure for service of subpoenas.

(6) Disciplinary proceedings and hearings shall be conducted in the manner prescribed by article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to said article by the board or an administrative law judge at the board's discretion.

(7) (a) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board. The person providing such copies shall prepare them from the original record and shall delete from the copy provided pursuant to the subpoena the name of the patient, but shall identify the patient by a numbered code, to be retained by the custodian of the records from which the copies were made. Upon certification of the custodian that the copies are true and complete except for the patient's name, they shall be deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. No privilege of confidentiality shall exist with respect to such copies, and no liability shall lie against the board or the custodian or his or her authorized employee for furnishing or using such copies in accordance with this subsection (7).

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(8) (Deleted by amendment, L. 2010, (HB 10-1224), ch. 420, p. 2154, § 13, effective July 1, 2010.)

(9) Upon the expiration of the term of suspension, the license shall be reinstated by the Colorado podiatry board if the holder of the license furnishes the board with evidence that he or she has complied with all terms of the suspension. If the evidence shows he or she has not complied with all terms of the suspension, the board shall continue the suspension or revoke the license at a hearing, notice of which and the procedure at which shall be as provided in this section.

(10) If a person holding a license to practice podiatry in this state is determined to be mentally incompetent or insane by a court of competent jurisdiction and a court enters, pursuant to part 3 or 4 of article 14 of title 15 or section 27-65-109 (4) or 27-65-127, C.R.S., an order specifically finding that the mental incompetency or insanity is of such a degree that the person holding a license is incapable of continuing to practice podiatry, his or her license shall automatically be suspended by the board, and, anything in this article to the contrary notwithstanding, the suspension shall continue until the licensee is found by such court to be competent to practice podiatry.

(11) (a) If the Colorado podiatry board has reasonable cause to believe that a person licensed to practice podiatry in this state is unable to practice podiatry with reasonable skill and safety to patients because of a condition described in section 12-32-107 (3) (f) or (3) (p), it may require the licensee to submit to mental or physical examinations by physicians designated by the board. Upon the failure of the licensee to submit to the mental or physical examinations, unless due to circumstances beyond his or her control, the board may suspend the licensee's license to practice podiatry in this state until such time as he or she submits to the required examinations and the board has made a determination on the ability of the licensee based on the results of the examinations. The board shall ensure that all examinations are conducted and evaluated in a timely manner.

(b) Every person licensed to practice podiatry in this state shall be deemed, by so practicing or by applying for registration of his or her license to practice podiatry in this

state, to have given his or her consent to submit to mental or physical examinations when directed in writing by the board and, further, to have waived all objections to the admissibility of the examining physician's testimony or examination reports on the ground of privileged communication.

(c) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than before the Colorado podiatry board.

(12) Investigations and examinations of the Colorado podiatry board conducted pursuant to the provisions of this section shall be exempt from the provisions of any law requiring that proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to the provisions of this subsection (12) be open to public inspection. Any proceedings with regard to a licensee who is in violation of section 12-32-107 (3) (f) and who is participating in good faith in a rehabilitation program designed to alleviate the conditions specified in section 12-32-107 (3) (f) which has been approved by the board are also exempt from any such requirements of law.

(13) A person licensed to practice podiatry or medicine who, at the request of the Colorado podiatry board, examines another person licensed to practice podiatry shall be immune from suit for damages by the person examined if the examining person conducted the examination and made his or her findings or diagnosis in good faith.

(14) Repealed.

(15) (a) If it appears to the Colorado podiatry board, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public or a person is acting or has acted without the required license, the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (15), the respondent may request a hearing on the question of whether acts or practices in violation of this part 1 have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(16) (a) If it appears to the Colorado podiatry board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 1, then, in addition to any specific powers granted pursuant to this part 1, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (16) shall be promptly notified by the Colorado podiatry board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (16) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the Colorado podiatry board as provided in paragraph (b) of this subsection (16). The hearing may be continued by agreement of the parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (16) does not appear at the hearing, the Colorado podiatry board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (16) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after

the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the Colorado podiatry board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this part 1, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The Colorado podiatry board shall provide notice, in the manner set forth in paragraph (b) of this subsection (16), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(17) If it appears to the Colorado podiatry board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this part 1, any rule promulgated pursuant to this part 1, any order issued pursuant to this part 1, or any act or practice constituting grounds for administrative sanction pursuant to this part 1, the board may enter into a stipulation with such person.

(18) If any person fails to comply with a final cease-and-desist order or a stipulation, the Colorado podiatry board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(19) A person aggrieved by the final cease-and-desist order may seek judicial review of the Colorado podiatry board's determination or of the board's final order as provided in section 12-32-108.7.

(20) The Colorado podiatry board may impose a fine, not to exceed five thousand dollars, for a violation of this article. All fines collected pursuant to this subsection (20) shall be transferred to the state treasurer, who shall credit the moneys to the general fund.

Source: **L. 85:** Entire section added, p. 490, § 9, effective July 1. **L. 87:** (4) and (6) amended, p. 946, § 32, effective March 13. **L. 90:** (2)(c)(V) added, (2)(d) repealed, and (11)(a) amended, pp. 808, 812, 809, §§ 6, 14, 7, effective July 1. **L. 91:** (10) amended, p. 1782, § 5, effective July 1. **L. 95:** (2)(c)(V) amended and (14) repealed, pp. 220, 221, §§ 4, 5, effective July 1. **L. 2003:** (2)(b)(III) amended, p. 620, § 27, effective July 1. **L. 2004:** (1), (2)(c)(III), (2)(c)(IV), and (7) amended, p. 1822, § 61, effective August 4. **L. 2006:** (15) to (19) added, p. 789, § 21, effective July 1. **L. 2010:** (10) amended, (SB 10-175), ch. 188, p. 778, § 7, effective April 29; (2)(a), (3), (8), (9), (10), (11)(a), (11)(b), and (13) amended and (3)(c) and (20) added, (HB 10-1224), ch. 420, pp. 2154, 2156, §§ 13, 14, effective July 1.

Editor's note: Amendments to subsection (10) by Senate Bill 10-175 and House Bill 10-1224 were harmonized.

Cross references: For the Colorado rule of civil procedure concerning subpoenas, see C.R.C.P. 45.

12-32-108.5. Reconsideration and review of action of board. (1) The Colorado podiatry board, on its own motion or upon application in accordance with subsection (3) of this section, at any time after the refusal to grant a license, the imposition of any discipline as provided in section 12-32-108.3, or the ordering of probation, as provided in section 12-32-107 (2), may reconsider its prior action and grant, reinstate, or restore such license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any such further action, or the holding of a hearing with respect thereto, shall rest in the sole discretion of the board.

(2) Upon the receipt of the application, it may be forwarded to the attorney general for such investigation as may be deemed necessary. A copy of the application and the report of investigation shall be forwarded to the board, which shall consider the same and report its findings and conclusions. The proceedings shall be governed by the applicable provisions governing formal hearings in disciplinary proceedings. The attorney general may present evidence bearing upon the matters in issue, and the burden shall be upon the applicant seeking reinstatement to establish the averments of his or her application as specified in section 24-4-105 (7), C.R.S. No application for reinstatement or for modification of a prior order shall be accepted unless the applicant deposits with the board all amounts unpaid under any prior order of the board.

(3) No licensee whose license is revoked shall be allowed to apply for reinstatement of such license earlier than two years after the effective date of the revocation.

Source: **L. 85:** Entire section added, p. 494, § 9, effective July 1. **L. 86:** (1) amended, p. 1216, § 7, effective May 20. **L. 90:** (1) amended and (3) added, p. 809, § 8, effective July 1. **L. 2010:** (2) amended, (HB 10-1224), ch. 420, p. 2156, § 15, effective July 1.

12-32-108.7. Judicial review. The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the Colorado podiatry board. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

Source: **L. 85:** Entire section added, p. 495, § 9, effective July 1.

12-32-109. Unauthorized practice - penalties. (1) Any person who practices or offers or attempts to practice podiatry within this state without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and, for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(1.5) Any person who presents as his or her own the diploma, license, certificate, or credentials of another, or who gives either false or forged evidence of any kind to the Colorado podiatry board, or any member thereof, in connection with an application for a license to practice podiatry, or who practices podiatry under a false or assumed name, or who falsely impersonates another licensee of a like or different name commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) No person shall advertise in any form or hold himself or herself out to the public as a podiatrist, or, in any sign or any advertisement, use the word “podiatrist”, “foot specialist”, “foot correctionist”, “foot expert”, “practipedist”, “podologist”, or any other terms or letters indicating or implying that he or she is a podiatrist or that he or she practices or holds himself or herself out as practicing podiatry or foot correction in any manner, without having, at the time of so doing, a valid, unsuspended, and unrevoked license as required by this article.

(3) No podiatrist shall willfully cause the public to believe that he or she has qualifications extending beyond the limits of this article, and no podiatrist shall willfully sign his or her name using the prefix “Doctor” or “Dr.” without following his or her name with “podiatrist”, “Doctor of Podiatric Medicine”, or “D.P.M.”. No podiatrist shall use the title “podiatric physician” unless such title is followed by the words “practice limited to treatment of the foot and ankle”.

(4) The conduct of the practice of podiatry in a corporate capacity is hereby prohibited, but such prohibition shall not be construed to prevent the practice of podiatry by a professional service corporation whose stockholders are restricted solely to licensed podiatrists. Any such professional service corporation may exercise such powers and shall be subject to such limitations and requirements, insofar as applicable, as are provided in section 12-32-109.5, relating to professional service corporations for the practice of podiatry.

(5) The provisions of this article shall not apply to any physician licensed to practice medicine or surgery, any regularly commissioned surgeon of the United States armed forces or United States public health service, or any licensed osteopath.

(6) The provisions of this article shall not be construed to prohibit the recommending, advertising, fitting, adjusting, or sale of corrective shoes, arch supports, or similar mechanical appliances and foot remedies by retail dealers and manufacturers.

(7) The provisions of this article shall not be construed to prohibit, or to require a license for, the rendering of services under the personal and responsible direction and supervision of a person licensed to practice podiatry, and this exemption shall not apply to persons otherwise qualified to practice podiatry but not licensed to practice in this state.

(8) The provisions of this article shall not be construed to prohibit, or to require a license for, the rendering of nursing services by registered or other nurses in the lawful discharge of their duties pursuant to article 38 of this title.

Source: L. 43: p. 429, § 5. L. 47: p. 656, § 3. CSA: C. 109, § 26(5). CRS 53: § 91-2-5. C.R.S. 1963: § 91-2-5. L. 71: p. 1033, § 1. L. 77: (1) amended, p. 876, § 38, effective July 1, 1979. L. 79: Entire section R&RE, p. 485, § 8, effective July 1. L. 81: (1) amended and (7) added, p. 774, § 1, effective May 27. L. 85: (1) amended, p. 407, § 7, effective July 1; (1) and (4) amended and (1.5) added, p. 495, § 10, effective July 1. L. 89: (1.5) amended, p. 825, § 23, effective July 1. L. 90: (3) amended and (8) added, p. 809, § 9, effective July 1. L. 2002: (1) and (1.5) amended, p. 1477, § 70, effective October 1. L. 2006: (1) amended, p. 86, § 23, effective August 7. L. 2010: (2), (3), and (5) amended, (HB 10-1224), ch. 420, p. 2156, § 16, effective July 1.

Editor's note: (1) Amendments to subsection (1) by House Bill 85-1031 and House Bill 85-1172 were harmonized.

(2) The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See *People v. McKenna*, 199 Colo. 452, 611 P.2d 54 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending subsections (1) and (1.5), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-32-109.3. Use of physician assistants. (1) A person licensed under the laws of this state to practice podiatry may delegate to a physician assistant licensed by the Colorado medical board pursuant to section 12-36-107.4 the authority to perform acts that constitute the practice of podiatry to the extent and in the manner authorized by rules promulgated by the Colorado podiatry board. Such acts shall be consistent with sound practices of podiatry. Each prescription issued by a physician assistant shall have the name of his or her supervising podiatrist printed on the prescription. Nothing in this section shall limit the ability of otherwise licensed health personnel to perform delegated acts. The dispensing of prescription medication by a physician assistant shall be subject to section 12-42.5-118 (6).

(2) If the authority to perform an act is delegated pursuant to subsection (1) of this section, the act shall not be performed except under the personal and responsible direction and supervision of a person licensed under the laws of this state to practice podiatry, and said person shall not be responsible for the direction and supervision of more than two physician assistants at any one time without specific approval of the board. The board may define appropriate direction and supervision pursuant to rules and regulations.

(3) The provisions of sections 12-36-106 (5) and 12-36-107.4 governing physician assistants under the "Colorado Medical Practice Act" shall apply to physician assistants under this section.

Source: L. 90: Entire section added, p. 809, § 10, effective July 1. L. 2001: (1) amended, p. 176, § 1, effective August 8. L. 2010: (1) amended, (HB 10-1224), ch. 420, p. 2157, § 17, effective July 1; (1) and (3) amended, (HB 10-1260), ch. 403, p. 1979, § 55,

effective July 1. **L. 2011:** (3) amended, (HB 11-1303), ch. 264, p. 1150, § 11, effective August 10. **L. 2012:** (1) amended, (HB 12-1311), ch. 281, p. 1611, § 14, effective July 1.

Editor's note: Amendments to subsection (1) by House Bill 10-1224 and House Bill 10-1260 were harmonized.

12-32-109.5. Professional service corporations, limited liability companies, and registered limited liability partnerships for the practice of podiatry - definitions.

(1) Persons licensed to practice podiatry by the Colorado podiatry board may form professional service corporations for the practice of podiatry under the "Colorado Corporation Code", if such corporations are organized and operated in accordance with the provisions of this section. The articles of incorporation of such corporations shall contain provisions complying with the following requirements:

(a) The name of the corporation shall contain the words "professional company" or "professional corporation" or abbreviations thereof.

(b) The corporation shall be organized solely for the purposes of conducting the practice of podiatry only through persons licensed by the Colorado podiatry board to practice podiatry in the state of Colorado.

(c) The corporation may exercise the powers and privileges conferred upon corporations by the laws of Colorado only in furtherance of and subject to its corporate purpose.

(d) All shareholders of the corporation shall be persons licensed by the Colorado podiatry board to practice podiatry in the state of Colorado, and who at all times own their shares in their own right. They shall be individuals who, except for illness, accident, time spent in the armed services, on vacations, and on leaves of absence not to exceed one year, are actively engaged in the practice of podiatry in the offices of the corporation.

(e) Provisions shall be made requiring any shareholder who ceases to be or for any reason is ineligible to be a shareholder to dispose of all his or her shares immediately, either to the corporation or to any person having the qualifications described in paragraph (d) of this subsection (1).

(f) The president shall be a shareholder and a director and, to the extent possible, all other directors and officers shall be persons having the qualifications described in paragraph (d) of this subsection (1). Lay directors and officers shall not exercise any authority whatsoever over professional matters. Notwithstanding sections 7-108-103 to 7-108-106, C.R.S., relating to the terms of office of directors, a professional service corporation for the practice of podiatry may provide in the articles of incorporation or the bylaws that the directors may have terms of office of up to six years and that the directors may be divided into either two or three classes, each class to be as nearly equal in number as possible, with the terms of each class staggered to provide for the periodic, but not annual, election of less than all the directors.

(g) The articles of incorporation shall provide and all shareholders of the corporation shall agree that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation or that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation except during periods of time when each person licensed by the Colorado podiatry board to practice podiatry in Colorado who is a shareholder or any employee of the corporation has a professional liability policy insuring himself or herself and all employees who are not licensed to practice podiatry who act at his or her direction in the amount of fifty thousand dollars for each claim and an aggregate top limit of liability per year for all claims of one hundred fifty thousand dollars or the corporation maintains in good standing professional liability insurance, which shall meet the following minimum standards:

(I) The insurance shall insure the corporation against liability imposed upon the corporation by law for damages resulting from any claim made against the corporation arising out of the performance of professional services for others by those officers and employees of the corporation who are licensed by the Colorado podiatry board to practice podiatry.

(II) Such policies shall insure the corporation against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all nonprofessional employees.

(III) The insurance shall be in an amount for each claim of at least fifty thousand dollars multiplied by the number of persons licensed to practice podiatry employed by the corporation. The policy may provide for an aggregate top limit of liability per year for all claims of one hundred fifty thousand dollars also multiplied by the number of persons licensed to practice podiatry employed by the corporation, but no firm shall be required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate top limit of liability for all claims during the year of nine hundred thousand dollars.

(IV) The policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured corporation or any stockholder or employee thereof; the conduct of any business enterprise, as distinguished from the practice of podiatry, in which the insured corporation under this section is not permitted to engage but which nevertheless may be owned by the insured corporation or in which the insured corporation may be a partner or which may be controlled, operated, or managed by the insured corporation in its own or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith; when not resulting from breach of professional duty, bodily injury to, or sickness, disease, or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof; and such policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(2) (a) The corporation shall do nothing which, if done by a person licensed to practice podiatry in the state of Colorado employed by it, would violate the standards of professional conduct as provided for in section 12-32-107 (3). Any violation by the corporation of this section shall be grounds for the Colorado podiatry board to terminate or suspend its right to practice podiatry.

(b) The provisions of paragraph (b) of subsection (5) of this section shall apply to the employment of a podiatrist by a professional service corporation, limited liability company, or registered limited liability partnership formed for the practice of podiatry in accordance with this section regardless of the date of formation of the entity.

(3) Nothing in this section shall be deemed to diminish or change the obligation of each person licensed to practice podiatry employed by the corporation to conduct his or her practice in accordance with the standards of professional conduct provided for in section 12-32-107 (3). Any person licensed by the Colorado podiatry board to practice podiatry who by act or omission causes the corporation to act or fail to act in a way that violates such standards of professional conduct, including any provision of this section, shall be deemed personally responsible for the act or omission and shall be subject to discipline for the act or omission.

(4) A professional service corporation may adopt a pension, profit-sharing (whether cash or deferred), health and accident, insurance, or welfare plan for all or part of its employees including lay employees if such plan does not require or result in the sharing of specific or identifiable fees with lay employees, and if any payments made to lay employees, or into any such plan in behalf of lay employees, are based upon their compensation or length of service, or both, rather than the amount of fees or income received.

(5) (a) Except as provided in this section, corporations shall not practice podiatry.

(b) Employment of a podiatrist by a certified or licensed hospital, licensed skilled nursing facility, certified home health agency, licensed hospice, certified comprehensive outpatient rehabilitation facility, certified rehabilitation agency, authorized health maintenance organization, accredited educational entity, or other entity wholly owned and operated by any governmental unit or agency shall not be considered the corporate practice of podiatry if:

(I) The relationship created by the employment does not affect the ability of the podiatrist to exercise his or her independent judgment in the practice of the profession;

(II) The podiatrist's independent judgment in the practice of the profession is in fact unaffected by the relationship;

(III) The policies of the entity employing the podiatrist contain a procedure by which complaints by a podiatrist alleging a violation of this paragraph (b) may be heard and resolved;

(IV) The podiatrist is not required to exclusively refer any patient to a particular provider or supplier; except that nothing in this subparagraph (IV) shall invalidate the policy provisions of a contract between a podiatrist and his or her intermediary or the managed care provisions of a health coverage plan; and

(V) The podiatrist is not required to take any other action he or she determines not to be in the patient's best interest.

(c) A podiatrist employed by an entity described in paragraph (b) of this subsection (5) shall be an employee of the entity for purposes of liability for all acts, errors, and omissions of the employee.

(6) As used in this section, unless the context otherwise requires:

(a) "Articles of incorporation" includes operating agreements of limited liability companies and partnership agreements of registered limited liability partnerships.

(b) "Corporation" includes a limited liability company organized under the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S., and a limited liability partnership registered under section 7-60-144 or 7-64-1002, C.R.S.

(c) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(d) "Employees" includes employees, members, and managers of a limited liability company and employees and partners of a registered limited liability partnership.

(d.5) "Health benefit plan" shall have the same meaning as set forth in section 10-16-102 (21), C.R.S.

(e) "Share" includes a member's rights in a limited liability company and a partner's rights in a registered limited liability partnership.

(f) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

Source: **L. 85:** Entire section added, p. 495, § 11, effective July 1. **L. 93:** (1)(f) amended, p. 862, § 33, effective July 1, 1994. **L. 95:** (6) added, p. 811, § 30, effective May 24. **L. 97:** (6)(b) amended, p. 918, § 11, effective January 1, 1998. **L. 2006:** (2) and (5) amended and (6)(d.5) added, pp. 105, 106, §§ 1, 2, effective August 7. **L. 2010:** (1)(e), IP(1)(g), and (3) amended, (HB 10-1224), ch. 420, p. 2157, § 18, effective July 1.

Editor's note: The "Colorado Corporation Code", articles 1 to 10 of title 7, referred to in the introductory portion to subsection (1) was repealed, effective July 1, 1994, and was replaced on that date by the "Colorado Business Corporation Act", articles 101 to 117 of title 7.

ANNOTATION

Law reviews. For article, "Operating a Personal Service Corporation", see 17 Colo. Law. 2011 (1988).

12-32-110. Penalties for practicing without license. (Repealed)

Source: **L. 43:** p. 429, § 6. **CSA:** C. 109, § 26(6). **CRS 53:** § 91-2-6. **L. 63:** p. 291, § 11. **C.R.S. 1963:** § 91-2-6. **L. 79:** Entire section repealed, p. 486, § 12, effective July 1.

12-32-111. Renewal of license. (1) (a) The Colorado podiatry board shall set reasonable continuing education requirements for renewal of license, but in no event shall the board require more than fourteen hours' credit of continuing education per year. A podiatrist desiring to renew his or her license to practice podiatry shall submit to the Colorado podiatry board the information the board believes necessary to show that he or she has fulfilled the board's continuing education requirements and a fee to be determined and

collected pursuant to section 24-34-105, C.R.S.

(b) On or before the 2013 podiatrist license renewal cycle, the Colorado podiatry board shall promulgate rules and implement an ongoing professional development program that shall be developed in conjunction with statewide professional associations that represent podiatrists. The professional development program may include the continuing education requirements in paragraph (a) of this subsection (1).

(1.5) The board shall establish a questionnaire to accompany the renewal form. The questionnaire shall be designed to determine if the licensee has acted in violation of, or has been disciplined for actions that might be construed as violations of, this article or that may make the licensee unfit to practice podiatry with reasonable care and safety. The failure of an applicant to answer the questionnaire accurately shall constitute unprofessional conduct pursuant to section 12-32-107.

(2) No license to practice podiatry that has been delinquent for more than two years shall be renewed unless the applicant demonstrates to the Colorado podiatry board his or her continued professional competence.

(3) (Deleted by amendment, L. 2010, (HB 10-1224), ch. 420, p. 2158, § 19, effective July 1, 2010.)

(4) Renewal or reinstatement of a license shall be pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies, and a license shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director, the license shall expire. A person whose license has expired shall be subject to the penalties provided in this article or in section 24-34-102 (8), C.R.S. The board shall establish the criteria for reinstatement of a license.

Source: L. 71: p. 1032, § 4. C.R.S. 1963: § 91-2-11. L. 79: (1) R&RE, p. 486, § 9, effective July 1. L. 85: Entire section amended, p. 497, § 12, effective July 1. L. 2010: Entire section amended, (HB 10-1224), ch. 420, p. 2158, § 19, effective July 1.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8).

12-32-112. Existing licenses and proceedings. (Repealed)

Source: L. 79: Entire section added, p. 486, § 10, effective July 1. L. 85: Entire section repealed, p. 506, § 24, effective July 1.

12-32-113. Injunctive proceedings. The Colorado podiatry board, in the name of the people of the state of Colorado, may apply for injunctive relief through the attorney general in any court of competent jurisdiction to enjoin any person who does not possess a currently valid or active podiatry license from committing any act declared to be unlawful or prohibited by this article. If it is established that the defendant has been or is committing an act declared to be unlawful or prohibited by this article, the court or any judge thereof shall enter a decree perpetually enjoining said defendant from further committing such act. In the case of a violation of any injunction issued under the provisions of this section, the court or any judge thereof may summarily try and punish the offender for contempt of court. Such injunctive proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided for in this article.

Source: L. 85: Entire section added, p. 498, § 13, effective July 1.

12-32-114. Duplicates of license. The Colorado podiatry board is authorized to issue a duplicate license to any person to whom a license to practice podiatry in this state has been

issued, upon application, properly verified by oath, establishing to the satisfaction of the board that the original license has been lost or destroyed and upon payment to the board of a fee to be determined by rule adopted by the board. No person shall be entitled to a duplicate license unless he or she is a licensee in good standing.

Source: L. 85: Entire section added, p. 498, § 13, effective July 1. L. 2010: Entire section amended, (HB 10-1224), ch. 420, p. 2159, § 20, effective July 1.

12-32-115. Procedure - registration - fees. (Repealed)

Source: L. 85: Entire section added and (1)(b) amended, pp. 498, 1371, §§ 13, 49, effective July 1. L. 90: (2) and (3) amended, p. 810, § 11, effective July 1. L. 95: (3) amended, p. 221, § 6, effective July 1. L. 2004: (3) amended, p. 1823, § 62, effective August 4. L. 2010: Entire section repealed, (HB 10-1224), ch. 420, p. 2159, § 21, effective July 1.

12-32-116. Certification of licensing. (Repealed)

Source: L. 85: Entire section added, p. 499, § 13, effective July 1. L. 2010: Entire section repealed, (HB 10-1224), ch. 420, p. 2160, § 22, effective July 1.

12-32-117. Division of fees. (1) If any person holding a license issued by the Colorado podiatry board divides any fee or compensation received or charged for services rendered by him or her as such licensee or agrees to divide any such fee or compensation with any person, firm, association, or corporation as pay or compensation to such other person for sending or bringing any patient or other person to such licensee, or for recommending such licensee to any person, or for being instrumental in any manner in causing any person to engage such licensee in his or her professional capacity; or if any such licensee shall either directly or indirectly pay or compensate or agree to pay or compensate any person, firm, association, or corporation for sending or bringing any patient or other person to such licensee for examination or treatment, or for recommending such licensee to any person, or for being instrumental in causing any person to engage such licensee in his or her professional capacity; or if any such licensee, in his or her professional capacity and in his or her own name or behalf, shall make or present a bill or request a payment for services rendered by any person other than the licensee, such licensee commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) Repealed.

Source: L. 85: Entire section added, p. 499, § 13, effective July 1. L. 86: (1) amended, p. 1216, § 8, effective May 30. L. 90: (2) repealed, p. 812, § 14, effective July 1. L. 2002: (1) amended, p. 1477, § 71, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-32-118. Recovery of fees illegally paid. If any licensee, in violation of section 12-32-117, divides or agrees to divide any fee or compensation received by him or her for services rendered in his or her professional capacity with any person, the person who has paid such fee or compensation to the licensee may recover the amount unlawfully paid or agreed to be paid from either the licensee or from the person to whom the fee or compensation has been paid, by an action to be instituted within two years after the date on which the fee or compensation was divided or agreed to be divided.

Source: L. 85: Entire section added, p. 500, § 13, effective July 1. L. 2010: Entire section amended, (HB 10-1224), ch. 420, p. 2160, § 23, effective July 1.

12-32-119. Existing licenses and proceedings. (Repealed)

Source: L. 85: Entire section added, p. 500, § 13, effective July 1. L. 2010: Entire section repealed, (HB 10-1224), ch. 420, p. 2160, § 24, effective July 1.

PART 2**SAFETY TRAINING FOR UNLICENSED X-RAY TECHNICIANS**

Cross references: For similar provisions in article 33 of this title regulating chiropractors, see part 2 of said article; for similar provisions in article 35 of this title regulating dentists, see part 2 of said article; for similar provisions in article 36 of this title regulating medical practitioners, see part 2 of said article.

12-32-201. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that public exposure to the hazards of ionizing radiation used for diagnostic purposes should be minimized wherever possible. Accordingly, the general assembly finds, determines, and declares that for any podiatric physician or podiatrist to allow an untrained person to operate a machine source of ionizing radiation, including without limitation a device commonly known as an "X-ray machine", or to administer such radiation to a patient for diagnostic purposes is a threat to the public health and safety.

(2) It is the intent of the general assembly that podiatric physicians or podiatrists utilizing unlicensed persons in their practices provide those persons with a minimum level of education and training before allowing them to operate machine sources of ionizing radiation; however, it is not the general assembly's intent to discourage education and training beyond this minimum. It is further the intent of the general assembly that established minimum training and education requirements correspond as closely as possible to the requirements of each particular work setting as determined by the Colorado podiatry board pursuant to this part 2.

(3) The general assembly seeks to ensure, and accordingly declares its intent, that in promulgating the rules and regulations authorized by this part 2, the Colorado podiatry board will make every effort, consistent with its other statutory duties, to avoid creating a shortage of qualified individuals to operate machine sources of ionizing radiation for beneficial medical purposes in any area of the state.

Source: L. 91: Entire part added, p. 1609, § 1, effective May 1.

12-32-202. Board authorized to issue rules. (1) (a) The Colorado podiatry board shall adopt rules and regulations prescribing minimum standards for the qualifications, education, and training of unlicensed persons operating machine sources of ionizing radiation and administering such radiation to patients for diagnostic podiatric use. No podiatric physician nor podiatrist shall allow any unlicensed person to operate a machine source of ionizing radiation or to administer such radiation to any patient unless such person has met the standards then in effect under rules and regulations adopted pursuant to this section. The board may adopt rules and regulations allowing a grace period in which newly hired operators of machine sources of ionizing radiation shall receive the training required pursuant to this section.

(b) For purposes of this part 2, "unlicensed person" means any person who does not hold a current and active license entitling the person to practice podiatry under the provisions of this article.

(2) The Colorado podiatry board shall seek the assistance of licensed podiatrists in developing and formulating the rules and regulations promulgated pursuant to this section.

(3) The required number of hours of training and education for all unlicensed persons operating machine sources of ionizing radiation and administering such radiation to patients shall be established by the board by rule on or before July 1, 1992. This standard shall apply to all persons in podiatric settings other than hospitals and similar facilities licensed by the department of public health and environment pursuant to section 25-1.5-103, C.R.S. Such

training and education may be obtained through programs approved by the appropriate authority of any state or through equivalent programs and training experience including on-the-job training as determined by the board.

Source: L. 91: Entire part added, p. 1610, § 1, effective May 1. **L. 94:** (3) amended, p. 2726, § 331, effective July 1. **L. 2003:** (3) amended, p. 700, § 7, effective July 1.

ARTICLE 33

Chiropractors

PART 1

GENERAL PROVISIONS

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PART 2

SAFETY TRAINING FOR UNLICENSED X-RAY TECHNICIANS

12-33-201.	Legislative declaration.
12-33-202.	Board authorized to issue rules.

PART 1

GENERAL PROVISIONS

12-33-101. Legislative declaration - unlawful acts - license required. (1) It is hereby declared to be the policy of the general assembly of the state of Colorado that, in order to safeguard the life, health, and property and the public welfare of the people of this state and in order to protect the people of this state against unauthorized, unqualified, and improper practice of chiropractic, it is necessary that a proper regulatory authority be established and adequately provided for.

(2) It is unlawful for any person to practice or to offer to practice chiropractic in the state of Colorado, or to use in connection with his name or business or otherwise to assume, use, or advertise any title or description which will or which reasonably might be expected to mislead the public into believing he is a doctor of chiropractic, unless such person has been duly licensed under the provisions of this article. Anyone who holds himself out to the public as a doctor of chiropractic without qualifying for proper licensing under this article and without submitting to the regulations provided in this article endangers thereby the public life, health, property, and welfare.

Source: L. 59: p. 293, § 1. CRS 53: § 23-2-1. C.R.S. 1963: § 23-1-1.

ANNOTATION

Doctors of medicine, doctors of osteopathy, chiropodists, dentists, and doctors of chiropractic all practice their professions by grace of the state. Colo. Chiropractic Ass'n v. State, 171 Colo. 395, 467 P.2d 795 (1970).

The scope of their practices is limited by law. Colo. Chiropractic Ass'n v. State, 171 Colo. 395, 467 P.2d 795 (1970).

The courses of study of the several limited branches of the healing arts are not determinative of the scope of practice permitted under any given license. Colo. Chiropractic Ass'n v. State, 171 Colo. 395, 467 P.2d 795 (1970).

The word "physician" does not appear in the chiropractic licensing act. Colo. Chiro-

practic Ass'n v. State, 171 Colo. 395, 467 P.2d 795 (1970).

Where a party was charged with violating this section and the statute relating to the practice of medicine without a license, it was held that a verdict of guilty on either charge was equivalent to a verdict of not guilty on the other, the two charges being wholly different. Hurley v. People, 99 Colo. 510, 63 P.2d 1227 (1936) (decided under repealed CSA, C. 34, § 1).

Applied in Flemming v. Colo. State Bd. of Educ., 157 Colo. 45, 400 P.2d 932 (1965).

12-33-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Acupuncture" means the puncture of the skin with fine needles for diagnostic and therapeutic purposes.

(1.3) (a) "Animal chiropractic" means diagnosing and treating animal vertebral subluxation through chiropractic adjustment of the spine or extremity articulations of fully awake dogs and horses. The chiropractic adjustment may be performed only with the hands or with the use of a hand-held low-force mechanical adjusting device functionally equivalent to the device known as an activator; all other equipment is prohibited.

(b) "Animal chiropractic" does not include:

(I) Performing veterinary medical care and diagnosis;

(II) Performing surgery;

(III) Dispensing or administering medications, dietary or nutritional supplements, herbs, essences, nutraceutical products, or anything else supplied orally, rectally, by inhalation, by injection, or topically except topically applied heat or cold;

(IV) Generating radiographic images or performing imaging procedures, including thermography;

(V) Performing acupuncture, or any treatment activity other than chiropractic adjustment;

(VI) Providing magnetic or other nonmanual treatment techniques, colonics, colored-light therapy, homeopathy, radionics, or vitamin therapy;

(VII) Venipuncture;

(VIII) Making diagnoses by methods such as live cell analysis, pendulum divining, iridology, hair analysis, nutritional deficiency questionnaires, herbal crystallization analysis, or food allergy testing.

(1.5) "Animal vertebral subluxation" means a lesion or dysfunction in a joint or motion segment in which alignment, movement integrity, or physiological function are altered, although contact between joint surfaces remains intact, which may influence biomechanical and neural integrity. Diagnosis of animal vertebral subluxation typically involves evaluation of gait and radiographs, and static and motion palpation techniques that are used to identify

joint dysfunction. Diagnosis of animal vertebral subluxation does not include methods such as applied kinesiology, reflexology, pendulum divining, or thermography.

(1.7) “Chiropractic” means that branch of the healing arts that is based on the premise that disease is attributable to the abnormal functioning of the human nervous system. It includes the diagnosing and analyzing of human ailments and seeks the elimination of the abnormal functioning of the human nervous system by the adjustment or manipulation, by hand or instrument, of the articulations and adjacent tissue of the human body, particularly the spinal column, and the use as indicated of procedures that facilitate the adjustment or manipulation and make it more effective and the use of sanitary, hygienic, nutritional, and physical remedial measures for the promotion, maintenance, and restoration of health, the prevention of disease, and the treatment of human ailments. “Chiropractic” includes the use of venipuncture for diagnostic purposes. “Chiropractic” does not include colonic irrigation therapy. “Chiropractic” includes treatment by acupuncture when performed by an appropriately trained chiropractor as determined by the Colorado state board of chiropractic examiners. Nothing in this section shall apply to persons using acupuncture not licensed by the board.

(2) “Chiropractic adjustment” means the application, by hand, by a trained chiropractor who has fulfilled the educational and licensing requirements of this article, of adjustive force to correct subluxations, fixations, structural distortions, abnormal tensions, and disrelated structures, or to remove interference with the transmission of nerve force. The application of the dynamic adjustive thrust is designed and intended to produce and usually elicits audible and perceptible release of tensions and movement of tissues or anatomical parts for the purpose of removing or correcting interference to nerve transmission and expression.

(3) “Electrotherapy” means the application of any radiant or current energies of high or low frequency, alternating or direct, except surgical cauterization, electrocoagulation, the use of radium in any form, and X-ray therapy.

(4) “Venipuncture” means the puncture of a vein for the withdrawal of blood for the purpose of diagnosis through blood analysis. Any blood analysis shall be done by a chiropractor or by a commercial laboratory.

(5) “Veterinary medical clearance” means that a veterinarian licensed under article 64 of this title has examined an animal patient, has provided a diagnosis or differential diagnosis if appropriate, and has provided written clearance, which may be transmitted electronically, for animal chiropractic. The veterinary medical clearance shall precede the commencement of animal chiropractic treatment and may contain limitations on the scope, date of initiation, and duration of chiropractic treatment. Once a veterinary medical clearance has been received, the chiropractor is responsible for developing the plan of care for the animal patient’s animal chiropractic.

Source: L. 59: p. 294, § 1. CRS 53: § 23-2-2. C.R.S. 1963: § 23-1-2. L. 79: (2) amended, p. 488, § 1, effective July 1. L. 85: (1) amended and (1.5) and (4) added, p. 507, § 1, effective July 1. L. 2009: (1) and (1.5) amended and (1.3), (1.7), and (5) added, (SB 09-167), ch. 366, p. 1917, § 6, effective June 1.

ANNOTATION

Teaching the correct poise of the body and its beneficial effect on general health without diagnosing the condition of any person or recommending any specific relief therefor is not a violation of this section. *Hurley v. People*, 99 Colo. 510, 63 P.2d 1227 (1936) (decided under repealed CSA, C. 34, § 1).

Hypnosis, psychotherapy, and family and marriage counseling are not part of the regular practice of chiropractic. *Bernie v. State Bd. of Chiropractic Exam’rs*, 36 Colo. App. 229, 538 P.2d 1345 (1975).

Applied in *Flemming v. Colo. State Bd. of Educ.*, 157 Colo. 45, 400 P.2d 932 (1965).

12-33-103. State board of chiropractic examiners - subject to termination - repeal of article. (1) There is hereby created a Colorado state board of chiropractic examiners, referred to in this article as the “board”, consisting of five members who are citizens of the

United States, four of whom shall have practiced chiropractic in the state of Colorado for five years prior to their appointment and one of whom shall be appointed from the public at large. The governor shall appoint members of the board for a term of four years. Any board member may be removed by the governor for misconduct, incompetence, or neglect of duty. No member shall serve more than two consecutive terms.

(2) Repealed.

(3) (a) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the Colorado state board of chiropractic examiners created by this section.

(b) This article is repealed, effective July 1, 2020.

Source: L. 59: p. 294, § 1. CRS 53: § 23-2-3. C.R.S. 1963: § 23-1-3. L. 73: p. 1367, § 10. L. 75: (2) amended, p. 453, § 1, effective July 14. L. 76: (3) added, p. 623, § 17, effective July 1. L. 79: (1) and (2) amended and (2) repealed, pp. 488, 912, §§ 2, 16, effective July 1. L. 85: (1) amended, p. 508, § 2, effective July 1. L. 87: (1) amended, p. 904, § 6, effective June 15. L. 91: (3) amended, p. 682, § 24, effective April 20. L. 95: (3)(b) amended, p. 1319, § 11, effective July 1. L. 2003: (1) amended, p. 911, § 10, effective August 6. L. 2007: (3)(b) amended, p. 382, § 1, effective August 3. L. 2009: (1) and (3)(b) amended, (SB 09-167), ch. 366, pp. 1917, 1916, §§ 5, 1, effective June 1.

12-33-104. Oath. (Repealed)

Source: L. 59: p. 295, § 1. CRS 53: § 23-2-4. C.R.S. 1963: § 23-1-4. L. 2004: Entire section repealed, p. 1824, § 63, effective August 4.

12-33-105. Board meetings - election of officers. The board shall elect from the membership thereof a president, a vice-president, and a secretary-treasurer. The board shall meet at such times and at such places as the board deems necessary, but in no case less than annually. A majority of the board shall constitute a quorum. An annual election of officers shall occur.

Source: L. 59: p. 295, § 1. CRS 53: § 23-2-5. C.R.S. 1963: § 23-1-5. L. 79: Entire section amended, p. 489, § 3, effective July 1. L. 81: Entire section amended, p. 2024, § 10, effective July 14.

12-33-106. Bond. (Repealed)

Source: L. 59: p. 295, § 1. CRS 53: § 23-2-6. C.R.S. 1963: § 23-1-6. L. 73: p. 1367, § 11. L. 79: Entire section repealed, p. 495, § 18, effective July 1.

12-33-107. Board powers. (1) The board is authorized to and shall:

(a) Adopt, promulgate, and from time to time revise such rules and regulations not inconsistent with the law as may be necessary to enable it to carry out the provisions of this article; except that the board shall not adopt the code of ethics of any professional group or association by rule or regulation;

(b) Examine, license, and renew licenses of duly qualified chiropractic applicants;

(c) Approve or refuse to approve chiropractic schools and colleges;

(d) Conduct hearings upon complaints concerning the disciplining of chiropractors;

(e) Cause the prosecution of and seek injunctions against all persons violating this article;

(f) Employ investigators, issue subpoenas, compel the attendance of witnesses, compel the production of records, books, papers, and documents, and administer oaths to persons giving testimony at hearings;

(g) Repealed.

(h) Identify and proscribe, by rule, chiropractic practices which are untrue, deceptive, or misleading.

Source: L. 59: p. 295, § 1. CRS 53: § 23-2-7. C.R.S. 1963: § 23-1-7. L. 79: (1)(a) amended and (1)(h) added, p. 489, § 4, effective July 1. L. 85: (1)(g) repealed, p. 511, § 10, effective July 1. L. 95: (1)(h) amended, p. 1311, § 1, effective July 1.

ANNOTATION

State board of chiropractic examiners is an “agency” of the state and may not be sued in a section 1983 civil rights action. States, state officials, and governmental entities that are considered arms of the state are not “persons” within the meaning of section 1983. *Stjernholm v. Colo. State Bd. of Chiropractic Exam’rs*, 820 P.2d 1166 (Colo. App. 1991).

The board performs both quasi-legislative and quasi-judicatory functions. Rule-making is a quasi-legislative function, and professional discipline and license suspension are quasi-judicial in nature. *Bd. of Chiropractic*

Exam’rs v. Stjernholm, 935 P.2d 959 (Colo. 1997).

As public officials engaging in quasi-judicial actions, the state board, board members, and board attorneys enjoy absolute immunity from suit for damages, state or federal. *Bd. of Chiropractic Exam’rs v. Stjernholm*, 935 P.2d 959 (Colo. 1997).

However, official immunity from damages does not equate to immunity from injunctive relief under § 1983. *Bd. of Chiropractic Exam’rs v. Stjernholm*, 935 P.2d 959 (Colo. 1997).

12-33-107.5. Limitation on authority. The authority granted the board under the provisions of this article shall not be construed to authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

Source: L. 89: Entire section added, p. 670, § 6, effective July 1.

Cross references: For the legislative declaration contained in the 1989 act enacting this section, see section 1 of chapter 111, Session Laws of Colorado 1989.

12-33-108. Board publications.

(1) Repealed.

(2) Publications of the board circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

Source: L. 59: p. 296, § 1. CRS 53: § 23-2-8. C.R.S. 1963: § 23-1-8. L. 64: p. 132, § 46. L. 79: (1) amended, p. 436, § 12, effective July 1. L. 83: Entire section amended, p. 829, § 17, effective July 1. L. 96: (1) repealed, p. 1227, § 41, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (1), see section 1 of chapter 237, Session Laws of Colorado 1996.

12-33-109. Disposition of fees. All examination and renewal fees under this article shall be collected by the board and transmitted to the state treasurer pursuant to law.

Source: L. 59: p. 296, § 1. CRS 53: § 23-2-9. C.R.S. 1963: § 23-1-9. L. 73: p. 1367, § 12. L. 79: Entire section R&RE, p. 489, § 5, effective July 1.

12-33-110. Records. The board shall keep a record of its proceedings and a register of all applications for licensing and all licensed chiropractors, such to be public records and prima facie evidence of the proceedings of the board set forth therein.

Source: L. 59: p. 296, § 1. CRS 53: § 23-2-10. C.R.S. 1963: § 23-1-10.

12-33-111. Licensure - minimum education requirements. (1) (a) A minimum educational requirement shall include a knowledge of the basic sciences and for original licensure shall include graduation from a high school or its educational equivalent and graduation from an approved chiropractic school or college which teaches a course of not

less than four thousand resident classroom hours in a period of four academic years. All applicants for licensure who matriculate in a chiropractic school or college shall present evidence of having graduated from a chiropractic school or college having status with the commission on accreditation of the council on chiropractic education, or its successor, or from a chiropractic school or college which meets equivalent standards. The schedule of minimum educational requirements to enable any person to practice chiropractic in the state of Colorado is, except as otherwise provided, as follows:

- Group 1. Anatomy, including embryology and histology
- Group 2. Physiology and psychology
- Group 3. Biochemistry, inorganic and organic chemistry
- Group 4. Pathology, bacteriology, and toxicology
- Group 5. Public health, hygiene, sanitation, and first aid
- Group 6. Diagnosis (to include, but not be limited to, physical, clinical, laboratory, and all other recognized diagnostic procedures), pediatrics, dermatology, syphilology, psychiatry, and X ray
- Group 7. Obstetrics, gynecology
- Group 8. Principles and practice of chiropractic, adjustive technic. Electives including dietetics, nutrition, posture, physiotherapy, electrotherapy, and surgical, optometric, and dental indications

(b) Any chiropractic college or school meeting the requirements of this section and the rules and regulations adopted by the board shall be eligible for approval.

Source: L. 59: p. 296, § 1. CRS 53: § 23-2-11. C.R.S. 1963: § 23-1-11. L. 76: IP(1) amended, p. 412, § 3, effective July 1. L. 79: IP(1) and (1)(a) amended, p. 489, § 6, effective July 1.

12-33-111.5. Display of license required. Every licensed practitioner of chiropractic shall conspicuously display his or her license to practice in this state. If a chiropractor practices at several locations, his or her name and license number shall be displayed in a manner that can be easily recognized by patients. Persons who engage in the practice of chiropractic under the name of a partnership, association, or other entity shall conspicuously display at the entrance of their place of business the name of each member or associate of such entity who is engaged in the practice of chiropractic.

Source: L. 95: Entire section added, p. 1311, § 2, effective July 1.

12-33-112. Application for license - fee - examination. Any person who fulfills the minimum educational requirements prescribed by this article and by the board, who is not less than twenty-one years of age, who desires to obtain a license to practice chiropractic in this state, and who is not entitled to a license therefor under other provisions of this article may make application for such license upon such forms and in such manner as prescribed by the board, which application shall be accompanied by an examination fee. The board may refuse to examine or license an applicant if the applicant has committed any act that would be grounds for disciplinary action against a licensed chiropractor. Such applicant shall be examined by the board or the board's designee in the subjects outlined in section 12-33-111 to determine the applicant's qualifications to practice chiropractic. A license shall be granted to all applicants who on such examination are found qualified by attaining a passing grade on the examinations adopted by the board. Qualification in that portion of the examination relating to the basic sciences shall be established by the applicant submitting proof satisfactory to the board of successfully passing the examination in the basic sciences given by the national board of chiropractic examiners. The board may adopt the practical

examination developed and administered by the national board of chiropractic examiners as the practical portion of the examination. If the board adopts such practical examination developed and administered by the national board of chiropractic examiners, qualification in the practical portion of the examination shall be established by the applicant submitting proof satisfactory to the board of successfully passing the practical examination given by the national board of chiropractic examiners, and the passing score for such practical examination shall be as set by the national board of chiropractic examiners. Any chiropractic applicant who desires to practice electrotherapy shall present evidence that he or she has successfully completed a course of not less than one hundred twenty classroom hours in this subject at a school approved by the board or under the instruction of an approved provider.

Source: L. 59: p. 298, § 1. CRS 53: § 23-2-14. C.R.S. 1963: § 23-1-14. L. 73: p. 517, § 20. L. 75: Entire section amended, p. 453, § 2, effective July 14. L. 76: Entire section amended, p. 412, § 4, effective July 1. L. 79: Entire section amended, p. 490, § 7, effective July 1. L. 85: Entire section amended, p. 508, § 3, effective July 1. L. 95: Entire section amended, p. 1312, § 3, effective July 1. L. 98: Entire section amended, p. 687, § 1, effective May 18.

12-33-112.5. Temporary licensure. (Repealed)

Source: L. 95: Entire section added, p. 1312, § 4, effective July 1. L. 2010: Entire section repealed, (HB 10-1128), ch. 172, p. 610, § 3, effective April 29.

12-33-113. Licensure by endorsement. (1) Upon application for a license to practice chiropractic in this state, accompanied by the required fee, the board shall issue such license to any person who furnishes, upon such form and in such manner as the board prescribes, evidence satisfactory to the board that:

(a) The applicant is licensed to practice chiropractic in another state, a territory of the United States, the District of Columbia, the commonwealth of Puerto Rico, or a province of Canada; and

(b) At the time of application under this section, the applicant possesses credentials and qualifications that are, in the judgment of the board, equivalent to this state's requirements for licensure by examination; and

(c) (I) The applicant has been engaged in the full-time practice of chiropractic, or has taught general clinical chiropractic subjects at an accredited school of chiropractic, as set forth in section 12-33-111 (I) (a), in one of the jurisdictions referred to in paragraph (a) of this subsection (1) for at least three of the five years immediately preceding the date of the receipt of the application; or

(II) The applicant has demonstrated competency as a chiropractor as determined by the board; and

(d) The applicant has not been convicted of a crime that would be grounds for the refusal, suspension, or revocation of a license to practice chiropractic in this state if committed in this state; and

(e) The applicant's license to practice chiropractic is in good standing.

Source: L. 59: p. 298, § 1. CRS 53: § 23-2-13. C.R.S. 1963: § 23-1-13. L. 67: p. 719, § 1. L. 76: Entire section amended, p. 412, § 5, effective July 1. L. 79: Entire section amended, p. 491, § 8, effective July 1. L. 83: Entire section R&RE, p. 533, § 1, effective July 1. L. 2010: Entire section amended, (HB 10-1175), ch. 46, p. 173, § 1, effective July 1, 2011.

12-33-114. Renewal of license. (1) Licenses shall be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations

within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(1.2) (Deleted by amendment, L. 2004, p. 1824, § 64, effective August 4, 2004.)

(1.3) A renewal fee paid pursuant to subsection (1) of this section shall not be refunded.

(2) (Deleted by amendment, L. 2004, p. 1824, § 64, effective August 4, 2004.)

Source: L. 59: p. 299, § 1. CRS 53: § 23-2-15. C.R.S. 1963: § 23-1-15. L. 75: Entire section amended, p. 454, § 4, effective July 14. L. 79: Entire section R&RE, p. 491, § 9, effective July 1. L. 85: Entire section amended, p. 509, § 4, effective July 1. L. 95: (1) amended and (1.2) and (1.3) added, p. 1313, § 5, effective July 1. L. 2004: (1), (1.2), and (2) amended, p. 1824, § 64, effective August 4.

12-33-114.5. Change of address - reporting required. Each person licensed under this article, upon changing his or her address, shall inform the board of their new address within thirty days after such change. The address change shall be reflected on the next license or renewal certificate issued to the licensee.

Source: L. 95: Entire section added, p. 1313, § 6, effective July 1.

12-33-115. Persons licensed under previous laws. Any person holding a valid license to practice chiropractic in Colorado on or after May 18, 1959, shall be licensed under the provisions of this article without further application by said person.

Source: L. 59: p. 302, § 1. CRS 53: § 23-2-20. C.R.S. 1963: § 23-1-20.

12-33-116. Continuing education. It is hereby expressly declared to be the purpose of this section to provide for an increase in the annual scientific educational requirements of licensed Colorado chiropractors. Each licensed Colorado chiropractor in active practice within the state of Colorado shall be required annually to attend not less than fifteen hours of scientific clinics, forums, or chiropractic educational study consisting of subjects basic to the field of the healing arts as set forth in section 12-33-111. Each year at the time of its regular June meeting the board shall prepare an educational schedule of minimum postgraduate requirements of subjects as set forth in section 12-33-111 that shall be met by any school, clinic, forum, or convention giving such educational work, and such minimum standards must be complied with by such school, clinic, forum, or convention before the board issues a postgraduate attendance certificate. Credit hours shall be determined by the board. Applicants shall apply to the board prior to or after the course and present proof of attendance and synopsis of the course content for approval of credit hours. This provision is made mandatory in the best interest of public health and welfare and to provide progress in the field of chiropractic. If any licensed chiropractor is unable to comply with this section on account of dire emergency and for good cause shown, the board may waive the provisions of this section.

Source: L. 59: p. 297, § 1. CRS 53: § 23-2-12. C.R.S. 1963: § 23-1-12. L. 79: Entire section amended, p. 491, § 10, effective July 1.

12-33-116.5. Professional liability insurance required. (1) (a) It is unlawful for any person to practice chiropractic within this state unless the person purchases and maintains professional liability insurance in an amount not less than three hundred thousand dollars per claim with an aggregate liability limit for all claims during the year of one million dollars.

(b) Professional liability insurance required by this section shall cover all acts within the scope of practice as defined by section 12-33-102. Professional liability coverage shall cover acupuncture and electrotherapy only if the licensee is authorized to perform these acts.

(2) Notwithstanding subsection (1) of this section, the board may by rule exempt or establish lesser liability insurance requirements for any class of licensee which:

- (a) Practices chiropractic as employees of the United States government;
- (b) Renders limited or occasional chiropractic services;
- (c) Performs less than full-time active chiropractic services because of administrative or other nonclinical duties of partial or complete retirement;
- (d) Provides uncompensated chiropractic care to patients but does not otherwise provide compensated chiropractic care to patients; or
- (e) Practices chiropractic in such a manner that renders the amounts provided in subsection (1) of this section unreasonable or unattainable.

Source: L. 95: Entire section added, p. 1313, § 6, effective July 1. L. 2006: (1) amended, p. 300, § 1, effective August 7. L. 2009: (1)(a) amended, (SB 09-167), ch. 366, p. 1917, § 3, effective June 1.

12-33-117. Discipline of licensees - letters of admonition, suspension, revocation, denial, and probation - grounds. (1) Upon any of the following grounds, the board may issue a letter of admonition to a licensee or may revoke, suspend, deny, refuse to renew, or impose conditions on such licensee's license:

- (a) Using fraud, misrepresentation, or deceit in applying for, securing, renewing, or seeking reinstatement of a license or in taking an examination provided for in this article;
- (b) An act or omission that constitutes negligent chiropractic practice or fails to meet generally accepted standards of chiropractic practice;
- (c) Conviction of a felony or any crime that would constitute a violation of this article. For purposes of this subsection (1), "conviction" includes the acceptance of a guilty plea or a plea of nolo contendere or the imposition of a deferred sentence.
- (d) Habitual intemperance or excessive use of a controlled substance as defined in section 18-18-102 (5), C.R.S., or a habit-forming drug;
- (e) Habitual intemperance or excessive use of alcohol;
- (f) Disobedience to a lawful rule or order of the board;
- (g) Persisting in maintaining an unsanitary office or practicing under unsanitary conditions after warning from the board;
- (h) Repealed.
- (i) False or misleading advertising;
- (j) Failure to report malpractice judgments or settlements within sixty days;
- (k) Violation of abuse of health insurance pursuant to section 18-13-119, C.R.S., or commission of a fraudulent insurance act, as defined in section 10-1-128, C.R.S.;
- (l) Treating a patient by colonic irrigation or allowing colonic irrigation to be performed at the licensee's premises;
- (m) Practicing with a suspended or expired license;
- (n) Willfully deceiving or attempting to deceive the board of examiners or their agents with reference to any matter under investigation by the board;
- (o) Practicing under an assumed name;
- (p) Unethical advertising, as defined in subsection (3) of this section, or advertising through any medium that the licensee will perform an act prohibited by section 18-13-119 (3), C.R.S.;
- (q) Violating this article or aiding any person to violate this article;
- (r) Knowingly practicing in the employment of or in association with any person who is practicing in an unlawful or unprofessional manner;
- (s) Offering, giving, or receiving commissions, rebates, or other forms of remuneration for the referral of clients; except that a licensee may compensate an independent advisory or marketing agent for advertising or marketing services, which services may include the

referral of patients identified through such services, and a licensee may give an incidental gift to a patient in appreciation for a referral;

(t) Conducting any enterprise other than the regular practice of chiropractic whereby the holder's license is used as a means of attracting patients or attaining prestige or patronage in the conduct of such enterprise;

(u) Permitting the practice of chiropractic, the holding out of such practice, or the maintenance of an office for such by an unlicensed person in association with himself or herself;

(v) Engaging in any of the following activities and practices: Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies; the administration, without clinical justification, of treatment which is demonstrably unnecessary; the failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care for the profession; or ordering or performing, without clinical justification, any service, X ray, or treatment which is contrary to recognized standards of the practice of chiropractic as interpreted by the board;

(w) Falsifying or making incorrect essential entries or failing to make essential entries on patient records;

(x) Violating section 8-42-101 (3.6), C.R.S.;

(y) Violating section 12-33-202 or any rule adopted pursuant to said section;

(z) Failing to report to the board the surrender of a license to, or adverse action taken against a license by, a licensing agency in another state, territory, or country, a governmental agency, a law enforcement agency, or a court for acts or conduct that would constitute grounds for discipline pursuant to this article;

(aa) Engaging in a sexual act with a patient during the course of such patient's care or within six months immediately following the termination of the chiropractor's professional relationship with the patient. "Sexual act", as used in this paragraph (aa), means sexual contact, sexual intrusion, or sexual penetration, as defined in section 18-3-401, C.R.S.

(bb) Abandoning a patient by any means, including, but not limited to, failing to provide a referral to another chiropractor or other appropriate health care practitioner when such referral was necessary to meet generally accepted standards of chiropractic care;

(cc) Failing to provide adequate or proper supervision when employing unlicensed persons in a chiropractic practice;

(dd) Having a physical or mental disability that makes him or her unable to render chiropractic services with reasonable skill and safety;

(ee) Performing a procedure in the course of patient care that is beyond the chiropractor's training or competence or the scope of authorized chiropractic services under this article;

(ff) Failing to respond to a board-generated complaint letter.

(1.5) In addition to any other penalty that may be imposed pursuant to this section, a chiropractor violating any provision of this article or any rule promulgated pursuant to this article may be fined no less than one thousand dollars for a first violation proven by the board, up to three thousand dollars for a second violation proven by the board, and up to five thousand dollars for a third or subsequent violation proven by the board. The board shall establish guidelines for the imposition of such fines. All fines collected pursuant to this subsection (1.5) shall be transferred to the state treasurer, who shall credit such moneys to the general fund.

(2) Disciplinary action taken against a licensee's ability to practice in another state or country shall be prima facie evidence of a violation of this article and shall constitute grounds for discipline if the acts giving rise to such disciplinary action would violate this article if committed in this state.

(2.5) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.

(3) (a) For purposes of this section, the term “unethical advertising” shall include, but not be limited to, advertising, through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise, which:

- (I) Contains false or misleading statements;
- (II) Holds out or promises cures or guarantees results;
- (III) Contains claims which cannot be substantiated by standard laboratory or diagnostic procedures.

(IV) and (V) Repealed.

(b) Repealed.

(4) Any doctor of chiropractic proven to be incompetent or negligent may be required to take an examination, given by the board, in the subjects outlined in section 12-33-111. In addition, the board may order the doctor of chiropractic to take such therapy or courses of training or education as may be needed to correct deficiencies found in the hearing.

(5) In the event any person holding a license to practice chiropractic in this state is determined to be mentally incompetent or insane by a court of competent jurisdiction and a court enters, pursuant to part 3 or 4 of article 14 of title 15 or section 27-65-109 (4) or 27-65-127, C.R.S., an order specifically finding that the mental incompetency or insanity is of such a degree that the person holding a license is incapable of continuing to practice chiropractic, his or her license shall automatically be suspended by the board, and, anything in this article to the contrary notwithstanding, such suspension shall continue until the licensee is found by such court to be competent to practice chiropractic.

Source: **L. 59:** p. 301, § 1. **CRS 53:** § 23-2-19. **C.R.S. 1963:** § 23-1-19. **L. 73:** pp. 402, 518, §§ 1-3, 21. **L. 79:** (1)(b) and (1)(i) amended, (1)(h), (2)(e), and (3)(a)(IV) repealed, and (1)(j), (4), and (5) added, pp. 492, 495, §§ 11, 18, 12, effective July 1. **L. 81:** (1)(d) amended, p. 735, § 8, effective July 1. **L. 83:** IP(1) amended, p. 534, § 2, effective July 1. **L. 85:** (1)(k) added, p. 682, § 3, effective June 2; (1)(c) and (4)(a) amended, (1)(l) and (2)(l) added, and (2)(h), (3)(a)(V), and (3)(b) repealed, pp. 509, 511, §§ 5, 10, 4, effective July 1. **L. 89:** (2)(m) to (2)(o) added, p. 671, § 7, effective July 1. **L. 91:** (2)(p) added and (5) amended, pp. 1782, 1336, §§ 6, 50, effective July 1; (2)(q) added, p. 1616, § 6, effective January 1, 1993. **L. 95:** IP(1), (1)(a), (1)(b), (1)(c), (1)(e), (1)(j), (1)(k), (1)(l), (2), and (4) amended and (1)(z), (1)(aa), (1)(bb), and (1)(cc) added, p. 1314, § 7, effective July 1. **L. 2003:** (1)(k) amended, p. 620, § 28, effective July 1; (1)(d), (1)(e), and (1)(w) amended and (1)(dd) and (1)(ee) added, p. 796, § 1, effective August 6. **L. 2004:** (1)(d) amended, p. 1194, § 34, effective August 4. **L. 2006:** (2.5) added, p. 791, § 22, effective July 1; (1.5) added, p. 300, § 2, effective August 7. **L. 2009:** (1)(ff) added and (1.5) amended, (SB 09-167), ch. 366, pp. 1917, 1919, §§ 4, 7, effective June 1. **L. 2010:** (5) amended, (SB 10-175), ch. 188, p. 778, § 8, effective April 29.

Cross references: (1) For an alternative disciplinary action for persons licensed pursuant to this article, see § 24-34-106; for an exception to the provisions of subsection (1)(u) of this section, see § 6-18-303.

(2) For the legislative declaration contained in the 1989 act enacting subsections (2)(m) to (2)(o), as said subsections existed prior to 1995, see section 1 of chapter 111, Session Laws of Colorado 1989.

ANNOTATION

Annotator’s note. Since § 12-33-117 is similar to repealed CSA, C. 34, § 11, a relevant case construing that provision has been included in the annotations to this section.

Under the provisions of this section, proof of the final and conclusive conviction of a crime of the class mentioned by the section would be sufficient ground for suspension or

revocation of a license. *Hummel v. Bd. of Chiropractic Exam’rs*, 103 Colo. 476, 87 P.2d 248 (1939).

Where a statute provides that “conviction of a crime” shall be a sufficient ground for the suspension or revocation of a license to practice chiropractic, a complaint and notice based thereon which allege only “a commission of

crime", are insufficient. *Hummel v. Bd. of Chiropractic Exam'rs*, 103 Colo. 476, 87 P.2d 248 (1939).

In proceedings for the revocation of the license of a chiropractor to follow his profession, a complaint which alleges only that the respondent had committed petit larceny is wholly insufficient under the provisions of this section. *Hummel v. Bd. of Chiropractic Exam'rs*, 103 Colo. 476, 87 P.2d 248 (1939).

Chiropractic practitioner was guilty of "unprofessional conduct" and "unethical advertising" as those terms are defined in this section

because of advertisements placed in the Denver Post and the yellow pages of the metropolitan area telephone directory. *Bernie v. State Bd. of Chiropractic Exam'rs*, 36 Colo. App. 229, 538 P.2d 1345 (1975).

This section does not prohibit a chiropractor from employing third persons to use tele-marketing to advertise his services. *Plott v. Griffiths*, 938 F.2d 164 (10th Cir. 1991).

This section prohibits holding oneself out as a doctor of chiropractic while one's license is suspended. *Stjernholm v. Bd. of Chiropractic Exam'rs*, 865 P.2d 853 (Colo. App. 1993).

12-33-117.5. Mental and physical examination of licensees. (1) If the board has reasonable cause to believe a licensee is unable to practice with reasonable skill and safety, it may require such licensee to take a mental or physical examination given by a physician or other qualified provider designated by the board. If the licensee refuses to undergo such examination or to release all medical records necessary to determine his or her ability to practice safely, unless such refusal or failure is due to circumstances beyond the licensee's control, the board may suspend such licensee's license until the results of such examination are known and the board has made a determination of the licensee's fitness to practice. The board shall proceed with an order for examination and make its determination in a timely manner.

(2) An order for examination issued by the board pursuant to subsection (1) of this section shall include the board's reasons for believing the licensee is unable to practice with reasonable skill and safety.

(3) For purposes of any disciplinary proceeding authorized under this article, a licensee shall be deemed to have waived all objections to the admissibility of an examining physician's testimony and examination reports on the basis of privilege.

(4) A licensee may submit to the board testimony and examination reports received from a physician chosen by the licensee, if such testimony and reports pertain to a condition that the board has alleged may preclude the licensee from practicing with reasonable skill and safety.

(5) The results of a mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than one held before the board and shall not be a public record nor made available to the public.

Source: L. 95: Entire section added, p. 1317, § 8, effective July 1.

12-33-118. Use of title. A license to practice chiropractic entitles the holder to use the title "Doctor" or "Dr." when accompanied by the word "Chiropractor" or the letters "D.C.", and to use the title of "Doctor of Chiropractic". Such license shall not confer upon the licensee the right to practice surgery or obstetrics or to prescribe, compound, or administer drugs, or to administer anesthetics. Nothing in this article shall be construed to prohibit or to require a license for bona fide chiropractic students or interns in attendance upon a regular course of instruction in a lawfully operated chiropractic school or hospital with respect to performing chiropractic services within such school or hospital while under the direct supervision of a licensed chiropractor.

Source: L. 59: p. 300, § 1. **CRS 53:** § 23-2-18. **C.R.S. 1963:** § 23-1-18. **L. 79:** Entire section amended, p. 492, § 13, effective July 1.

ANNOTATION

Applied in *Bernie v. State Bd. of Chiropractic Exam'rs*, 36 Colo. App. 229, 538 P.2d 1345 (1975).

12-33-119. Disciplinary proceedings. (1) The board, through the department of regulatory agencies, may employ administrative law judges, on a full-time or part-time basis, to conduct hearings as provided by this article or on any matter within the board's jurisdiction upon such conditions and terms as the board may determine.

(2) A proceeding for the discipline of a licensee may be commenced when the board has reasonable grounds to believe that a licensee under the board's jurisdiction has committed an act that may violate section 12-33-117.

(3) The attendance of witnesses and the production of books, patient records, papers, and other pertinent documents at the hearing may be summoned by subpoenas issued by the board, which shall be served in the manner provided by the Colorado rules of civil procedure for service of subpoenas.

(3.5) (Deleted by amendment, L. 2004, p. 1825, § 65, effective August 4, 2004.)

(4) Disciplinary proceedings and hearings shall be conducted in the manner prescribed by article 4 of title 24, C.R.S.

(5) A previously issued license to engage in the practice of chiropractic shall not be revoked or suspended until after a hearing conducted pursuant to section 24-4-105, C.R.S., except in the case of a deliberate and willful violation of this article or if the public health, safety, and welfare require emergency action under section 24-4-104 (4), C.R.S. The denial of an application to renew an existing license shall be treated in all respects as a revocation. If an application for a new license is denied, the applicant, within sixty days after the giving of notice of such action, may request a hearing as provided in section 24-4-105, C.R.S.

(6) Repealed.

(7) (a) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board. The person providing such copies shall prepare them from the original record and shall delete from the copy provided pursuant to the subpoena the name of the patient, but he or she shall identify the patient by a numbered code, to be retained by the custodian of the records from which the copies were made.

(b) Upon certification of the custodian that the copies are true and complete except for the patient's name, they shall be deemed authentic, subject to the right to subpoena the originals for the limited purpose of ascertaining the accuracy of the copies. The originals shall remain confidential and be returned to the custodian as soon as the accuracy of the copy is ascertained or as soon as the case is concluded if the original is needed as evidence of falsification. No privilege of confidentiality shall exist with respect to such copies, and no liability shall lie against the board or the custodian for furnishing or using such copies in accordance with this subsection (7).

(c) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(8) If a licensee has committed an act which violates section 12-33-117, the board shall withhold, revoke, or suspend an existing license, issue a letter of admonition, or grant probation on terms and conditions set by the board, or otherwise discipline a licensee as provided for in this article. A revoked or suspended license may thereafter be reissued by the board. The board may dismiss or terminate probation prior to the completion of the probationary period.

(9) (a) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be sent by certified mail to

the chiropractor against whom the complaint was made and a copy also sent to the person making the complaint. When a letter of admonition is sent by certified mail by the board to a chiropractor complained against, such chiropractor shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

(b) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(10) Notwithstanding other laws to the contrary, investigations, examinations, meetings, and other proceedings of the board conducted pursuant to this section are not required to be conducted publically and minutes of the board need not be open to public inspection; except that final action of the board taken pursuant to this section shall be open to the public.

Source: L. 59: p. 299, § 1. CRS 53: § 23-2-16. C.R.S. 1963: § 23-1-16. L. 77: (4) added, p. 662, § 4, effective July 1. L. 79: Entire section R&RE, p. 493, § 14, effective July 1. L. 85: (4) and (8) amended, (6) repealed, and (9) added, pp. 510, 511, §§ 6, 10, effective July 1. L. 87: (1) amended, p. 946, § 33, effective March 13. L. 89: (3.5) added, p. 671, § 8, effective July 1. L. 95: (9) amended, p. 1318, § 9, effective July 1. L. 2003: (2), (5), and (7) amended and (10) added, p. 797, § 2, effective August 6. L. 2004: (3.5), (7), and (9) amended, p. 1825, § 65, effective August 4.

Cross references: For the legislative declaration contained in the 1989 act enacting subsection (3.5), as said subsection existed prior to 2004, see section 1 of chapter 111, Session Laws of Colorado 1989.

ANNOTATION

Disciplinary procedures under this section invoke application of the Administrative Procedures Act. Bd. of Chiropractic Exam'rs v. Stjernholm, 935 P.2d 959 (Colo. 1997).

Board acted properly. There is nothing in the record to indicate that the board denied the chiropractic practitioner any constitutional right or privilege, acted in excess of its statutory authority or jurisdiction, or acted improperly, arbitrarily, or capriciously. *Bernie v. State Bd. of Chiropractic Exam'rs*, 36 Colo. App. 229, 538 P.2d 1345 (1975).

Board of chiropractic examiners only has authority to suspend a license summarily in situations involving an emergency, despite the APA's provision allowing summary suspension for either a deliberate or willful violation or an emergency situation, since the more specific statutory provision relating to a particular agency controls. *Stjernholm v. Bd. of Chiropractic Exam'rs*, 865 P.2d 853 (Colo. App. 1993).

12-33-119.1. Immunity in professional review. (1) If a professional review committee is established pursuant to this section to investigate the quality of care, including utilization review, being given by a person licensed pursuant to this article, it shall include in its membership at least three persons licensed under this article, but such committee may be authorized to act only by:

(a) The board; or

(b) A society or an association of persons licensed pursuant to this article whose membership includes not less than one-third of the persons licensed pursuant to this article residing in this state if the licensee whose services are the subject of review is a member of such society or association.

(2) Any member of the board or professional review committee, the board's or professional review committee's staff, any person acting as a witness or consultant to the board or committee, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her

capacity as board or professional review committee member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: **L. 79:** Entire section added, p. 494, § 15, effective July 1. **L. 90:** IP(1)(a) amended, p. 813, § 1, effective April 9. **L. 2004:** (2) amended, p. 1826, § 66, effective August 4.

Editor's note: The provisions in this section, as enacted by Senate Bill 182 in 1979, were renumbered on revision in 1997 for ease of location.

12-33-119.2. Cease-and-desist orders. (1) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public or a person is acting or has acted without the required license, the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (1), the respondent may request a hearing on the question of whether acts or practices in violation of this part 1 have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(2) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 1, then, in addition to any specific powers granted pursuant to this part 1, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (2) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (2). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (2) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this part 1, a final cease-and-desist order may

be issued directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (2), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(3) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this part 1, any rule promulgated pursuant to this part 1, any order issued pursuant to this part 1, or any act or practice constituting grounds for administrative sanction pursuant to this part 1, the board may enter into a stipulation with such person.

(4) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(5) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-33-121.

Source: L. 95: Entire section added, p. 1318, § 10, effective July 1. L. 2006: Entire section amended, p. 791, § 23, effective July 1.

12-33-120. Unauthorized practice - penalties - exemption. (1) Except as specified in subsection (2) or (3) of this section, any person who practices or offers or attempts to practice chiropractic without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and, for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) A chiropractor who lawfully practices chiropractic in another state or territory and whose license is in good standing in such other state or territory may practice chiropractic in this state for the limited purpose of treating members, coaches, and staff of a visiting sports team while in Colorado without having a license issued pursuant to this article. An unlicensed chiropractor practicing pursuant to this subsection (2) shall not:

- (a) Practice in Colorado more than ten days in a twelve-month period;
- (b) Enter Colorado to practice more than three times in a twelve-month period; or
- (c) Hold himself or herself out as a chiropractor to or practice chiropractic with members of the general public.

(3) A chiropractor who lawfully practices chiropractic in another state or territory may provide chiropractic services to athletes or team personnel registered to train at the United States olympic training center in Colorado Springs or to provide chiropractic services at an event in this state sanctioned by the United States olympic committee. The chiropractor's services shall be contingent upon the requirements and approvals of the United States olympic committee and shall not exceed ninety days per calendar year.

Source: L. 59: p. 302, § 1. CRS 53: § 23-2-21. C.R.S. 1963: § 23-1-21. L. 85: Entire section amended, p. 407, § 8, effective July 1. L. 2002: Entire section amended, p. 1477, § 72, effective October 1. L. 2006: Entire section amended, p. 87, § 24, effective August 7. L. 2009: Entire section amended, (SB 09-167), ch. 366, p. 1920, § 8, effective June 1. L. 2010: (1) amended and (3) added, (HB 10-1128), ch. 172, p. 611, § 4, effective April 29.

Cross references: (1) For a provision making it an unlawful act for a chiropractor to treat cancer or prescribe for the treatment of cancer, see § 12-30-107.

(2) For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-33-121. Judicial review. The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the board. Such proceeding shall be conducted in accordance with section 24-4-106 (11), C.R.S.

Source: L. 59: p. 300, § 1. CRS 53: § 23-2-17. C.R.S. 1963: § 23-1-17. L. 79: Entire section repealed, p. 495, § 18, effective July 1. L. 85: Entire section RC&RE, p. 510, § 7, effective July 1.

12-33-122. Duty of district attorneys - duty of department of regulatory agencies. It is the duty of the several district attorneys of this state to prosecute all persons charged with the violation of any of the provisions of this article. It is the duty of the secretary-treasurer of the board, under the direction of the board, to aid said attorneys in the enforcement of this article. It is the duty of the attorney general to advise the board upon all legal matters and to represent the board in all actions brought by or against it. It is the duty of the department of regulatory agencies to forward to the board a copy of any correspondence concerning the professional conduct or competence of any licensed chiropractor which the department either transmits or receives.

Source: L. 59: p. 302, § 1. CRS 53: § 23-2-22. C.R.S. 1963: § 23-1-22. L. 79: Entire section amended, p. 494, § 16, effective July 1.

ANNOTATION

Annotator's note. Since § 12-33-122 is similar to repealed CSA, C. 34, § 17, a relevant case construing that provision has been included in the annotations to this section.

The duty of the attorney general under this section is to advise the board upon all legal matters and to represent the board in all actions brought by or against it. *Hummel v. Bd. of*

Chiropractic Colo., 103 Colo. 476, 87 P.2d 248 (1939).

The attorney general is not in any sense the complainant or prosecutor and does not ex officio supplant the one who files charges under section 12-33-117. *Hummel v. Bd. of Chiropractic Colo.*, 103 Colo. 476, 87 P.2d 248 (1939).

12-33-123. Application of article. (Repealed)

Source: L. 59: p. 303, § 3. CRS 53: § 23-2-24. C.R.S. 1963: § 23-1-24. L. 79: Entire section repealed, p. 1633, § 10, effective July 19.

12-33-124. Professional service corporations, limited liability companies, and registered limited liability partnerships for the practice of chiropractic - definitions.

(1) Persons licensed to practice chiropractic by the board may form professional service corporations for the practice of chiropractic under the "Colorado Corporation Code", if such corporations are organized and operated in accordance with the provisions of this section. The articles of incorporation of such corporations shall contain provisions complying with the following requirements:

(a) The name of the corporation shall contain the words "professional company" or "professional corporation" or abbreviations thereof.

(b) The corporation shall be organized solely for the purposes of conducting the practice of chiropractic only through persons licensed by the board to practice chiropractic in the state of Colorado.

(c) The corporation may exercise the powers and privileges conferred upon corporations by the laws of Colorado only in furtherance of and subject to its corporate purpose.

(d) All shareholders of the corporation shall be persons licensed by the board to practice chiropractic in the state of Colorado, and who at all times own their shares in their own right. They shall be individuals who, except for illness, accident, time spent in the armed services, on vacations, and on leaves of absence not to exceed one year, are actively engaged in the practice of chiropractic in the offices of the corporation.

(e) Provisions shall be made requiring any shareholder who ceases to be or for any reason is ineligible to be a shareholder to dispose of all his shares forthwith, either to the corporation or to any person having the qualifications described in paragraph (d) of this subsection (1).

(f) The president shall be a shareholder and a director, and to the extent possible, all other directors and officers shall be persons having the qualifications described in paragraph (d) of this subsection (1). Lay directors and officers shall not exercise any authority whatsoever over professional matters.

(g) The articles of incorporation shall provide, and all shareholders of the corporation shall agree, that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation, or that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation except during periods of time when the corporation maintains in good standing professional liability insurance which shall meet the following minimum standards:

(I) The insurance shall insure the corporation against liability imposed upon the corporation by law for damages resulting from any claim made against the corporation arising out of the performance of professional services for others by those officers and employees of the corporation who are licensed by the board to practice chiropractic.

(II) Such policies shall insure the corporation against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all nonprofessional employees.

(III) The insurance shall be in an amount for each claim of at least fifty thousand dollars multiplied by the number of persons licensed to practice chiropractic employed by the corporation. The policy may provide for an aggregate top limit of liability per year for all claims of one hundred fifty thousand dollars also multiplied by the number of persons licensed to practice chiropractic employed by the corporation, but no firm shall be required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate top limit of liability for all claims during the year of nine hundred thousand dollars.

(IV) The policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured corporation or any stockholder or employee thereof; the conduct of any business enterprise, as distinguished from the practice of chiropractic, in which the insured corporation under this section is not permitted to engage but which nevertheless may be owned by the insured corporation or in which the insured corporation may be a partner or which may be controlled, operated, or managed by the insured corporation in its own or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith; when not resulting from breach of professional duty, bodily injury to, or sickness, disease, or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof; and such policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(2) Repealed.

(3) The corporation shall do nothing which, if done by a person licensed to practice chiropractic in the state of Colorado employed by it, would violate the standards of professional conduct as provided for in section 12-33-117. Any violation by the corporation of this section shall be grounds for the board to terminate or suspend its right to practice chiropractic.

(4) Nothing in this section shall be deemed to diminish or change the obligation of each person licensed to practice chiropractic employed by the corporation to conduct his practice in accordance with the standards of professional conduct provided for in section 12-33-117. Any person licensed by the board to practice chiropractic who by act or omission causes the corporation to act or fail to act in a way which violates such standards of professional conduct, including any provision of this section, shall be deemed personally responsible for such act or omission and shall be subject to discipline therefor.

(5) A professional service corporation may adopt a pension, profit-sharing (whether cash or deferred), health and accident insurance, or welfare plan for all or part of its employees including lay employees if such plan does not require or result in the sharing of

specific or identifiable fees with lay employees, and if any payments made to lay employees, or into any such plan in behalf of lay employees, are based upon their compensation or length of service, or both, rather than the amount of fees or income received.

(6) Except as provided in this section, corporations shall not practice chiropractic.

(7) As used in this section, unless the context otherwise requires:

(a) "Articles of incorporation" includes operating agreements of limited liability companies and partnership agreements of registered limited liability partnerships.

(b) "Corporation" includes a limited liability company organized under the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S., and a limited liability partnership registered under section 7-60-144 or 7-64-1002, C.R.S.

(c) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(d) "Employees" includes employees, members, and managers of a limited liability company and employees and partners of a registered limited liability partnership.

(e) "Share" includes a member's rights in a limited liability company and a partner's rights in a registered limited liability partnership.

(f) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

Source: L. 73: p. 404, § 1. C.R.S. 1963: § 23-1-25. L. 85: (2) repealed, p. 511, § 10, effective July 1. L. 95: (7) added, p. 812, § 31, effective May 24. L. 97: (7)(b) amended, p. 918, § 12, effective January 1, 1998.

Editor's note: The "Colorado Corporation Code", articles 1 to 10 of title 7, referred to in the introductory portion to subsection (1) was repealed, effective July 1, 1994, and was replaced on that date by the "Colorado Business Corporation Act", articles 101 to 117 of title 7.

ANNOTATION

Law reviews. For article, "Operating a Personal Service Corporation", see 17 Colo. Law. 2011 (1988).

12-33-125. Reporting requirements. A person licensed to practice chiropractic in this state shall report to the board any chiropractor known or believed to have violated this article.

Source: L. 95: Entire section added, p. 1318, § 10, effective July 1.

12-33-126. Confidentiality - exceptions. (1) A licensee shall not disclose confidential communications made between such licensee and a patient in the course of such licensee's professional employment unless such patient gives his or her consent prior to the disclosure. An employee or associate of a licensee shall not disclose any knowledge of confidential communications acquired in his or her capacity as an employee or associate, unless a patient gives his or her consent prior to the disclosure.

(2) Subsection (1) of this section shall not apply when:

(a) A patient or an heir, executor, or administrator of a patient files a complaint or suit against a licensee with respect to any cause of action arising out of or connected with:

(I) The care or treatment of such patient by such licensee; or

(II) The consultation by such licensee with another health care practitioner who provided care or treatment to the patient.

(b) A review of the services of a licensee is conducted by:

(I) The board, or a person or group authorized by the board;

(II) The governing board of a hospital where said licensee practices, which hospital is licensed pursuant to part 1 of article 3 of title 25, C.R.S., or the medical staff of such hospital if said staff operates pursuant to written bylaws approved by the governing board of the hospital; or

(III) A professional review committee established pursuant to section 12-33-119.1, if the licensee has signed a release authorizing such review.

(3) The records and information produced and used in a review described in paragraph (b) of subsection (2) of this section shall not become public records solely because of the use of such records and information in such review, and the identity of a patient whose records are reviewed pursuant to said paragraph (b) shall not be disclosed to any person not directly involved in the review process. The board shall adopt procedures to ensure that the identity of patients remains confidential during the review process.

(4) Nothing in this section shall be deemed to prohibit any disclosure required by law.

Source: L. 95: Entire section added, p. 1318, § 10, effective July 1.

12-33-127. Animal chiropractic - registration - qualifications - continuing education - collaboration with veterinarian - discipline - title restriction - rules. (1) (a) A licensed chiropractor who is registered under this section is authorized to perform animal chiropractic when such chiropractic diagnosis and treatment is consistent with the scope of practice for chiropractors and the animal has been provided a veterinary medical clearance by a licensed veterinarian. A chiropractor shall have the knowledge, skill, ability, and documented competency to perform an act that is within the scope of practice for chiropractors.

(b) In recognition of the special authority granted by this section, the performance of animal chiropractic in accordance with this section shall not be deemed a violation of section 12-64-104.

(c) A licensed chiropractor who is not registered under this section may perform animal chiropractic if the animal has been provided a veterinary medical clearance by a licensed veterinarian and the animal chiropractic is performed under the direct, on-premises supervision of the veterinarian who has provided the veterinary medical clearance.

(d) An individual who is not licensed as a chiropractor or a veterinarian may not perform animal chiropractic.

(2) The state board of chiropractic examiners shall regulate animal chiropractic and diagnosis, including, without limitation, educational and clinical requirements for the performance of animal chiropractic and the procedure for referring complaints to the department of regulatory agencies regarding animal chiropractic diagnosis and therapy.

(3) **Registry.** (a) The state board of chiropractic examiners shall maintain a database of all licensed chiropractors that are registered pursuant to this section and rules promulgated pursuant to this article to practice animal chiropractic in this state. Information in the database shall be open to public inspection at all times and shall be easily accessible in electronic form.

(b) A licensed chiropractor who chooses to practice animal chiropractic and who seeks registration in animal chiropractic shall provide the state board of chiropractic examiners with registration information as required by the board, which shall include the chiropractor's name, current address, education and training in the field of animal chiropractic, active Colorado chiropractic license, and qualifications to perform animal chiropractic and treatment. Forms for chiropractors to provide such information shall be provided by the board.

(4) **Educational qualifications.** A licensed chiropractor who seeks registration in animal chiropractic shall obtain education in the field of animal chiropractic from an accredited college of veterinary medicine, an accredited college of chiropractic, or an educational program deemed equivalent by mutual agreement of the state board of chiropractic examiners and the state board of veterinary medicine. The educational program shall consist of no fewer than two hundred ten hours, shall include both classroom instruction and clinical experience, and shall culminate with a proficiency evaluation. The educational program shall include the following subjects:

(a) Chiropractic topics, including:

(I) History and systems review;

(II) Subluxation and vertebral subluxation; and

(III) Adjustment techniques for dogs and horses;

(b) Veterinary topics specific to canine and equine species, including:

(I) Anatomy, including sacropelvic, thoracolumbar, cervical, and extremity, including normal hoof anatomy and care;

(II) Physiology;

(III) Behavior;

(IV) Knowledge of breed anomalies;

(V) Restraint;

(VI) Biomechanics, gait, and lameness;

(VII) Neurology, neuroanatomy, and neurological conditions;

(VIII) Differential diagnosis of neuromusculoskeletal conditions;

(IX) Motion palpation;

(X) Pathology; and

(XI) Radiographic interpretation;

(c) Recognition of canine and equine zoonotic and contagious diseases;

(d) Animal-specific case management, outcome assessment, and documentation; and

(e) Animal-specific professional ethics and legalities.

(5) **Continuing education.** A licensed chiropractor who is registered to perform animal chiropractic shall complete twenty hours of continuing education per licensing period that is specific to the diagnosis and treatment of animals. All continuing education courses shall be in the fields of study listed in subsection (4) of this section.

(6) **Records and professional collaboration.** (a) A licensed veterinarian who provides veterinary medical clearance for animal chiropractic may require a veterinarian's presence at any chiropractic treatment rendered pursuant to the veterinary medical clearance.

(b) The chiropractor and the veterinarian shall continue professional collaboration as necessary for the well-being of the animal patient. The veterinarian shall provide the animal patient's medical record to the chiropractor upon request.

(c) The chiropractor shall maintain an animal patient record that includes the written veterinary medical clearance, including the name of the veterinarian, date, and time the clearance was received. The chiropractor shall furnish a copy of the medical record to the veterinarian upon the veterinarian's request.

(d) A licensed chiropractor registered to perform animal chiropractic shall maintain complete and accurate records or patient files in the chiropractor's office for a minimum of three years.

(7) **Discipline.** Complaints received in the office of the state board of chiropractic examiners that include allegations of a violation related to animal chiropractic shall be forwarded to the state board of veterinary medicine for its review and advisory recommendation to the state board of chiropractic examiners. The state board of chiropractic examiners retains the final authority for decisions related to the discipline of a chiropractor.

(8) **Separate treatment room.** A licensed chiropractor who provides animal chiropractic diagnosis and treatment in the same facility where human patients are treated shall maintain a separate, noncarpeted room for the purpose of adjusting animals. The table and equipment used for animals shall not be used for human patients.

(9) **Use of title.** Only a licensed chiropractor qualified and registered in Colorado to perform animal chiropractic may use the titles "animal chiropractor", "animal adjuster", "equine chiropractor", or "equine adjuster". No chiropractor shall use the titles "veterinary chiropractor" or "veterinary adjuster" unless the chiropractor is also licensed to practice veterinary medicine in Colorado. Nothing in this section shall prohibit a licensed veterinarian from using the titles "animal adjuster" or "equine adjuster".

(10) **Rules.** The state board of chiropractic examiners, in consultation with the state board of veterinary medicine, may establish by rule any additional requirements to be met by a chiropractor regarding required documentation and any other rules necessary for the implementation of this section.

(11) Nothing in this section shall be construed to prohibit, limit, or alter the privileges or practices of any other licensed profession, including veterinarians, from performing spinal, extremity, or other aspects of adjustment, manipulation, or mobilization on animals as allowed for in the scope of their respective practice acts.

Source: L. 2009: Entire section added, (SB 09-167), ch. 366, p. 1920, § 9, effective June 1.

12-33-128. Chiropractic assistants. A chiropractor may supervise up to five unlicensed persons as chiropractic assistants if such persons have received appropriate training as established by the board by rule promulgated pursuant to section 12-33-107. A chiropractic assistant may perform his or her duties only under the direct supervision of a chiropractor and only in those areas in which the chiropractic assistant has the requisite skill and training. A chiropractic assistant shall not perform a diagnosis, an adjustment, or acupuncture.

Source: L. 2009: Entire section added, (SB 09-167), ch. 366, p. 1923, § 9, effective June 1.

PART 2

SAFETY TRAINING FOR UNLICENSED X-RAY TECHNICIANS

Cross references: For similar provisions in article 32 of this title regulating podiatrists, see part 2 of said article; for similar provisions in article 35 of this title regulating dentists, see part 2 of said article; for similar provisions in article 36 of this title regulating medical practitioners, see part 2 of said article.

12-33-201. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that public exposure to the hazards of ionizing radiation used for diagnostic purposes should be minimized wherever possible. Accordingly, the general assembly finds, determines, and declares that for any licensed chiropractor to allow an untrained person to operate a machine source of ionizing radiation, including without limitation a device commonly known as an "X-ray machine", or to administer such radiation to a patient for diagnostic purposes is a threat to the public health and safety.

(2) It is the intent of the general assembly that licensed chiropractors utilizing unlicensed persons in their practices provide those persons with a minimum level of education and training before allowing them to operate machine sources of ionizing radiation; however, it is not the general assembly's intent to discourage education and training beyond this minimum. It is further the intent of the general assembly that established minimum training and education requirements correspond as closely as possible to the requirements of each particular work setting as determined by the Colorado state board of chiropractic examiners pursuant to this part 2.

(3) The general assembly seeks to ensure, and accordingly declares its intent, that in promulgating the rules and regulations authorized by this part 2, the board will make every effort, consistent with its other statutory duties, to avoid creating a shortage of qualified individuals to operate machine sources of ionizing radiation for beneficial medical purposes in any area of the state.

Source: L. 91: Entire part added, p. 1611, § 2, effective May 1.

12-33-202. Board authorized to issue rules. (1) (a) The Colorado state board of chiropractic examiners shall adopt rules and regulations prescribing minimum standards for the qualifications, education, and training of unlicensed persons operating machine sources of ionizing radiation and administering such radiation to patients for diagnostic chiropractic use. No licensed chiropractor shall allow any unlicensed person to operate any machine source of ionizing radiation or to administer such radiation to any patient unless such person has met the standards then in effect under rules and regulations adopted pursuant to this section. The board may adopt rules and regulations allowing a grace period in which newly hired operators of machine sources of ionizing radiation shall receive the training required pursuant to this section.

(b) For purposes of this part 2, “unlicensed person” means any person who does not hold a current and active license entitling the person to practice chiropractic under the provisions of this article.

(2) The board shall seek the assistance of licensed chiropractors in developing and formulating the rules and regulations promulgated pursuant to this section.

(3) The required number of hours of training and education for all unlicensed persons operating machine sources of ionizing radiation and administering such radiation to patients shall be established by the board by rule on or before July 1, 1992. This standard shall apply to all persons in chiropractic settings other than hospitals and similar facilities licensed by the department of public health and environment pursuant to section 25-1.5-103, C.R.S. Such training and education may be obtained through programs approved by the appropriate authority of any state or through equivalent programs and training experience including on-the-job training as determined by the board.

Source: L. 91: Entire part added, p. 1611, § 2, effective May 2. **L. 94:** (3) amended, p. 2727, § 332, effective July 1. **L. 2003:** (3) amended, p. 700, § 8, effective July 1.

ARTICLE 34

Dead Human Bodies

Cross references: For the definition of “death”, see § 12-36-136; for the “Mortuary Science Code”, see article 54 of this title; for designation on drivers’ licenses for anatomical gifts, see § 42-2-107; for authorization to take pituitary glands, see § 30-10-621; for limitation of liability regarding transplants or transfusions of blood, see § 13-22-104; for the donation of human tissue, organ, or blood or a component thereof under the “Uniform Commercial Code”, see § 4-2-102.

PART 1		12-34-114.	Rights and duties of procurement organization and others.
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PART 1

REVISED UNIFORM ANATOMICAL GIFT ACT

Editor's note: This part 1 was numbered as article 9 of chapter 91, C.R.S. 1963. The provisions of this part 1 were repealed and reenacted in 2007, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 1 prior to 2007, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this part 1, see the comparative tables located in the back of the index.

12-34-101. Short title. This part 1 shall be known and may be cited as the "Revised Uniform Anatomical Gift Act".

Source: L. 2007: Entire part R&RE, p. 779, § 1, effective July 1.

Editor's note: This section is similar to former § 12-34-101 as it existed prior to 2007.

ANNOTATION

Law reviews. For article, "Disposition of Last Remains — Planning Aspects", see 11 Colo. Law. 2986 (1982). For article, "Disposition of Bodily Remains: Post-Death Aspects", see 12 Colo. Law. 439 (1983). For article, "Organ Donation Update", see 13 Colo. Law. 612 (1984). For article, "Uniform State Laws of

Interest to Colorado Probate Lawyers", see 14 Colo. Law. 1961 (1985).

Applied in *Lovato v. District Court*, 198 Colo. 419, 601 P.2d 1072 (1979) (decided prior to the 2007 repeal and reenactment of this part 1).

12-34-102. Definitions. In this part 1:

- (1) "Adult" means an individual who is at least eighteen years of age.
- (2) "Agent" means an individual:
 - (A) Authorized to make health-care decisions on the principal's behalf by a power of attorney for health care; or
 - (B) Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.
- (3) "Anatomical gift" means a donation of all or part of a human body, to take effect after the donor's death, for the purpose of transplantation, therapy, research, or education.
- (4) "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than this part 1, a fetus.
- (5) "Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under section 12-34-111.
- (6) "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, or donor registry.

- (7) “Donor” means an individual whose body or part is the subject of an anatomical gift.
- (8) “Donor registry” means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.
- (9) “Driver’s license” means a license or permit issued by the department of revenue to operate a vehicle, whether or not conditions are attached to the license or permit.
- (10) “Eye bank” means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.
- (11) “Guardian” means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.
- (12) “Hospital” means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.
- (13) “Identification card” means an identification card issued by the department of revenue or the department’s agent.
- (14) “Know” means to have actual knowledge.
- (15) “Minor” means an individual who is under eighteen years of age.
- (16) “Organ procurement organization” means a person designated by the secretary of the United States department of health and human services as an organ procurement organization.
- (17) “Parent” means a parent whose parental rights have not been terminated.
- (18) “Part” means an organ, an eye, or tissue of a human being. The term does not include the whole body.
- (19) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (20) “Physician” means an individual authorized to practice medicine or osteopathy under the law of any state.
- (21) “Procurement organization” means an eye bank, organ procurement organization, or tissue bank.
- (22) “Prospective donor” means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal.
- (23) “Reasonably available” means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.
- (24) “Recipient” means an individual into whose body a decedent’s part has been or is intended to be transplanted.
- (25) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (26) “Refusal” means a record created under section 12-34-107 that expressly states an intent to bar other persons from making an anatomical gift of an individual’s body or part.
- (27) “Sign” means, with the present intent to authenticate or adopt a record:
- (A) To execute or adopt a tangible symbol; or
- (B) To attach to or logically associate with the record an electronic symbol, sound, or process.
- (28) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (29) “Technician” means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

(30) “Tissue” means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.

(31) “Tissue bank” means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(32) “Transplant hospital” means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

Source: L. 2007: Entire part R&RE, p. 779, § 1, effective July 1.

Editor’s note: This section is similar to former § 12-34-102 as it existed prior to 2007.

12-34-103. Applicability. This part 1 applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

Source: L. 2007: Entire part R&RE, p. 782, § 1, effective July 1.

ANNOTATION

Law reviews. For article, “Disposition of Last Remains — Planning Aspects”, see 11 Colo. Law. 2986 (1982). For article, “Disposition of Bodily Remains: Post-Death Aspects”,

see 12 Colo. Law. 439 (1983). For article, “The Bequest of Life: Organ and Tissue Donation as Part of a Thorough Estate Plan,” see 25 Colo. Law. 40 (April 1996).

12-34-104. Who may make anatomical gift before donor’s death. Subject to section 12-34-108, an anatomical gift of a donor’s body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in section 12-34-105 by:

- (1) The donor, if the donor is an adult or if the donor is a minor and is:
 - (A) Emancipated; or
 - (B) Authorized under state law to apply for a driver’s license because the donor is at least sixteen years of age;
- (2) An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;
- (3) A parent of the donor, if the donor is an unemancipated minor; or
- (4) The donor’s guardian.

Source: L. 2007: Entire part R&RE, p. 782, § 1, effective July 1.

Editor’s note: This section is similar to former § 12-34-103 (1) as it existed prior to 2007.

ANNOTATION

Law reviews. For article, “Disposition of Bodily Remains: Post-Death Aspects”, see 12 Colo. Law. 439 (1983).

12-34-105. Manner of making anatomical gift before donor’s death. (a) A donor may make an anatomical gift:

- (1) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor’s driver’s license or identification card;
- (2) In a will;
- (3) During a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or
- (4) As provided in subsection (b) of this section.

(b) A donor or other person authorized to make an anatomical gift under section 12-34-104 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) State that it has been signed and witnessed as provided in paragraph (1) of this subsection (b).

(c) Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift.

(d) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

Source: L. 2007: Entire part R&RE, p. 782, § 1, effective July 1.

Editor's note: This section is similar to former § 12-34-105 as it existed prior to 2007.

ANNOTATION

Law reviews. For article, "Disposition of Last Remains — Planning Aspects", see 11 Colo. Law. 2986 (1982).

12-34-106. Amending or revoking anatomical gift before donor's death. (a) Subject to section 12-34-108, a donor or other person authorized to make an anatomical gift under section 12-34-104 may amend or revoke an anatomical gift by:

(1) A record signed by:

(A) The donor;

(B) The other person; or

(C) Subject to subsection (b) of this section, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(2) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(b) A record signed pursuant to subparagraph (C) of paragraph (1) of subsection (a) of this section must:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) State that it has been signed and witnessed as provided in paragraph (1) of this subsection (b).

(c) Subject to section 12-34-108, a donor or other person authorized to make an anatomical gift under section 12-34-104 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(d) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (a) of this section.

Source: L. 2007: Entire part R&RE, p. 783, § 1, effective July 1.

Editor's note: This section is similar to former § 12-34-107 as it existed prior to 2007.

ANNOTATION

Law reviews. For article, "Disposition of Last Remains — Planning Aspects", see 11 Colo. Law. 2986 (1982).

12-34-107. Refusal to make anatomical gift - effect of refusal. (a) An individual may refuse to make an anatomical gift of the individual's body or part by:

- (1) A record signed by:
 - (A) The individual; or
 - (B) Subject to subsection (b) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;
 - (2) The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or
 - (3) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.
- (b) A record signed pursuant to subparagraph (B) of paragraph (1) of subsection (a) of this section must:
- (1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and
 - (2) State that it has been signed and witnessed as provided in paragraph (1) of this subsection (b).
 - (c) An individual who has made a refusal may amend or revoke the refusal:
 - (1) In the manner provided in subsection (a) of this section for making a refusal;
 - (2) By subsequently making an anatomical gift pursuant to section 12-34-105 that is inconsistent with the refusal; or
 - (3) By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.
 - (d) Except as otherwise provided in section 12-34-108 (h), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

Source: L. 2007: Entire part R&RE, p. 784, § 1, effective July 1.

Editor's note: This section is similar to former § 12-34-107 as it existed prior to 2007.

ANNOTATION

Law reviews. For article, "Disposition of Last Remains — Planning Aspects", see 11 Colo. Law. 2986 (1982).

12-34-108. Preclusive effect of anatomical gift, amendment, or revocation. (a) Except as otherwise provided in subsection (g) of this section and subject to subsection (f) of this section, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under section 12-34-105 or an amendment to an anatomical gift of the donor's body or part under section 12-34-106.

(b) A donor's revocation of an anatomical gift of the donor's body or part under section 12-34-106 is not a refusal and does not bar another person specified in section 12-34-104 or 12-34-109 from making an anatomical gift of the donor's body or part under section 12-34-105 or 12-34-110.

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under section 12-34-105 or an amendment to an anatomical gift of the donor's

body or part under section 12-34-106, another person may not make, amend, or revoke the gift of the donor's body or part under section 12-34-110.

(d) A revocation of an anatomical gift of a donor's body or part under section 12-34-106 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under section 12-34-105 or 12-34-110.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 12-34-104, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 12-34-104, an anatomical gift of a part for one or more of the purposes set forth in section 12-34-104 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under section 12-34-105 or 12-34-110.

(g) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

Source: L. 2007: Entire part R&RE, p. 785, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-34-107 and 12-34-103 (6) as they existed prior to 2007.

ANNOTATION

Law reviews. For article, "Disposition of Last Remains — Planning Aspects", see 11 Colo. Law. 2986 (1982). For article, "Disposition of Bodily Remains: Post-Death Aspects", see 12 Colo. Law. 439 (1983).

12-34-109. Who may make anatomical gift of decedent's body or part. (a) Subject to subsections (b) and (c) of this section and unless barred by section 12-34-107 or 12-34-108, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1) An agent of the decedent at the time of death who could have made an anatomical gift under section 12-34-104 (2) immediately before the decedent's death;

(2) The spouse of the decedent;

(2.5) A person who is designated by the decedent as a designated beneficiary in a designated beneficiary agreement pursuant to article 22 of title 15, C.R.S., with the right to be an agent to make, revoke, or object to anatomical gifts of the decedent;

(3) Adult children of the decedent;

(4) Parents of the decedent;

(5) Adult siblings of the decedent;

(6) Adult grandchildren of the decedent;

(7) Grandparents of the decedent;

(8) An adult who exhibited special care and concern for the decedent;

(9) The persons who were acting as the guardians of the person of the decedent at the time of death; and

(10) Any other person having the authority to dispose of the decedent's body.

(b) If there is more than one member of a class listed in paragraph (1), (3), (4), (5), (6), (7), or (9) of subsection (a) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under section 12-34-111 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (a) of this section is reasonably available to make or to object to the making of an anatomical gift.

Source: **L. 2007:** Entire part R&RE, p. 786, § 1, effective July 1. **L. 2009:** (a) amended, (HB 09-1260), ch. 107, p. 440, § 5, effective July 1.

Editor's note: This section is similar to former § 12-34-103 (2) and (3) as they existed prior to 2007.

ANNOTATION

Law reviews. For article, "Disposition of Last Remains — Planning Aspects", see 11 Colo. Law. 2986 (1982). For article, "Disposition of Bodily Remains: Post-Death Aspects",

see 12 Colo. Law. 439 (1983). For article, "The Bequest of Life: Organ and Tissue Donation as Part of a Thorough Estate Plan," see 25 Colo. Law. 40 (April 1996).

12-34-110. Manner of making, amending, or revoking anatomical gift of decedent's body or part. (a) A person authorized to make an anatomical gift under section 12-34-109 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to subsection (c) of this section, an anatomical gift by a person authorized under section 12-34-109 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under section 12-34-109 may be:

(1) Amended only if a majority of the reasonably available members agree to the amending of the gift; or

(2) Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(c) A revocation under subsection (b) of this section is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

Source: **L. 2007:** (1) amended, p. 310, § 6, effective March 30; entire part R&RE, p. 787, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 12-34-107 as it existed prior to 2007.

(2) Subsection (1) was amended in Senate Bill 07-037. Those amendments were superseded by the repeal and reenactment of this part 1 in House Bill 07-1266. For the amendments to subsection (1) that were in effect from March 30, 2007, to July 1, 2007, see chapter 73, Session Laws of Colorado 2007. (See L. 2007, p. 310.)

ANNOTATION

Law reviews. For article, "Disposition of Last Remains — Planning Aspects", see 11 Colo. Law. 2986 (1982).

12-34-111. Persons that may receive anatomical gift - purpose of anatomical gift. (a) An anatomical gift may be made to the following persons named in the document of gift:

(1) A hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person, for research or education;

(2) Subject to subsection (b) of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the part;

(3) An eye bank or tissue bank.

(b) If an anatomical gift to an individual under paragraph (2) of subsection (a) of this section cannot be transplanted into the individual, the part passes in accordance with subsection (g) of this section in the absence of an express, contrary indication by the person making the anatomical gift.

(c) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (a) of this section but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(2) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(3) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(4) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(d) For the purpose of subsection (c) of this section, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(e) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (a) of this section and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g) of this section.

(f) If a document of gift specifies only a general intent to make an anatomical gift by words such as “donor”, “organ donor”, or “body donor”, or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g) of this section.

(g) For purposes of subsections (b), (e), and (f) of this section the following rules apply:

(1) If the part is an eye, the gift passes to the appropriate eye bank.

(2) If the part is tissue, the gift passes to the appropriate tissue bank.

(3) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(h) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under paragraph (2) of subsection (a) of this section, passes to the organ procurement organization as custodian of the organ.

(i) If an anatomical gift does not pass pursuant to subsections (a) through (h) of this section or the decedent’s body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(j) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under section 12-34-105 or 12-34-110 or if the person knows that the decedent made a refusal under section 12-34-107 that was not revoked. For purposes of this subsection (j), if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(k) Except as otherwise provided in paragraph (2) of subsection (a) of this section, nothing in this part 1 affects the allocation of organs for transplantation or therapy.

Source: L. 2007: Entire part R&RE, p. 787, § 1, effective July 1.

Editor’s note: This section is similar to former § 12-34-104 as it existed prior to 2007.

12-34-112. Search and notification. (Reserved)

12-34-113. Delivery of document of gift not required - right to examine. (a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under section 12-34-111.

Source: L. 2007: Entire part R&RE, p. 789, § 1, effective July 1.

Editor's note: This section is similar to former § 12-34-106 as it existed prior to 2007.

12-34-114. Rights and duties of procurement organization and others. (a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the department of revenue and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization must be allowed reasonable access to information in the records of the department of revenue to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(d) Unless prohibited by law other than this part 1, at any time after a donor's death, the person to which a part passes under section 12-34-111 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law other than this part 1, an examination under subsection (c) or (d) of this section may include an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subsection (a) of this section, a procurement organization shall make a reasonable search for any person listed in section 12-34-109 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to sections 12-34-111 (i) and 12-34-123, the rights of the person to which a part passes under section 12-34-111 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this part 1, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under section 12-34-111, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(i) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(j) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

Source: L. 2007: Entire part R&RE, p. 789, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 2007. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Law reviews. For article, "Disposition of Bodily Remains: Post-Death Aspects", see 12 Colo. Law. 439 (1983).

12-34-115. Coordination of procurement and use. Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

Source: L. 2007: Entire part R&RE, p. 791, § 1, effective July 1.

Editor's note: This section is similar to former § 12-34-108.5 (12) as it existed prior to 2007.

12-34-116. Sale or purchase of parts prohibited. (a) Except as otherwise provided in subsection (b) of this section, a person that knowingly acquires, receives, or otherwise transfers a part for valuable consideration for transplantation may be liable as specified in 42 U.S.C. sec. 274e.

(b) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

Source: L. 2007: Entire part R&RE, p. 791, § 1, effective July 1.

12-34-117. Other prohibited acts. A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal commits a class 1 misdemeanor as specified in section 18-1.3-501, C.R.S.

Source: L. 2007: Entire part R&RE, p. 791, § 1, effective July 1.

12-34-118. Immunity. (a) A person that acts in accordance with this part 1 or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.

(b) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(c) In determining whether an anatomical gift has been made, amended, or revoked under this part 1, a person may rely upon representations of an individual listed in section 12-34-109 (a) (2), (a) (3), (a) (4), (a) (5), (a) (6), (a) (7), or (a) (8) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

Source: L. 2007: Entire part R&RE, p. 791, § 1, effective July 1.

Editor's note: This section is similar to former § 12-34-108 (3) as it existed prior to 2007.

12-34-119. Law governing validity - choice of law as to execution of document of gift - presumption of validity. (a) A document of gift is valid if executed in accordance with:

- (1) This part 1;
- (2) The laws of the state or country where it was executed; or

(3) The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(b) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

Source: L. 2007: Entire part R&RE, p. 791, § 1, effective July 1.

12-34-120. Donor registry. (a) The department of revenue may establish or contract for the establishment of a donor registry.

(b) The department of revenue shall cooperate with a person that administers any donor registry that this state establishes, contracts for, or recognizes for the purpose of transferring to the donor registry all relevant information regarding a donor's making, amendment to, or revocation of an anatomical gift.

(c) A donor registry must:

(1) Allow a donor or other person authorized under section 12-34-104 to include on the donor registry a statement or symbol that the donor has made, amended, or revoked an anatomical gift;

(2) Be accessible to a procurement organization to allow it to obtain relevant information on the donor registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift; and

(3) Be accessible for purposes of paragraphs (1) and (2) of this subsection (c) seven days a week on a twenty-four-hour basis.

(d) Personally identifiable information on a donor registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective donor, or person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.

(e) This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the state. Any such registry must comply with subsections (c) and (d) of this section.

Source: L. 2007: Entire part R&RE, p. 792, § 1, effective July 1.

Editor's note: This section is similar to former § 12-34-110 as it existed prior to 2007.

12-34-121. Effect of anatomical gift on advance health-care directive. (a) In this section:

(1) "Advance health-care directive" means a power of attorney for health care or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health-care decision for the prospective donor.

(2) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(3) "Health-care decision" means any decision regarding the health care of the prospective donor.

(b) If a prospective donor has a declaration or health-care directive, and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none or the agent is not reasonably available, another person

authorized by law other than this article to make health-care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under section 12-34-109. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care.

Source: L. 2007: Entire part R&RE, p. 792, § 1, effective July 1.

Cross references: For provisions relating to a medical durable power of attorney, see § 15-14-506; for provisions relating to declarations concerning medical treatment, see article 18 of title 15; for provisions relating to proxy decision-makers for medical treatment decisions, see article 18.5 of title 15; for provisions relating to cardiopulmonary resuscitation directives, see article 18.6 of title 15.

12-34-122. Cooperation between coroner and procurement organization. (a) A coroner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation or therapy.

(b) Subject to section 12-34-123, if a coroner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the coroner and a post-mortem examination is going to be performed, the coroner or designee shall make every reasonable effort to conduct a post-mortem examination of the body or the part in a manner and within a period compatible with its preservation for the purposes of the gift and the medicolegal death investigation.

(c) A part may not be removed from the body of a decedent under the jurisdiction of a coroner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the coroner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection (c) does not preclude a coroner from performing the medicolegal investigation upon the body or parts of a decedent under the jurisdiction of the coroner.

Source: L. 2007: Entire part R&RE, p. 793, § 1, effective July 1.

Editor's note: This section is similar to former § 12-34-108.5 (8)(c) as it existed prior to 2007.

12-34-123. Facilitation of anatomical gift from decedent whose body is under jurisdiction of coroner. (a) Upon request of a procurement organization, a coroner shall release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is under the jurisdiction of the coroner. If the decedent's body or part is medically suitable for transplantation or therapy, the coroner shall release post-mortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the post-mortem examination results or other information received from the coroner only if relevant to transplantation or therapy.

(b) The coroner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, X-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the coroner which the coroner determines may be relevant to the investigation.

(c) A person that has any information requested by a coroner pursuant to subsection (b) of this section shall provide that information as expeditiously as possible to allow the coroner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation or therapy.

(d) If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of the coroner and a post-mortem examination is not required, or the coroner determines that a post-mortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the coroner and procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation or therapy.

(e) If an anatomical gift of a part from the decedent under the jurisdiction of the coroner has been or might be made, but the coroner initially believes that the recovery of the part could interfere with the post-mortem investigation into the decedent's cause or manner of death or preservation or collection of evidence, the coroner shall consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. The procurement organization shall obtain and provide the coroner with all available information which could relate to the cause or manner of the decedent's death. After consultation, the coroner may allow the recovery, or may deny or delay the recovery as provided in subsection (f), (g), or (h) of this section.

(f) The coroner, district attorney, and a procurement organization shall enter into an agreement establishing protocols and procedures governing the relations between them when an anatomical gift of a part from a decedent whose body is under the jurisdiction of the coroner has been or might be made but the coroner or the district attorney believes that the recovery of the part could interfere with the post-mortem investigation into the decedent's cause or manner of death or the documentation or preservation of evidence. Decisions regarding the recovery of the part from the decedent shall be made in accordance with the agreement. The coroner, district attorney, and procurement organization shall evaluate the effectiveness of the agreement at regular intervals but no less frequently than every two years.

(g) In the absence of an agreement as provided in subsection (f) of this section that establishes protocols and procedures governing the relations between the coroner, district attorney, and procurement organization when an anatomical gift of an organ from a decedent whose body is under the jurisdiction of the coroner has been or might be made, and following the consultation under subsection (e) of this section, if the coroner intends to deny recovery of the organ, the coroner or designee, at the request of the procurement organization, shall view the body either at the hospital or recovery location or by electronic means, prior to making a decision whether or not to allow the procurement organization to recover the organ. After viewing the body, the coroner or designee may allow recovery by the procurement organization to proceed, or, if the coroner or designee reasonably believes that the part may be involved in determining the decedent's cause or manner of death or preservation or collection of evidence, deny recovery by the procurement organization. The coroner or designee shall comply with all the requirements of this section in a manner and within a time period compatible with the preservation and purposes of the organ.

(h) In the absence of an agreement establishing protocols and procedures governing the relations between the coroner, district attorney, and procurement organization when an anatomical gift of an eye or tissues from a decedent whose body is under the jurisdiction of the coroner has been or might be made, and following the consultation under subsection (e) of this section, the coroner may allow, deny, or delay the recovery of the eye or tissues until after the collection of evidence or autopsy, in order to preserve and collect evidence, to maintain a proper chain-of-custody, or to allow an accurate determination of the decedent's cause of death. When a determination to delay the recovery of the eye or tissues is made, every effort possible shall be made by the coroner to complete the collection of evidence or autopsy in a timely manner compatible with the preservation of the eye or tissues for the purpose of transplantation or therapy.

(i) If the coroner or designee denies or delays recovery under subsection (f), (g), or (h) of this section, the coroner or designee shall:

(1) State in a record the specific reasons for not allowing recovery of the part;

(2) Include the specific reasons in the records of the coroner; and

(3) Upon request by a procurement organization, provide a record within two weeks of the date of the request with the specific reasons for not allowing recovery of the part.

(j) If the coroner or designee allows recovery of a part, in addition to any information required pursuant to the protocol under subsection (f) of this section, the procurement organization shall cooperate with the coroner in any documentation of injuries and the preservation and collection of evidence prior to and during the recovery of the part and, upon the coroner's request, shall cause the physician or technician who removes the part to provide the coroner, as soon as practicable, with a record that includes: The names of all personnel participating in the removal of the part; a report documenting any internal or external injuries observed, any evidence observed, and describing the condition of the part; photographs or other documentation of evidence as identified in the protocol; and any other information and observations that would assist in the post mortem.

(k) If a coroner or designee is required to be present to view the body at the hospital or recovery location under subsection (g) of this section, upon request the procurement organization requesting the recovery of the part shall reimburse the coroner or designee for the reasonable additional cost of travel incurred in complying with subsection (g) of this section.

Source: L. 2007: Entire part R&RE, p. 793, § 1, effective July 1.

Editor's note: This section is similar to former § 12-34-108.5 (8)(c) as it existed prior to 2007.

12-34-124. Uniformity of application and construction. In applying and construing this part 1, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: L. 2007: Entire part R&RE, p. 796, § 1, effective July 1.

Editor's note: This section is similar to former § 12-34-109 as it existed prior to 2007.

12-34-125. Relation to "Electronic Signatures in Global and National Commerce Act". This act modifies, limits, and supersedes the "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or supersede section 101 (a) of that act, 15 U.S.C. sec. 7001, or authorize electronic delivery of any of the notices described in section 103 (b) of that act, 15 U.S.C. sec. 7003 (b).

Source: L. 2007: Entire part R&RE, p. 796, § 1, effective July 1.

PART 2

UNCLAIMED HUMAN BODIES

Law reviews: For article, "Organ Donation Update", see 13 Colo. Law 612 (1984).

12-34-201. Board for distribution of unclaimed human bodies. (1) The deans and the heads of the departments of anatomy and surgery of the accredited medical and dental schools of this state are constituted a board for the distribution and delivery of unclaimed dead human bodies, described in this part 2, to and among such institutions which, under the provisions of this part 2, are entitled to distribution. The board has full power to establish rules and regulations for its government, and to appoint and remove officers, and shall keep full and complete minutes of its transactions. Records shall also be kept, under its direction, of all bodies received and distributed by said board, and of the institutions to which the same may be distributed, which minutes and records shall be open at all times to the inspection of each member of said board and of any district attorney of any county within this state. The name of said board of distribution shall be the anatomical board of the state of Colorado, called, in this part 2, the "anatomical board". The anatomical board, in its discretion, may exempt any counties or other districts from the provisions of this part 2 for any calendar year by the regulations of the board issued for such year.

(2) Repealed.

Source: L. 27: p. 217, § 1. CSA: C. 109, § 38. CRS 53: § 91-3-1. C.R.S. 1963: § 91-3-1. L. 64: p. 151, § 93. L. 83: (2) amended, p. 829, § 18, effective July 1. L. 96: (2) repealed, p. 1227, § 40, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (2), see section 1 of chapter 237, Session Laws of Colorado 1996.

12-34-202. Duty of public officers as to unclaimed bodies. (1) All public officers, agents, and servants, and all officers, agents, and servants of every county, city, township, borough, district, and other municipality, and every almshouse, prison, morgue, hospital, or other municipal or other public institution, and all other persons having charge or control over unclaimed dead human bodies required to be buried at public expense shall use reasonable effort to ascertain if said deceased person has any relative, friend, or other representative who will assume charge of said body for burial at his expense. If such effort does not result in the discovery of a claimant within twenty-four hours after death, such officers, agents, or other persons shall immediately notify the anatomical board or such person as may from time to time be designated by said board as its duly authorized officer or agent, when such unclaimed body or bodies come into his possession, charge, or control. In any county which is entirely located more than one hundred fifty miles from any accredited medical or dental school, the minimum period of notification shall be extended to forty-eight hours. Such officers, agents, or other persons, without fee or reward, shall deliver such unclaimed body to the anatomical board and permit the board or its agents to take and remove all such unclaimed bodies to be used for the advancement of medical and anatomical sciences.

(2) Such notices shall be given to the anatomical board in all cases, but no such body shall be delivered if any relative, by blood or marriage, shall previously claim the body for burial at the expense of such relative, but the body shall be surrendered to said claimant for interment; nor shall any such body be delivered if any representative of a fraternal society of which the deceased was a member, or a representative of any charitable organization, or if any friend of the deceased shall claim the body for burial prior to delivery to the board, said burial to be at the expense of such fraternal society, charitable organization, or friend. In the case of death of any person whose body is required to be buried at public expense and the duly authorized officer or agent of the anatomical board deems such body unfit for anatomical purposes, he shall notify the board of county commissioners or such other agency as may be in charge of the county paupers of the county in which such person dies, in writing, and the board of county commissioners or other agency shall direct some person to take charge of the body of such deceased indigent person, and cause it to be buried, and draw warrants upon the treasurer of said county for the payment of such expenses.

(3) No warrants for the payment of the expenses of the burial of any person whose body is required to be buried at public expense shall be drawn or paid except upon the certificate of the duly authorized officer or agent of the anatomical board to the effect that such unclaimed body is unfit for anatomical purposes, by reason of decomposition or contagious disease, and that the provisions of this part 2 have been complied with. If, through the failure of any person to deliver the body of a deceased indigent as required by this part 2, such unclaimed body becomes unfit for anatomical purposes, and is so certified by the duly authorized officer or agent of said anatomical board, such body shall be buried in accordance with the provisions of this part 2, and the person so failing to deliver such unclaimed body shall pay to the county treasurer the expense so incurred. Upon the refusal or failure of such person, on demand, to pay such expense, the board of county commissioners, or such other agency as may be in charge of the county paupers, may bring suit to recover the expenses, and the same may be recovered as debts of like amount are collectible by law.

Source: L. 27: p. 218, § 2. CSA: C. 109, § 39. CRS 53: § 91-3-2. C.R.S. 1963: § 91-3-2.

ANNOTATION

Law reviews. For article, "Disposition of Bodily Remains: Post-Death Aspects", see 12 Colo. Law. 439 (1983).

12-34-203. Claiming of body - publication of notice. After an unclaimed body has been received by the anatomical board or its duly authorized agent, and has been preserved and stored, said body may be claimed within twenty days after death by relatives, friends, or fraternal or charitable organizations for burial or cremation at the expense of said claimant, and the body shall be surrendered to such claimant without charge of any character. During the twenty-day period the board shall publish at least two notices in some newspaper of general circulation, published in the county in which the death occurred or in which the body was first discovered, stating that the body is unclaimed and giving the name of the deceased if it is known. Such notice shall be published in the name of the coroner of such county.

Source: L. 27: p. 220, § 5. CSA: C. 109, § 42. CRS 53: § 91-3-5. C.R.S. 1963: § 91-3-5.

12-34-204. Disposition of all or any portion of body after death - nonliability. (1) A person has a right during his lifetime to provide for the disposition of all or any portion of his body upon his death.

(2) No cause of action for damages shall accrue to any person arising out of the removal of all or any portion of the body of any deceased person if such deceased person has, prior to the time of his death, executed a written consent to such removal, and the person against whom such cause of action is alleged had no actual knowledge of any revocation of such consent.

(3) The anatomical board, or its duly authorized agent, is authorized to receive and distribute dead human bodies or parts thereof bequeathed or donated to it for the advancement of medical and anatomical sciences in the same manner as is now provided by law for the receipt and distribution of unclaimed dead human bodies; except that no publication of notice as required by section 12-34-203 shall be required.

Source: L. 61: p. 561, § 1. CRS 53: § 91-3-9. L. 67: p. 124, § 1. C.R.S. 1963: § 91-3-9.

ANNOTATION

Law reviews. For article, "The Private Autopsy: Problems of Consent", see 41 Den. L.

Ctr. J. 239 (1964). For article, "Organ Donation Update", see 13 Colo. Law. 612 (1984).

12-34-205. Unlawful to hold autopsy - when. It is unlawful for any person to hold an autopsy on any dead human body mentioned in this part 2, except on the request of the district attorney of the district where such body is located, without the written, telegraphic, or telephonic consent of the secretary of the anatomical board, such telegraphic or telephonic consent to be verified by written consent.

Source: L. 27: p. 220, § 3. CSA: C. 109, § 40. CRS 53: § 91-3-3. C.R.S. 1963: § 91-3-3.

12-34-206. Holding of body for twenty days. The anatomical board, or its duly authorized agent, shall take and receive any unclaimed bodies so delivered, and, after holding said bodies for a period of twenty days to determine if said bodies are claimed, shall distribute and deliver said unclaimed bodies on requisition to and among the institutions mentioned in this part 2, to be used for anatomical purposes as such institutions shall determine.

Source: L. 27: p. 220, § 4. **CSA:** C. 109, § 41. **CRS 53:** § 91-3-4. **C.R.S. 1963:** § 91-3-4.

12-34-207. Disposition of remains. After the institutions to which said unclaimed bodies have been distributed by the anatomical board have completed the scientific study of such unclaimed bodies, the remains thereof shall in every case be disposed of by burial or cremation.

Source: L. 27: p. 221, § 6. **CSA:** C. 109, § 43. **CRS 53:** § 91-3-6. **C.R.S. 1963:** § 91-3-6.

12-34-208. Expense to be borne by institutions. Neither the county, municipality, nor any officer, agent, or servant thereof shall incur any expense by reason of the delivery or distribution of any such unclaimed body, but all the expenses thereof and of the anatomical board shall be borne by those institutions receiving said unclaimed bodies in the manner determined by the board.

Source: L. 27: p. 221, § 7. **CSA:** C. 109, § 44. **CRS 53:** § 91-3-7. **C.R.S. 1963:** § 91-3-7.

12-34-209. Penalty. Any person having duties enjoined upon him by the provisions of this part 2, who neglects, refuses, or omits to perform the same as required in this part 2, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars for each offense.

Source: L. 27: p. 221, § 8. **CSA:** C. 109, § 45. **CRS 53:** § 91-3-8. **C.R.S. 1963:** § 91-3-8.

ARTICLE 35

Dentists and Dental Hygienists

Editor's note: This article was numbered as article 1 of chapter 42, C.R.S. 1963. This article was repealed in 2003 and was subsequently recreated and reenacted in 2004, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers prior to 2003 are shown in editor's notes following those sections that were relocated.

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PART 2

SAFETY TRAINING FOR
UNLICENSED X-RAY TECHNICIANS

PART 1

GENERAL PROVISIONS

12-35-101. Short title. This article shall be known and may be cited as the “Dental Practice Law of Colorado”.

Source: L. 2004: Entire article RC&RE, p. 822, § 1, effective July 1.

ANNOTATION

Former statute held valid. State Bd. of Dental Exam’rs v. Savelle, 90 Colo. 177, 8 P.2d 693, appeal dismissed, 287 U.S. 562, 53 S. Ct. 5, 77

L. Ed. 496 (1932), (decided under repealed laws antecedent to CSA, C. 52, § 1).

12-35-102. Legislative declaration. The practice of dentistry and dental hygiene in this state is declared to affect the public health, safety, and welfare and to be subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified dentists and dental hygienists be permitted to practice dentistry or dental hygiene in this state. It is the purpose of this article to promote the public health, safety, and welfare by regulating the practice of dentistry and dental hygiene and to ensure that no one shall practice dentistry or dental hygiene without qualifying under this article. The provisions of this article relating to licensure by credentials are not intended to reduce competition or restrain trade with respect to the oral health needs of the public. All provisions of this article relating to the practice of dentistry and dental hygiene shall be liberally construed to carry out these objects and purposes.

Source: L. 2004: Entire article RC&RE, p. 822, § 1, effective July 1.

ANNOTATION

Annotator's note. Since § 12-35-102 is similar to § 12-35-102 as it existed prior to the 2003 repeal of article 35 of title 12, and former § 12-35-102 is similar to repealed laws antecedent to CSA, C. 52, § 1, relevant cases construing those provisions have been included in the annotations to this section.

Dentistry is generally considered as a learned profession. *People v. Painless Parker Dentist*, 85 Colo. 304, 275 P. 928 (1929).

Dentistry is subject to state regulation. Since dentistry is a profession having to do with public health, it is subject to regulation by the state. *State Bd. of Dental Exam'rs v. Savelle*, 90 Colo. 177, 8 P.2d 693, appeal dismissed, 287 U.S. 562, 53 S. Ct. 5, 77 L. Ed. 496 (1932).

The purpose of regulation is to protect the public from ignorance, unskillfulness, unscrupulousness, deception and fraud. *State Bd. of Dental Exam'rs v. Savelle*, 90 Colo. 177, 8 P.2d 693, appeal dismissed, 287 U.S. 562, 53 S. Ct. 5, 77 L. Ed. 496 (1932).

The purpose of the dental practice law is to protect the public interest. *Cross v. Colo. State Bd. of Dental Exam'rs*, 37 Colo. App. 504, 552 P.2d 38 (1976).

For the necessity of prescribing regulations for the practice of dentistry, see *Gothard v. People*, 32 Colo. 11, 74 P. 890 (1903).

Personal dentist-patient relation required. The state requires that the relation of the dental practitioner to his patients and patrons must be personal. *State Bd. of Dental Exam'rs v. Savelle*, 90 Colo. 177, 8 P.2d 693, appeal dismissed, 287 U.S. 562, 53 S. Ct. 5, 77 L. Ed. 496 (1932).

Disciplinary proceedings are in furtherance of purpose of law. When the board exercises its statutory function of conducting disciplinary proceedings, it is pursuing the purpose of the dental practice law. *Cross v. Colo. State Bd. of Dental Exam'rs*, 37 Colo. App. 504, 552 P.2d 38 (1976).

Plaintiff may not surrender license as of right during pendency. To effectuate the purpose of the dental practice law, plaintiff is not entitled to resign or surrender his license as of right, during the pendency of disciplinary proceedings, and thereby divest the board of its jurisdiction. *Cross v. Colo. State Bd. of Dental Exam'rs*, 37 Colo. App. 504, 552 P.2d 38 (1976).

12-35-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Accredited" means a program that is nationally recognized for specialized accrediting for dental, dental hygiene, and dental auxiliary programs by the United States department of education.

(2) "Board" means the state board of dental examiners, created in section 12-35-104.

(3) "Dental assistant" means any person not a dentist or dental hygienist licensed in Colorado who may be assigned or delegated to perform dental tasks or procedures as authorized by this article or by rules of the board.

(4) "Dental hygiene" means the delivery of preventive, educational, and clinical services supporting total health for the control of oral disease and the promotion of oral health provided by a dental hygienist within the scope of his or her education, training, and experience and in accordance with applicable law.

(4.5) "Dental hygiene diagnosis" means the identification of an existing oral health problem that a dental hygienist is qualified and licensed to treat within the scope of dental hygiene practice. The dental hygiene diagnosis focuses on behavioral risks and physical conditions that are related to oral health. A dentist shall confirm any dental hygiene diagnosis that requires treatment that is outside the scope of dental hygiene practice pursuant to sections 12-35-124, 12-35-125, and 12-35-128.

(5) "Dentistry" means the evaluation, diagnosis, prevention, or treatment, including nonsurgical, surgical, or related procedures, of diseases, disorders, or conditions of the oral cavity, maxillofacial area, or the adjacent and associated structures and the impact of the disease, disorder, or condition on the human body so long as a dentist is practicing within the scope of his or her education, training, and experience and in accordance with applicable law.

(6) (a) "Direct supervision" means the supervision of those tasks or procedures that do not require the presence of the dentist in the room where performed but require the dentist's presence on the premises and availability for prompt consultation and treatment.

(b) For purposes of this subsection (6) only, "premises" means within the same

building, dental office, or treatment facility and within close enough proximity to respond in a timely manner to an emergency or the need for assistance.

(7) “Examination proctor” means a licensed dentist or dental hygienist, who shall have at least five years’ clinical experience and who is appointed by the board to supervise and administer written and clinical examinations in the field in which the dentist or dental hygienist is licensed to practice under this article.

(8) “Inactive license” means a status granted to a person pursuant to section 12-35-122.

(9) “Independent advertising or marketing agent” means a person, firm, association, or corporation that performs advertising or other marketing services on behalf of licensed dentists, including referrals of patients to licensees resulting from patient-initiated responses to such advertising or marketing services.

(10) (a) “Indirect supervision” means the supervision of those tasks or procedures that do not require the presence of the dentist in the office or on the premises at the time such tasks or procedures are being performed, but do require that the tasks be performed with the prior knowledge and consent of the dentist.

(b) For purposes of this subsection (10) only, “premises” means within the same building, dental office, or treatment facility and within close enough proximity to respond in a timely manner to an emergency or the need for assistance.

(11) “Laboratory work order” means the written instructions of a dentist licensed in Colorado authorizing another person to construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to function in the oral cavity, maxillofacial area, or adjacent and associated regions.

(12) “License” means the grant of authority by the board to any person to engage in the practice of dentistry or dental hygiene. “License” includes an academic license to practice dentistry pursuant to section 12-35-117.5. A license shall be a privilege personal to the licensee and may be revoked, suspended, or subjected to disciplinary conditions by the board for violation of any of the provisions of this article and shall be null and void upon the failure of the licensee to file an application for renewal and to pay the fee as required by section 12-35-121.

(13) “License certificate” means the documentary evidence that the board has granted authority to the licensee to practice dentistry or dental hygiene in this state.

(14) “Proprietor” includes any person who:

(a) Employs dentists, dental hygienists, or dental assistants in the operation of a dental office, except as provided in sections 12-35-113 and 12-35-128;

(b) Places in possession of a dentist, dental hygienist, dental assistant, or other agent such dental material or equipment as may be necessary for the management of a dental office on the basis of a lease or any other agreement for compensation for the use of such material, equipment, or offices; or

(c) Retains the ownership or control of dental equipment or material or a dental office and makes the same available in any manner for use by dentists, dental hygienists, dental assistants, or other agents; except that nothing in this paragraph (c) shall apply to bona fide sales of dental equipment or material secured by a chattel mortgage or retain-title agreement or to the loan of articulators.

(15) “Renewal certificate” means the documentary evidence that the board has renewed the authority of the licensee to practice dentistry or dental hygiene in this state.

Source: L. 2004: Entire article RC&RE, p. 823, § 1, effective July 1. L. 2009: (4.5) added, (SB 09-129), ch. 181, p. 797, § 1, effective April 22; (12) amended, (HB 09-1128), ch. 21, p. 104, § 1, effective August 5.

ANNOTATION

Annotator’s note. Since § 12-35-103 is similar to § 12-35-103 as it existed prior to the 2003 repeal of article 35 of title 12, a relevant case construing that provision has been included in the annotations to this section.

License is privilege. A license, which gives a person the authority to practice dentistry, is a “privilege” granted by the board. *Cross v. Colo. State Bd. of Dental Exam’rs*, 37 Colo. App. 504, 552 P.2d 38 (1976).

A license certificate is merely evidence of the license. Cross v. Colo. State Bd. of Dental Exam'rs, 37 Colo. App. 504, 552 P.2d 38 (1976).

12-35-104. State board of dental examiners - subject to termination - immunity - repeal of article. (1) (a) The state board of dental examiners is hereby created as the agency of this state for the regulation of the practice of dentistry in this state and to carry out the purposes of this article. The board shall be under the supervision and control of the division of professions and occupations as provided by section 24-34-102, C.R.S. The board shall consist of five dentist members, two dental hygienist members, and three members from the public at large, each member to be appointed by the governor for a term of four years and to have the qualifications provided in this article. No member shall serve more than two consecutive terms of four years. Due consideration shall be given to having a geographical, political, urban, and rural balance among the board members. Should a vacancy occur in any board membership before the expiration of the term thereof, the governor shall fill such vacancy by appointment for the remainder of such term in the same manner as in the case of original appointments. Any member of the board may be removed by the governor for misconduct, incompetence, or neglect of duty.

(b) Notwithstanding the July 1, 2004, recreation and reenactment of this article, members of the board who were serving as of June 30, 2004, shall continue to serve except as otherwise provided in this article, and their service shall be deemed to have been continuous. On and after January 1, 2005, the board shall consist of seven dentist members, three dental hygienist members, and three members from the public at large, each member to be appointed by the governor for a term of four years and to have the qualifications provided in this article.

(2) The board shall organize annually by electing one of its members as chairperson and one as vice-chairperson. It may adopt such rules for its government as it may deem proper. The board shall meet at least quarterly, and more often if necessary, at such times and places as it may from time to time designate.

(3) The board may employ examination proctors when necessary.

(4) (a) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the board. At the time of sunset review by the appropriate legislative committee, all functions of the board, including the issuing of permits for administering anesthesia and the regulation of such administration of anesthesia, shall be reviewed.

(b) This article is repealed, effective July 1, 2014.

Source: L. 2004: Entire article RC&RE, p. 825, § 1, effective July 1.

12-35-105. Qualifications of board members. (1) A person shall be qualified to be appointed to the board if such person:

(a) Is a legal resident of Colorado;

(b) Is currently licensed as a dentist or dental hygienist, if fulfilling that position on the board; and

(c) Has been actively engaged in a clinical practice in this state for at least five years immediately preceding the appointment, if fulfilling the position of dentist or dental hygienist on the board.

(2) Notwithstanding subsection (1) of this section or section 24-5-101, C.R.S., a person convicted of a felony in Colorado or any other state or of violating this article or any law governing the practice of dentistry shall not be appointed to or serve on the board.

Source: L. 2004: Entire article RC&RE, p. 826, § 1, effective July 1.

12-35-106. Quorum of board - panel. A majority of the members of the board shall constitute a quorum for the transaction of business, but if less than a quorum is present on the day appointed for a meeting, those present may adjourn until a quorum is present. Any

action taken by a quorum of the assigned panel shall constitute action by the board; except that, for disciplinary matters concerning a dentist, a majority of dentist members is required for a quorum.

Source: L. 2004: Entire article RC&RE, p. 826, § 1, effective July 1.

12-35-107. Powers and duties of board. (1) The board shall exercise, subject to the provisions of this article, the following powers and duties:

(a) Conduct examinations to ascertain the qualifications and fitness of applicants for licensure to practice dentistry and dental hygiene. To assist with such examinations:

(I) Only proctors or licensed dentists may participate in the examination of candidates for dental licensure; and

(II) Only licensed dentists, licensed dental hygienists, or proctors may participate in the examination of candidates for dental hygiene licensure.

(b) Make, publish, declare, and periodically review such reasonable rules as may be necessary to carry out and make effective the powers and duties of the board as vested in it by this article. Rules of the board may include but shall not be limited to:

(I) The examination of applicants for licensing as dentists and dental hygienists;

(II) The practices of dentistry and dental hygiene;

(III) The tasks and procedures that may be assigned to dental assistants and dental hygienists; and

(IV) The specification of essential instructions to be included in a laboratory work order.

(c) Conduct hearings to revoke, suspend, or deny the issuance of a license or renewal license granted under the authority of this article or of previous laws, issue a confidential letter of concern, issue a letter of admonition, or reprimand, censure, or place on probation a licensee when evidence has been presented showing violation of any of the provisions of this article by a holder of or an applicant for a license. The board may elect to hear the matter itself pursuant to the provisions of section 12-35-129, or it may elect to hear the matter with the assistance of an administrative law judge or an advisory attorney from the office of the attorney general, and, in such case, the advisor or administrative law judge shall advise the board on legal and procedural matters and rule on evidence and otherwise conduct the course of the hearing.

(d) Conduct investigations and inspections for compliance with the provisions of this article;

(e) Grant and issue licenses and renewal certificates in conformity with this article to such applicants as have been found qualified. The board may also grant and issue temporary licenses. The board shall promulgate rules concerning the granting of temporary licenses, which rules shall include, but not be limited to, restrictions with respect to effective dates, areas of practice that may be performed, and licensing fees that may be charged to the applicant.

(f) Make such reasonable rules as may be necessary to carry out and make effective the powers and duties of the board as vested in it by the provisions of this article; except that all rules adopted or amended by the board on or after July 1, 1979, shall be subject to sections 24-4-103 (8) (c) and (8) (d) and 24-34-104 (9) (b) (II), C.R.S. Such rules may include, but shall not be limited to, minimum training and equipment requirements for the administration of local anesthetics, general anesthesia, conscious sedation, and nitrous oxide/oxygen inhalation sedation, including procedures that may be used by and minimum training requirements for dentists, dental hygienists, and dental assistants. The general assembly declares that rules relating to anesthesia are not intended to permit administration of local anesthetics, general anesthesia, or conscious sedation, by dental assistants nor to reduce competition or restrain trade with respect to dentistry needs of the public.

(g) Through the department of regulatory agencies and subject to appropriations made to the department of regulatory agencies, employ hearing officers or administrative law judges on a full-time or part-time basis to conduct any hearings required by this article. The hearing officers and administrative law judges shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S.

(h) (I) Issue anesthesia permits to licensed dentists and set and collect a fee for such issuance.

(II) Anesthesia permits shall be valid for a period of five years and shall allow permit-holding licensees to administer deep conscious sedation or both general anesthesia and deep conscious sedation.

(i) Develop criteria and procedures for an office inspection program including, but not limited to:

(I) Designating qualified inspectors who are experts in dental outpatient general anesthesia and deep conscious sedation;

(II) Requiring each licensee inspected to bear the cost of inspection by allowing designated inspectors to charge a reasonable fee as established by the board;

(III) Requiring an inspector to notify the board in writing of the results of an inspection.

(2) The board may recognize those dental specialties defined by the American dental association.

(3) To facilitate the licensure of qualified applicants, the board may, in its discretion, establish a subcommittee of at least six board members to perform licensing functions in accordance with this article. Four subcommittee members shall constitute a quorum of the subcommittee. The chairperson of the board may serve on a subcommittee as deemed necessary by the chairperson. Any action taken by a quorum of the subcommittee shall constitute action by the board.

Source: L. 2004: Entire article RC&RE, p. 826, § 1, effective July 1.

ANNOTATION

Law reviews. For note, "The Right to Cross-Examine Adverse Witnesses as a Part of Due Process in Hearings Before Colorado Agencies", see 31 Dicta 383 (1954).

Annotator's note. Since § 12-35-107 is similar to § 12-35-107 as it existed prior to the 2003 repeal of article 35 of title 12, relevant cases construing that provision have been included in the annotations to this section.

The board of dental examiners, being a statutory board, is not vested with arbitrary power. State Bd. of Dental Colo. v. Savelle, 90 Colo. 177, 8 P.2d 693, appeal dismissed, 287 U.S. 562, 53 S. Ct. 5, 77 L. Ed. 496 (1932) (decided under repealed laws antecedent to CSA, C. 52, § 14).

The dental practice law does not mention surrender of a license. Cross v. Colo. State Bd. of Dental Colo., 37 Colo. App. 504, 552 P.2d 38 (1976).

The dental board may accept or reject the tendered surrender of a license; such authority must be implied from the authority to grant the license. Cross v. Colo. State Bd. of Dental Colo., 37 Colo. App. 504, 552 P.2d 38 (1976).

Surrender does not extinguish license. The surrender of the license certificate, until accepted, does not extinguish the license. Cross v. Colo. State Bd. of Dental Colo., 37 Colo. App. 504, 552 P.2d 38 (1976).

So long as plaintiff's name is entered on the record book of the board, he remains licensed to practice dentistry. Cross v. Colo. State Bd. of Dental Colo., 37 Colo. App. 504, 552 P.2d 38 (1976).

Board can conduct disciplinary proceedings. Until the board accepts the surrender of a license, it is acting within the scope of its statutory power to conduct disciplinary proceedings, and the district court has no jurisdiction to restrain the board from performing its statutory function. Cross v. Colo. State Bd. of Dental Colo., 37 Colo. App. 504, 552 P.2d 38 (1976).

Disciplinary proceedings are in furtherance of purpose of law. The purpose of the dental practice law is to protect the public interest, and when the board exercises its statutory function of conducting disciplinary proceedings, it is pursuing that purpose. Cross v. Colo. State Bd. of Dental Colo., 37 Colo. App. 504, 552 P.2d 38 (1976).

Plaintiff may not surrender license as of right during pendency. To effectuate the purpose of the dental practice law, plaintiff is not entitled to resign or surrender his license as of right, during the pendency of disciplinary proceedings, and thereby divest the board of its jurisdiction. Cross v. Colo. State Bd. of Dental Colo., 37 Colo. App. 504, 552 P.2d 38 (1976).

Although a license to practice dentistry may be considered "property" to the extent that due process must be satisfied before there can be any governmental "taking" of it, a dentistry license is not property that may be abandoned so as to divest the board of jurisdiction after disciplinary proceedings have been instituted. Cross v. Colo. State Bd. of Dental Colo., 37 Colo. App. 504, 552 P.2d 38 (1976).

Board may not participate with hearing officer in conducting proceedings. Where the

board participated jointly with the hearing officer in conducting the proceedings involving a practitioner, in using the hearing officer as its legal advisor during its deliberations, and in entering the initial fact-finding decision, the

board violates the statutory provisions of this article, and the practitioner is not required to demonstrate any prejudice to him as result of these statutory violations. In re Maul v. State Bd. of Dental Colo., 668 P.2d 933 (Colo. 1983).

12-35-108. Limitation on authority. The authority granted the board under the provisions of this article shall not be construed to authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

Source: L. 2004: Entire article RC&RE, p. 828, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-107.5 as it existed prior to 2003, and the former § 12-35-108 was relocated to § 12-35-109.

12-35-109. Power of board to administer oaths - issue subpoenas - service - penalty for refusing to obey subpoena. (1) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board.

(2) Upon failure of any witness to comply with such subpoena or process, the board may petition the district court in the county in which the proceeding is pending setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, in which event, the district court, after hearing evidence in support of or contrary to the petition, may enter an order as in other civil actions compelling the witness to attend and testify or produce books, records, or other evidence.

(3) Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this part 1, and any person who lodges a complaint pursuant to this part 1 shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this part 1 shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 2004: Entire article RC&RE, p. 828, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-108 as it existed prior to 2003, and the former § 12-35-109 was relocated to § 12-35-112.

ANNOTATION

Annotator's note. Since § 12-35-109 is similar to § 12-35-108 as it existed prior to the 2003 repeal of article 35 of title 12, a relevant case construing that provision has been included in the annotations to this section.

Applied in In re Maul v. State Bd. of Dental Exam'rs, 668 P.2d 933 (Colo. 1983).

12-35-110. Disposition of fees. (1) The board shall not have the power to create any indebtedness on behalf of the state. All examination and other fees under this article shall be collected by the board and transmitted to the state treasurer, who shall credit the same

pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for the uses and purposes of this article. Expenditures from such appropriations shall be made upon vouchers and warrants drawn pursuant to law.

(2) Appropriations made to the board shall be applied only to the payment of the necessary traveling, hotel, and clerical expenses of the members of the board in the performance of their duties; the payment of dues for membership in the American association of dental examiners and the expense of sending delegates to the convention of such association; and the payment of all such other expenditures as may be necessary or proper to carry out and execute the powers and duties of the board and the provisions of this article.

(3) Publications of the board circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

Source: L. 2004: Entire article RC&RE, p. 829, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-121 as it existed prior to 2003, and the former § 12-35-110 was relocated to § 12-35-113.

12-35-111. Change of address - duplicate licenses and certificates. (1) Every person licensed under this article, upon changing the licensee's place of business, shall furnish to the board the licensee's new mailing address within thirty days.

(2) The board may issue a duplicate of any license upon attestation by the licensee of loss or destruction and shall charge a fee established pursuant to section 24-34-105, C.R.S., for a duplicate.

Source: L. 2004: Entire article RC&RE, p. 829, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-119 as it existed prior to 2003, and the former § 12-35-111 was relocated to § 12-35-115.

12-35-112. Persons entitled to practice dentistry or dental hygiene. (1) It is unlawful for any person to practice dentistry or dental hygiene in this state except those:

(a) Who are duly licensed as dentists or dental hygienists pursuant to this article;

(b) Who are designated by this article as dental assistants, but only to the extent of the procedures authorized by this article and the rules adopted by the board.

Source: L. 2004: Entire article RC&RE, p. 829, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-109 as it existed prior to 2003, and the former § 12-35-112 was relocated to § 12-35-116.

ANNOTATION

Annotator's note. Since § 12-35-112 is similar to 12-35-109 as it existed prior to the 2003 repeal of article 35 of title 12 and repealed laws antecedent to CSA, C. 52, § 1, a relevant case construing those provisions has been included in the annotations to this section.

A private corporation organized in another state may not lawfully engage in the practice

of dentistry in Colorado without a license from the state board of dental examiners. *People v. Painless Parker Dentist*, 85 Colo. 304, 275 P. 928 (1929).

This section is broad enough to include both a human being or an artificial being, a private corporation. *People v. Painless Parker Dentist*, 85 Colo. 304, 275 P. 928 (1929).

12-35-113. What constitutes practicing dentistry. (1) A person shall be deemed to be practicing dentistry if such person:

(a) Performs, or attempts or professes to perform, any dental operation, oral surgery, or dental diagnostic or therapeutic services of any kind; except that nothing in this paragraph

(a) shall be construed to prohibit a dental hygienist or dental assistant from providing preventive dental or nutritional counseling, education, or instruction services;

(b) Is a proprietor of a place where dental operation, oral surgery, or dental diagnostic or therapeutic services are performed; except that nothing in this paragraph (b) shall be construed to prohibit a dental hygienist or dental assistant from performing those tasks and procedures consistent with section 12-35-128;

(c) Directly or indirectly, by any means or method, takes impression of the human tooth, teeth, jaws, maxillofacial area, or adjacent and associated structures, performs any phase of any operation incident to the replacement of a part of a tooth, or supplies artificial substitutes for the natural teeth, jaws, or adjacent and associated structures; except that nothing in this paragraph (c) shall prohibit or be construed to prohibit a dental hygienist or dental assistant from performing tasks and procedures consistent with sections 12-35-124 (1) (d), 12-35-125 (1) (d), and 12-35-128 (3) (a) (I);

(d) Furnishes, supplies, constructs, reproduces, or repairs any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth or upon the jaws, maxillofacial area, or adjacent and associated structures other than on the written laboratory work order of a duly licensed and practicing dentist;

(e) Places an appliance or structure described in paragraph (d) of this subsection (1) in the human mouth;

(f) Adjusts or attempts or professes to adjust an appliance or structure described in paragraph (d) of this subsection (1);

(g) Delivers an appliance or structure described in paragraph (d) of this subsection (1) to any person other than the dentist upon whose laboratory work order the work was performed;

(h) Professes to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth or upon the jaws, maxillofacial area, or adjacent and associated structures;

(i) Examines, diagnoses, plans treatment of, or treats natural or artificial structures or conditions associated with, adjacent to, or functionally related to the oral cavity, jaws, maxillofacial area, or adjacent and associated structures and their impact on the human body;

(j) Extracts, or attempts to extract, human teeth or corrects, or attempts to correct, malformations of human teeth or jaws;

(k) Repairs or fills cavities in human teeth;

(l) Prescribes ionizing radiation or the use of an X ray for the purpose of taking dental X rays or roentgenograms; except that nothing in this paragraph (l) shall be construed to prohibit these procedures from being delegated to appropriately trained personnel in accordance with this article and rules of the board;

(m) Gives, or professes to give, interpretations or readings of dental X rays or roentgenograms, CT scans, or other diagnostic methodologies; except that nothing in this paragraph (m) shall be construed to prohibit a dental hygienist from performing tasks and procedures consistent with sections 12-35-124 and 12-35-125;

(n) Represents himself or herself to an individual or the general public as practicing dentistry, by using the words "dentist" or "dental surgeon", or by using the letters "D.D.S.", "D.M.D.", "D.D.S./M.D.", or "D.M.D./M.D.". Nothing in this paragraph (n) shall be construed to prohibit a dental hygienist or dental assistant from performing tasks and procedures consistent with section 12-35-128 (2) or (3) (a).

(o) States, permits to be stated, or professes by any means or method whatsoever that he or she can perform or will attempt to perform dental operations or render a diagnosis connected therewith;

(p) Prescribes such drugs or medications and administers such general or local anesthetics, anesthesia, or analgesia as may be necessary for the proper practice of dentistry; except that nothing in this paragraph (p) shall be construed to prohibit a dental hygienist from performing those tasks and procedures consistent with sections 12-35-124 (1) (e), 12-35-125 (1) (e) and (1) (f), and 12-35-128, and in accordance with rules promulgated by the board;

(q) Prescribes, induces, and sets dosage levels for inhalation analgesia; except that nothing in this paragraph (q) shall be construed to prohibit the delegation of monitoring and administration to appropriately trained personnel in accordance with this article and rules of the board;

(r) Gives or professes to give interpretations or readings of dental charts or records or gives treatment plans or interpretations of treatment plans derived from examinations, patient records, dental X rays, or roentgenograms; except that nothing in this paragraph (r) shall be construed to prohibit a dental hygienist or dental assistant from performing tasks and procedures consistent with sections 12-35-124, 12-35-125, and 12-35-128 (2) and (3).

Source: L. 2004: Entire article RC&RE, p. 830, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-110 as it existed prior to 2003, and the former § 12-35-113 was relocated to § 12-35-117.

ANNOTATION

Annotator's note. Since § 12-35-113 is similar to § 12-35-110 as it existed prior to the 2003 repeal of article 35 of title 12, relevant cases construing that provision have been included in the annotations to this section.

A statute will be presumed constitutional unless the contrary clearly appears, and this is particularly true where the statute is designed to protect the health and safety of the public. *People ex rel. Dunbar v. Kogul*, 179 Colo. 394, 501 P.2d 738 (1972).

Hence, a requirement that all repair work on dental prosthetics be done pursuant to a prescription by a licensed dentist is not unconstitutional, since it is reasonably related to the health and safety of the public. *People ex rel. Dunbar v. Kogul*, 179 Colo. 394, 501 P.2d 738 (1972).

The general assembly may devise reasonable schemes for regulation of activities which affect the health and safety of the public. *People ex rel. Dunbar v. Kogul*, 179 Colo. 394, 501 P.2d 738 (1972).

The scope of judicial review is limited to a determination whether or not the particular regulation is reasonably related to such health and safety. *People ex rel. Dunbar v. Kogul*, 179 Colo. 394, 501 P.2d 738 (1972).

Craniosacral manipulation for the relief of pain from temporomandibular joint dysfunction

constitutes the practice of dentistry and is therefore exempt from the medical licensing requirements. *Colo. Bd. of Med. Exam'rs v. Raemer*, 794 P.2d 1075 (Colo. App. 1990), appeal dismissed, 801 P.2d 536 (Colo. 1990).

Individuals who purchased dental equipment and then leased it to orthodontist were proprietors of a dental operation under subsections (14)(b) and (14)(c). *Mason v. Orthodontic Ctrs. of Colo.*, 516 F. Supp. 2d 1205 (D. Colo. 2007).

Through these actions, the individuals were engaged in the practice of dentistry under subsection (1)(b). *Mason v. Orthodontic Ctrs. of Colo.*, 516 F. Supp. 2d 1205 (D. Colo. 2007).

Because these individuals lacked a license to engage in such practice, they were also in violation of subsection (1)(a). *Mason v. Orthodontic Ctrs. of Colo.*, 516 F. Supp. 2d 1205 (D. Colo. 2007).

Individuals who leased or arranged for offices and then sublet them to orthodontist were proprietors of a dental practice under subsection (14)(c). *Mason v. Orthodontic Ctrs. of Colo.*, 516 F. Supp. 2d 1205 (D. Colo. 2007).

Applied in *McIntyre v. State Dept. of Rev.*, 757 P.2d 1161 (Colo. App. 1988).

12-35-114. Dentists may prescribe drugs - surgical operations - anesthesia. A licensed dentist is authorized to prescribe such drugs or medicine, perform such surgical operations, administer such general or local anesthetics, and use such appliances as may be necessary to the proper practice of dentistry. A dentist shall not prescribe, distribute, or give to any person, including himself or herself, any habit-forming drug or any controlled substance, as defined in section 18-18-102 (5), C.R.S., or as contained in schedule II of 21 U.S.C. sec. 812, other than in the course of legitimate dental practice and pursuant to the rules promulgated by the board regarding controlled substance record-keeping.

Source: L. 2004: Entire article RC&RE, p. 832, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-122 as it existed prior to 2003, and the former § 12-35-114 was relocated to § 12-35-119.

12-35-115. Persons exempt from operation of this article. (1) Nothing in this article shall apply to the following practices, acts, and operations:

(a) Practice of his or her profession by a physician or surgeon licensed as such under the laws of this state unless the physician or surgeon practices dentistry as a specialty;

(b) The giving of an anesthetic by a qualified anesthetist or registered nurse for a dental operation under the direct supervision of a licensed dentist;

(c) The practice of dentistry or dental hygiene in the discharge of their official duties by graduate dentists or dental surgeons or dental hygienists in the United States armed forces, public health service, Coast Guard, or veterans administration;

(d) Students or residents regularly employed by a private hospital or by a city, county, city and county, or state hospital under an advanced dental education program accredited by the commission on dental accreditation of the American dental association and approved and registered as such by the board;

(e) The practice of dental hygiene by instructors and students or the practice of dentistry by students or residents in schools or colleges of dentistry, schools of dental hygiene, or schools of dental assistant education while such instructors, students, or residents are participating in accredited programs of such schools or colleges;

(f) The practice of dentistry or dental hygiene by dentists or dental hygienists licensed in good standing by other states or countries while appearing in programs of dental education or research at the invitation of any group of licensed dentists or dental hygienists in this state who are in good standing, so long as such practice is limited to five consecutive days in a twelve-month period and the name of each person engaging in such practice is submitted to the board, in writing and on a form approved by the board, at least ten days before the person performs such practice;

(g) The filling of laboratory work orders of a licensed dentist, as provided by section 12-35-133, by any person, association, corporation, or other entity for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances to be used or worn as substitutes for natural teeth or for restoration of natural teeth, or replacement of structures relating to the jaws, maxillofacial area, or adjacent and associated structures;

(h) The performance of acts by a person under the direct or indirect supervision of a dentist licensed in Colorado when authorized pursuant to the rules of the board or when authorized under other provisions of this article;

(i) The practicing of dentistry or dental hygiene by an examiner representing a testing agency approved by the board, during the administration of an examination; or

(j) (Deleted by amendment, L. 2010, (HB 10-1128), ch. 172, p. 611, § 5, effective April 29, 2010.)

(k) The practice of dentistry or dental hygiene by dentists or dental hygienists licensed in good standing by other states while providing care as a volunteer, at the invitation of any group of licensed dentists or dental hygienists in this state who are in good standing, so long as such practice is limited to five consecutive days in a twelve-month period and the name of each person engaging in such practice is submitted to the board, in writing and on a form approved by the board, at least ten days before the person performs such practice.

Source: L. 2004: Entire article RC&RE, p. 832, § 1, effective July 1. L. 2007: (1)(k) added, p. 691, § 1, effective August 3. L. 2009: (1)(e) amended, (HB 09-1128), ch. 21, p. 104, § 2, effective August 5. L. 2010: (1)(e), (1)(i), and (1)(j) amended, (HB 10-1128), ch. 172, p. 611, § 5, effective April 29.

Editor's note: This section is similar to former § 12-35-111 as it existed prior to 2003, and the former § 12-35-115 was relocated to § 12-35-130.

12-35-116. Names and status under which dental practice may be conducted.

(1) The conduct of the practice of dentistry or dental hygiene in a corporate capacity is prohibited, but such prohibition shall not be construed to prevent the practice of dentistry

or dental hygiene by a professional service corporation of licensees so constituted that they may be treated under the federal internal revenue laws as a corporation for tax purposes only. Any such professional service corporation may exercise such powers and shall be subject to such limitations and requirements, insofar as applicable, as are provided in section 12-36-134, relating to professional service corporations for the practice of medicine.

(2) The group practice of dentistry or dental hygiene is permitted.

(3) The practice of dentistry or dental hygiene by a limited liability company of licensees or by a limited liability partnership of licensees is permitted subject to the limitations and requirements, insofar as are applicable, set forth in section 12-36-134, relating to a limited liability company or limited liability partnership for the practice of medicine.

Source: L. 2004: Entire article RC&RE, p. 833, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-112 as it existed prior to 2003, and the former § 12-35-116 was relocated to § 12-35-121.

ANNOTATION

Law reviews. For article, "Operating a Personal Service Corporation", see 17 Colo. Law. 2011 (1988).

Annotator's note. Since § 12-35-116 is similar to 12-35-112 as it existed prior to the 2003 repeal of article 35 of title 12 and to repealed laws antecedent to CSA, C. 52, § 1, relevant cases construing those provisions have been included in the annotations to this section.

This section intends to forbid the practice of dentistry other than in one's own name. State Bd. of Dental Exam'rs v. Savelle, 90 Colo. 177, 8 P.2d 693, appeal dismissed, 287 U.S. 562, 53 S. Ct. 5, 77 L. Ed. 496 (1932).

The practice of dentistry under the name of a corporation not licensed and not entitled to a license for such purpose is unlawful. State Bd. of Dental Exam'rs v. Savelle, 90 Colo. 177, 8 P.2d 693, appeal dismissed, 287 U.S. 562, 53 S. Ct. 5, 77 L. Ed. 496 (1932).

Under this article a corporation which uses as a part of its name the word "dentist", and practices dentistry through its employees, is engaged in the dental practice. People v. Painless Parker Dentist, 85 Colo. 304, 275 P. 928 (1929).

12-35-116.5. Ownership of dental or dental hygiene practice - information to be posted - heir to serve as temporary proprietor - limitations. (1) (a) Only a dentist licensed to practice dentistry in this state pursuant to this article may be the proprietor of a dental practice in this state.

(b) Only a dentist licensed to practice dentistry in this state pursuant to this article or a dental hygienist licensed to practice dental hygiene in this state pursuant to this article may be the proprietor of a dental hygiene practice in this state.

(c) (I) Notwithstanding paragraphs (a) and (b) of this subsection (1), a nonprofit organization may be the proprietor of a dental or dental hygiene practice if:

(A) The organization is a community health center, as defined in the federal "Public Health Service Act", 42 U.S.C. sec. 254b; or

(B) At least fifty percent of the patients served by the organization are low income. As used in this sub-subparagraph (B), "low income" means the patient's income does not exceed the income level specified for determining eligibility for the children's basic health plan established in article 8 of title 25.5, C.R.S.

(II) Notwithstanding paragraphs (a) and (b) of this subsection (1), a political subdivision of the state may be the proprietor of a dental or dental hygiene practice. As used in this subparagraph (II), "political subdivision of the state" means a county, city and county, city, town, service authority, special district, or any other kind of municipal, quasi-municipal, or public corporation, as defined in section 7-49.5-103, C.R.S.

(III) The proprietorship of a dental or dental hygiene practice by a nonprofit organization that meets the criteria in subparagraph (I) of this paragraph (c) or by a political subdivision of the state shall not affect the exercise of the independent professional

judgment of the licensed dentist or dental hygienist providing care to patients on behalf of the organization or political subdivision.

(2) (a) The name, license number, ownership percentage, and other information, as required by the board, of each proprietor of a dental or dental hygiene practice, including an unlicensed heir who is the temporary proprietor of the practice, as specified in subsection (3) of this section, shall be available at the reception desk of the dental or dental hygiene practice during the practice's hours of operation. The information required by this paragraph (a) shall be available in a format approved by the board.

(b) Upon request, the dental or dental hygiene practice shall promptly make available to the requesting person a copy of the information required by paragraph (a) of this subsection (2).

(c) The dental or dental hygiene practice shall ensure that the information required by paragraph (a) of this subsection (2) is accurate and current. Any change in the information shall be updated within thirty days after the change.

(3) (a) Notwithstanding sections 12-35-125 and 12-35-129 (1) (h), (14), and (15), if a dentist or dental hygienist who was the proprietor of a dental or dental hygiene practice and was engaged in the active practice of dentistry or dental hygiene dies:

(I) An heir to the dentist may serve as a proprietor of the deceased dentist's dental or dental hygiene practice for up to one year after the date of the dentist's death, regardless of whether the heir is licensed to practice dentistry or dental hygiene; or

(II) An heir to the dental hygienist may serve as a proprietor of the deceased dental hygienist's dental hygiene practice for up to one year after the date of the dental hygienist's death, regardless of whether the heir is licensed to practice dentistry or dental hygiene.

(b) Upon good cause shown by the heir or the heir's representative, the board may extend the period described in paragraph (a) of this subsection (3) by up to an additional twelve months, if necessary, to allow the heir sufficient time to sell or otherwise dispose of the practice.

(c) If an heir to a deceased dentist or dental hygienist serves as a proprietor of the deceased dentist's or dental hygienist's practice as specified in paragraph (a) of this subsection (3), all patient care provided during the time the heir is a proprietor of the practice shall be provided by an appropriately licensed dentist or dental hygienist.

(d) The temporary proprietorship of a dental or dental hygiene practice by an unlicensed heir shall not affect the exercise of the independent professional judgment of the licensed dentist or dental hygienist providing care to patients on behalf of the practice.

Source: L. 2008: Entire section added, p. 147, § 1, effective August 5.

12-35-117. Application for license - fee. (1) Every person not currently holding a license to practice dentistry in this state who desires to practice dentistry in this state shall file with the board an application for a license on a form to be provided by the board, verified by the oath of the applicant, and accompanied by a fee required by section 12-35-138 (1) (a) or established pursuant to section 24-34-105, C.R.S., in which application it shall appear that the applicant:

(a) Has attained the age of twenty-one years;

(b) Is a graduate of a dental school or college that, at the time of the applicant's graduation, was accredited. An official transcript prepared by the dental college or school attended shall be submitted to the board.

(c) Has listed any act the commission of which would be grounds for disciplinary action under section 12-35-129 against a licensed dentist, along with an explanation of the circumstances of such act;

(d) Has verification of licensure from other jurisdictions where the applicant holds or has held a dental or other health care license;

(e) Has proof that he or she has not been subject to final or pending disciplinary action by any state in which the applicant is or has been previously licensed; except that, if the applicant has been subject to disciplinary action, the board may review such disciplinary action to determine whether it warrants grounds for refusal to issue a license; and

(f) Has proof that he or she has met any more stringent criteria established by the board.

(2) An applicant for licensure shall demonstrate to the board that he or she has maintained the professional ability and knowledge required by this article when such applicant has not graduated from an accredited dental school or college within the twelve months immediately preceding the application and has not, for at least one year of the five years immediately preceding the application, engaged in:

- (a) The active clinical practice of dentistry;
- (b) Teaching dentistry in an accredited program; or
- (c) Service as a dentist in the military.

(3) Such other pertinent information shall appear on the application as the board may deem necessary to process the application.

Source: L. 2004: Entire article RC&RE, p. 833, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-113 as it existed prior to 2003, and the former § 12-35-117 was relocated to § 12-35-121.

ANNOTATION

Annotator's note. Since § 12-35-117 is similar to § 12-35-113 as it existed prior to the 2003 repeal of article 35 of title 12, and former § 12-35-113 is similar to repealed laws antecedent to CSA, C. 52, § 8, relevant cases construing those provisions have been included in the annotations to this section.

Only those who are qualified by statute and experience to practice dentistry may do so, if the general assembly sees fit to so ordain. *People v. Painless Parker Dentist*, 85 Colo. 304, 275 P. 928 (1929).

That body may lawfully provide that only those who study the science and art of den-

tistry, and show that they are properly qualified, may practice dentistry. *People v. Painless Parker Dentist*, 85 Colo. 304, 275 P. 928 (1929).

Every citizen is bound by the restrictions established by the general assembly. *Gothard v. People*, 32 Colo. 11, 74 P. 890 (1903).

A former provision which restricted the practice to persons holding a diploma from a dental school, college, or university duly authenticated by the laws of this or some other state was held not class legislation. *Gothard v. People*, 32 Colo. 11, 74 P. 890 (1903).

12-35-117.5. Academic license. (1) (a) A dentist who is employed at an accredited school or college of dentistry in this state and who practices dentistry in the course of his or her employment responsibilities shall either make written application to the board for an academic license in accordance with this section or shall otherwise become licensed pursuant to sections 12-35-117, 12-35-118, and 12-35-119, as applicable.

(b) Nothing in this section shall require a dentist who appears in a program of dental education or research, as described in section 12-35-115 (1) (f), to obtain an academic license pursuant to this section.

(2) A person who applies for an academic license shall submit proof to the board that he or she:

(a) Graduated from a school of dentistry located in the United States or another country;

(b) Is employed by an accredited school or college of dentistry in this state; and

(c) Successfully passed the jurisprudence examination described in section 12-35-119 (1) (b).

(3) An applicant for an academic license shall satisfy the credentialing standards of the accredited school or college of dentistry that employs the applicant.

(4) An academic license shall authorize the licensee to practice dentistry only while engaged in the performance of his or her official duties as an employee of the accredited school or college of dentistry and only in connection with programs affiliated or endorsed by the school or college. An academic licensee may not use an academic license to practice dentistry outside of his or her academic responsibilities.

(5) In addition to the requirements of this section, an applicant for an academic license shall complete all procedures for academic licensing established by the board to become licensed, including payment of any fee imposed pursuant to section 12-35-117 (1).

Source: L. 2009: Entire section added, (HB 09-1128), ch. 21, p. 105, § 3, effective August 5.

12-35-118. Graduates of foreign dental schools. (1) An applicant for a license to practice dentistry who is a graduate of a foreign nonaccredited dental school shall:

(a) Present evidence of having completed a program in clinical dentistry and having obtained a doctorate of dental surgery or a doctorate of dental medicine at an accredited dental school;

(b) Pass the examination administered by the joint commission on national dental examinations; and

(c) Pass an examination designed to test the applicant's clinical skills and knowledge. Such examination shall be administered by a regional testing agency composed of at least four states or an examination of another state.

Source: L. 2004: Entire article RC&RE, p. 834, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-113.5 as it existed prior to 2003, and the former § 12-35-118 was relocated to § 12-35-129.

12-35-119. Examinations - how conducted - certificates issued to successful applicants - conditions on reexamination. (1) Applicants for dental licensure shall submit to the board proof of having successfully passed the following:

(a) The examination administered by the joint commission on national dental examinations;

(b) A jurisprudence examination, approved by the board, designed to test the applicant's knowledge of the provisions of this article; and

(c) An examination designed to test the applicant's clinical skills and knowledge. Such examination shall be administered by a regional testing agency composed of at least four states or an examination of another state.

(2) All examination results required by the board shall be filed with the board and kept for reference for a period of not less than two years. Should the applicant successfully complete such examinations and be otherwise qualified, the applicant shall be granted a license by the board and shall be issued a license certificate.

(3) The board shall adopt rules to establish:

(a) The maximum number of times and maximum time period within which an applicant will be allowed to retake only the failed parts of the examination designed to test clinical skills and knowledge; and

(b) The maximum number of times an applicant may fail to successfully complete the examination designed to test clinical skills and knowledge before the board requires such applicant to take specified remedial measures as a prerequisite to retaking the examination.

Source: L. 2004: Entire article RC&RE, p. 835, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-114 as it existed prior to 2003, and the former § 12-35-119 was relocated to § 12-35-111.

ANNOTATION

Annotator's note. Since § 12-35-119 is similar to § 12-35-114 as it existed prior to the 2003 repeal of article 35 of title 12, relevant cases construing that provision have been included in the annotations to this section.

The general assembly has delegated the duty to examine applicants for a dental li-

cense to the members of the Colorado state board of dental examiners, who are appointed by the governor. Colo. State Bd. of Dental Exam'rs v. Schroeder, 174 Colo. 343, 483 P.2d 970 (1971).

Moreover, it is not for the supreme court, any more than it is for the trial court, to act

as a super dental board. Colo. State Bd. of Dental Exam'rs v. Schroeder, 174 Colo. 343, 483 P.2d 970 (1971).

Failure to pass all parts of required examination renders a person unqualified to practice dentistry. Colo. State Bd. of Dental Exam'rs v. Major, 996 P.2d 246 (Colo. App. 1999).

The federal Americans with Disabilities Act does not require the issuance of a license to a person who is otherwise unqualified to practice dentistry. Colo. State Bd. of Dental Exam'rs v. Major, 996 P.2d 246 (Colo. App. 1999).

The guidelines provided by this section afford the public protection against the incompetent who seeks to practice dentistry, while granting to every applicant a fair and uniform basis for ascertaining whether he is qualified to practice dentistry in Colorado. Colo. State Bd. of Dental Exam'rs v. Schroeder, 174 Colo. 343, 483 P.2d 970 (1971).

The general assembly has caused the examination procedure that is to be conducted by the state board of dental examiners to be defined by this section. Colo. State Bd. of Dental Exam'rs v. Schroeder, 174 Colo. 343, 483 P.2d 970 (1971).

The test prescribed by the state board of dental examiners, if carried out in a uniform manner and with an objective and factual basis for determining the qualifications of an applicant, is valid. Colo. State Bd. of Dental Exam'rs v. Schroeder, 174 Colo. 343, 483 P.2d 970 (1971).

The state board of dental examiners, in conducting an examination and in causing a record to be made of the examination results, failed to comply with this section where the board did not uniformly grade the applicants or make a record of all the grades, nor did the board record the grade of each applicant who took the subjective, practical dentistry examination, and in many instances, the examinations bore grades which were not tied to any factual standards relating to the practical dental work which was assigned to the applicants, but instead, many of the applicants were given grades which were arbitrarily arrived at on the basis of whether the applicant was obviously passing or failing the practical dentistry examination and other applicants were not graded on each phase of the practical examination and were given only an over-all grade. Colo. State Bd. of Dental Exam'rs v. Schroeder, 174 Colo. 343, 483 P.2d 970 (1971).

12-35-120. Licensure by endorsement. (1) The board shall provide for licensure upon application of any person licensed in good standing to practice dentistry in another state or territory of the United States who provides the credentials and meets the qualifications set forth in this section in the manner prescribed by the board.

(2) The board shall issue a license to an applicant licensed as a dentist in another state or territory of the United States if said applicant has submitted credentials and qualifications for licensure that include:

- (a) Proof of graduation from an accredited dental school;
 - (b) Proof the applicant is currently licensed in another state or United States territory;
 - (c) Proof the applicant has been in practice or teaching dentistry, which involves personally providing care to patients for not less than three hundred hours annually in an accredited dental school for a minimum of five years out of the seven years immediately preceding the date of the receipt of the application, or evidence that the applicant has demonstrated competency as a dentist as determined by the board;
 - (d) Proof the applicant has not been subject to final or pending disciplinary action by any state in which the applicant is or has been previously licensed; except that, if the applicant has been subject to disciplinary action, the board may review such disciplinary action to determine whether the underlying conduct warrants refusal to issue a license;
 - (e) Proof the applicant has passed an examination on the provisions of this article;
 - (f) Proof the applicant has passed an entry level examination acceptable to the board;
- and
- (g) Proof the applicant has met any more stringent criteria established by the board.

Source: L. 2004: Entire article RC&RE, p. 835, § 1, effective July 1. **L. 2010:** (2)(c) amended, (HB 10-1175), ch. 46, p. 174, § 2, effective July 1, 2011.

Editor's note: This section is similar to former § 12-35-114.5 as it existed prior to 2003.

12-35-121. Renewal of dental and dental hygienist licenses - fees. Licenses shall be renewed or reinstated pursuant to a schedule established by the director of the division of

professions and occupations within the department of regulatory agencies, referred to in this section as the director, and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

Source: L. 2004: Entire article RC&RE, p. 836, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-35-116, 12-35-117, and 12-35-127 as they existed prior to 2003, and the former § 12-35-121 was relocated to § 12-35-110.

ANNOTATION

Law reviews. For note, "Licensing of Occupations and Professions in Colorado", see 35 Dicta 235 (1958).

Annotator's note. Since § 12-35-121 is similar to § 12-35-117 as it existed prior to the 2003 repeal of article 35 of title 12, a relevant case construing that provision has been included in the annotations to this section.

Failure to pay fee does not automatically extinguish license. The failure to pay the registration fee to renew the license does not automatically extinguish the license. *Cross v. Colo. State Bd. of Dental Colo.*, 37 Colo. App. 504, 552 P.2d 38 (1976).

12-35-122. Inactive dental license. (1) Any person licensed to practice dentistry pursuant to this article may apply to the board to be transferred to an inactive status. Such application shall be in the form and manner designated by the board. The board may grant such status by issuing an inactive license, or it may deny the application for any of the causes set forth in section 12-35-129.

(2) Any person applying for a license under this section shall:

(a) Provide an affidavit to the board that the applicant, after a date certain, shall not practice dentistry in this state unless he or she is issued a license to practice dentistry pursuant to subsection (5) of this section;

(b) Pay the license fee as authorized pursuant to section 24-34-105, C.R.S.; and

(c) Comply with any financial responsibility standards promulgated by the board pursuant to section 13-64-301 (1), C.R.S.

(3) Such inactive status shall be plainly indicated on the face of any inactive license certificate issued under this section.

(4) The board is authorized to conduct disciplinary proceedings as set forth in section 12-35-129 against any person licensed under this section for any act committed while the person was licensed pursuant to this article.

(5) Any person licensed under this section who wishes to resume the practice of dentistry shall file an application in the form and manner the board shall designate, pay the license fee promulgated by the board pursuant to section 24-34-105, C.R.S., and meet the financial responsibility requirements promulgated by the board pursuant to section 13-64-301 (1), C.R.S. The board may approve such application and issue a license to practice dentistry or may deny the application for any of the causes set forth in section 12-35-129.

Source: L. 2004: Entire article RC&RE, p. 836, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-135 as it existed prior to 2003, and the former § 12-35-122 was relocated to § 12-35-114.

12-35-123. Retired dental and dental hygienist licenses. (1) Any person licensed to practice dentistry or dental hygiene pursuant to this article may apply to the board for retired licensure status. Any such application shall be in the form and manner designated by the board. The board may grant such status by issuing a retired license, or it may deny the

application if the licensee has been disciplined for any of the causes set forth in section 12-35-129.

(2) Any person applying for a license under this section shall:

(a) Provide an affidavit to the board stating that, after a date certain, the applicant shall not practice dentistry or dental hygiene, shall no longer earn income as a dentist or dental hygiene administrator or consultant, and shall not perform any activity that constitutes practicing dentistry or dental hygiene pursuant to sections 12-35-113, 12-35-124, and 12-35-125 unless said applicant is issued a license to practice dentistry or dental hygiene pursuant to subsection (5) of this section; and

(b) Pay the license fee authorized by section 24-34-105, C.R.S., which fee shall not exceed fifty dollars.

(3) The retired status of a licensee shall be plainly indicated on the face of any retired license certificate issued under this section.

(4) The board is authorized to conduct disciplinary proceedings pursuant to section 12-35-129 against any person licensed under this section for an act committed while such person was licensed pursuant to this article.

(5) Any person licensed under this section may apply to the board for a return to active licensure status by filing an application in the form and manner the board shall designate pursuant to section 12-35-117, paying the appropriate license fee established pursuant to section 24-34-105, C.R.S., and meeting the financial responsibility requirements issued by the board pursuant to section 13-64-301 (1), C.R.S. The board may approve such application and issue a license to practice dentistry or dental hygiene or may deny the application if the licensee has been disciplined for any of the causes set forth in section 12-35-129.

(6) A dentist in retired status may provide dental services on a voluntary basis to the indigent, if such services are provided on a limited basis and no fee is charged. Such a dentist shall have immunity for voluntary care provided pursuant to this subsection (6).

Source: L. 2004: Entire article RC&RE, p. 837, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-136 as it existed prior to 2003, and the former § 12-35-123 was relocated to § 12-35-126.

12-35-124. What constitutes practicing unsupervised dental hygiene. (1) Unless licensed to practice dentistry, a person shall be deemed to be practicing unsupervised dental hygiene who, within the scope of the person's education, training, and experience:

(a) Removes deposits, accretions, and stains by scaling with hand, ultrasonic, or other devices from all surfaces of the tooth and smooths and polishes natural and restored tooth surfaces, including root planing;

(b) Removes granulation and degenerated tissue from the gingival wall of the periodontal pocket through the process of gingival curettage;

(c) Provides preventive measures including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease;

(d) Gathers and assembles information including, but not limited to:

(I) Fact-finding and patient history;

(II) Preparation of study casts for the purpose of fabricating a permanent record of the patient's present condition; as a visual aid for patient education, dental hygiene diagnosis, and dental hygiene treatment planning; and to provide assistance during forensic examination;

(III) Extra- and intra-oral inspection;

(IV) Dental and periodontal charting; and

(V) Radiographic and X-ray survey for the purpose of assessing and diagnosing dental hygiene-related conditions for treatment planning for dental hygiene services as described in this section and identifying dental abnormalities for immediate referral to a dentist;

(e) Administers a topical anesthetic to a patient in the course of providing dental care;

(f) Performs dental hygiene assessment, dental hygiene diagnosis, and dental hygiene treatment planning for dental hygiene services as described in this section and section 12-35-125 and identifies dental abnormalities for immediate referral to a dentist; or

(g) Administers fluoride, fluoride varnish, and antimicrobial solutions for mouth rinsing.

(1.5) A dental hygienist shall state in writing and require a patient to acknowledge by signature that any diagnosis or assessment is for the purpose of determining necessary dental hygiene services only and that it is recommended by the American dental association, or any successor organizations, that a thorough dental examination be performed by a dentist twice each year.

(2) Unsupervised dental hygiene may be performed by licensed dentists and licensed dental hygienists without the supervision of a licensed dentist.

(3) (a) Notwithstanding section 12-35-103 (14) or 12-35-113 (1) (b), a dental hygienist may be the proprietor of a place where supervised or unsupervised dental hygiene is performed and may purchase, own, or lease equipment necessary to perform supervised or unsupervised dental hygiene.

(b) A dental hygienist proprietor, or a professional corporation or professional limited liability corporation of dental hygienists, in addition to providing dental hygiene services, may enter into an agreement with one or more dentists for the lease or rental of equipment or office space in the same physical location as the dental hygiene practice, but only if the determination of necessary dental services provided by the dentist and professional responsibility for those services, including but not limited to dental records, appropriate medication, and patient payment, remain with the treating dentist. It shall be the responsibility of the dental hygienist to inform the patient as to whether there is a supervisory relationship between the dentist and the dental hygienist. Such an agreement shall not constitute employment and shall not constitute cause for discipline pursuant to section 12-35-129 (1) (h).

Source: L. 2004: Entire article RC&RE, p. 838, § 1, effective July 1. **L. 2006:** (3) amended, p. 1165, § 1, effective May 25. **L. 2009:** IP(1), (1)(a), and (1)(d) amended and (1)(f), (1)(g), and (1.5) added, (SB 09-129), ch. 181, pp. 797, 798, §§ 2, 3, effective April 22.

Editor's note: This section is similar to former § 12-35-122.5 as it existed prior to 2003, and the former § 12-35-124 was relocated to § 12-35-127.

12-35-125. What constitutes practicing supervised dental hygiene. (1) Unless licensed to practice dentistry, a person shall be deemed to be practicing supervised dental hygiene who:

(a) Removes deposits, accretions, and stains by scaling with hand, ultrasonic, or other devices from all surfaces of the tooth and smooths and polishes natural and restored tooth surfaces, including root planing;

(b) Removes granulation and degenerated tissue from the gingival wall of the periodontal pocket through the process of gingival curettage. Such curettage may include the incidental removal of live epithelial tissue and is to be performed under the indirect supervision of a licensed dentist.

(c) Provides preventive measures including, but not limited to, the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease;

(d) Gathers and assembles information including, but not limited to:

(I) Fact-finding and patient history;

(II) Radiographic and X-ray survey for the purpose of assessing and diagnosing dental hygiene-related conditions for treatment planning for dental hygiene services as described in section 12-35-124 and this section and identifying dental abnormalities for immediate referral to a dentist;

(III) Preparation of study casts;

(IV) Oral inspection; and

(V) Dental and periodontal charting;

(e) Administers a topical anesthetic to a patient in the course of providing dental care;

(f) Administers local anesthetic under the indirect supervision of a licensed dentist pursuant to rules of the board, which shall include minimum education requirements and procedures for such administration;

(g) Performs dental hygiene assessment, dental hygiene diagnosis, and dental hygiene treatment planning for dental hygiene services as described in this section and section 12-35-124 and identifies dental abnormalities for immediate referral to a dentist; or

(h) Administers fluoride, fluoride varnish, and antimicrobial solutions for mouth rinsing.

(2) Supervised dental hygiene may be performed by licensed dentists and, except for the administration of local anesthetic performed under paragraph (f) of subsection (1) of this section, by licensed dental hygienists under the indirect supervision of a licensed dentist in accordance with rules adopted by the board.

Source: L. 2004: Entire article RC&RE, p. 838, § 1, effective July 1. L. 2009: (1)(d) and (1)(f) amended and (1)(g) and (1)(h) added, (SB 09-129), ch. 181, p. 798, § 4, effective April 22.

Editor's note: This section is similar to former § 12-35-122.6 as it existed prior to 2003, and the former § 12-35-125 was relocated to § 12-35-128.

12-35-126. Application for dental hygienist license - fee. (1) Every person who desires to qualify for practice as a dental hygienist within this state shall file with the board:

(a) A written application for a license, on which application such applicant shall list:

(I) Any act the commission of which would be grounds for disciplinary action under section 12-35-129 against a licensed dental hygienist; and

(II) An explanation of the circumstances of such act; and

(b) Satisfactory proof of graduation from a school of dental hygiene that, at the time of the applicant's graduation, was accredited, and proof that the program offered by the accredited school of dental hygiene was at least two academic years.

(2) Such application must be on the form prescribed and furnished by the board, verified by the oath of the applicant, and accompanied by a fee established pursuant to section 24-34-105, C.R.S.

(3) An applicant for licensure who has not graduated from an accredited school or program of dental hygiene within the twelve months immediately preceding application, or who has not engaged either in the active clinical practice of dental hygiene or in teaching dental hygiene in an accredited program for at least one year during the five years immediately preceding the application, shall demonstrate to the board that the applicant has maintained the professional ability and knowledge required by this article.

(4) Licenses for dental hygienists shall be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies, referred to in this section as the director, and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

Source: L. 2004: Entire article RC&RE, p. 839, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-123 as it existed prior to 2003.

12-35-127. Dental hygienist examinations - license - endorsement - liability insurance. (1) Every applicant for dental hygiene licensure shall submit to the board proof of having successfully completed the following:

(a) An examination administered by the joint commission on national dental examinations;

(b) An examination designed to test the applicant's clinical skills and knowledge, which shall be administered by a regional testing agency composed of at least four states or an examination of another state; and

(c) An examination on the provisions of this article.

(2) All examination results required by the board shall be filed with the board and kept for reference for a period of not less than two years. Should an applicant successfully complete such examinations and be otherwise qualified, the applicant shall be granted a license by the board and shall be issued a license certificate signed by the officers of the board.

(3) (a) The board shall provide for licensure upon application of any person licensed in good standing to practice dental hygiene in another state or territory of the United States who has met the requirements of section 12-35-126, subsections (1) and (2) of this section, and paragraph (b) of this subsection (3) and provides the credentials and meets the qualifications set forth in paragraph (b) of this subsection (3) in the manner prescribed by the board. The examination for knowledge of the provisions of this article shall be accomplished by the use of a mail-in jurisprudence examination administered by the board.

(b) The board shall issue a license to an applicant duly licensed as a dental hygienist in another state or territory of the United States who has submitted credentials and qualifications for licensure in Colorado. Such credentials and qualifications shall include:

(I) Verification of licensure from any other jurisdiction where the applicant has held a dental hygiene or other health care license;

(II) Evidence of the applicant's successful completion of the national board dental examination administered by the joint commission on national dental examinations;

(III) (A) Verification that the applicant has been engaged either in clinical practice or in teaching dental hygiene or dentistry in an accredited program for at least one year during the three years immediately preceding the date of the receipt of the application; or

(B) Evidence that the applicant has demonstrated competency as a dental hygienist as determined by the board;

(IV) A report of any pending or final disciplinary actions against any health care license held by the applicant at any time; and

(V) A report of any pending or final malpractice actions against the applicant.

(4) A practicing dental hygienist shall have professional liability insurance in the amount of not less than fifty thousand dollars per claim and an aggregate liability limit for all claims during a calendar year of not less than three hundred thousand dollars. Upon request of the board, the dental hygienist shall provide proof of the insurance to the board.

Source: L. 2004: Entire article RC&RE, p. 840, § 1, effective July 1. L. 2009: (4) added, (SB 09-129), ch. 181, p. 799, § 5, effective April 22. L. 2010: (3)(b)(III) amended, (HB 10-1175), ch. 46, p. 174, § 3, effective July 1, 2011.

Editor's note: This section is similar to former § 12-35-124 as it existed prior to 2003, and the former § 12-35-127 was relocated to § 12-35-121.

12-35-128. Tasks authorized to be performed by dental assistants or dental hygienists. (1) The responsibility for dental diagnosis, dental treatment planning, or the prescription of therapeutic measures in the practice of dentistry shall remain with a licensed dentist and may not be assigned to any dental hygienist; except that a dental hygienist may perform dental hygiene assessment, dental hygiene diagnosis, and dental hygiene treatment planning for dental hygiene services; identify dental abnormalities for immediate referral to a dentist as described in sections 12-35-124 and 12-35-125; and may administer fluoride, fluoride varnish, and antimicrobial solutions for mouth rinsing as described in sections 12-35-124 and 12-35-125, and resorbable antimicrobial agents pursuant to rules of the board. No dental procedure that involves surgery or that will contribute to or result in an irremediable alteration of the oral anatomy may be assigned to anyone other than a licensed dentist. Prescriptive authority may not be assigned to anyone other than a licensed dentist.

(2) Except as provided in subsection (1) of this section, a dental hygienist may perform any dental task or procedure assigned to the hygienist by a licensed dentist that does not

require the professional skill of a licensed dentist; except that such task or procedure shall be performed only under the indirect supervision of a licensed dentist on the premises, or as provided elsewhere in sections 12-35-124 and 12-35-125.

(3) (a) A dental assistant shall not perform the following tasks:

- (I) Diagnosis;
- (II) Treatment planning;
- (III) Prescription of therapeutic measures;
- (IV) Any procedure that contributes to or results in an irremediable alteration of the oral anatomy;
- (V) Administration of local anesthesia;
- (VI) Scaling (supra and sub-gingival), as it pertains to the practice of dental hygiene;
- (VII) Root planing;
- (VIII) Soft tissue curettage;
- (IX) Periodontal probing.

(b) A dental assistant may perform the following tasks under the direct or indirect supervision of a licensed dentist:

- (I) Smoothing and polishing natural and restored tooth surfaces;
- (II) Provision of preventive measures, including the application of fluorides and other recognized topical agents for the prevention of oral disease;
- (III) Gathering and assembling information including, but not limited to, fact-finding and patient history, oral inspection, and dental and periodontal charting;
- (IV) Administering topical anesthetic to a patient in the course of providing dental care;
- (V) Any other task or procedure that does not require the professional skill of a licensed dentist.

(c) A dental assistant may, under the direct supervision of a licensed dentist in accordance with rules promulgated by the board, administer and monitor the use of nitrous oxide on a patient.

(d) (I) A dental assistant may perform intraoral and extraoral tasks and procedures necessary for the fabrication of a complete or partial denture under the direct supervision of a licensed dentist. These tasks and procedures shall include:

- (A) Making of preliminary and final impressions;
- (B) Jaw relation records and determination of vertical dimensions;
- (C) Tooth selection;
- (D) A preliminary try-in of the wax-up trial denture prior to and subject to a try-in and approval in writing of the wax-up trial denture by the licensed dentist;
- (E) Denture adjustments that involve the periphery, occlusal, or tissue-bearing surfaces of the denture prior to the final examination of the denture.

(II) The tasks and procedures in subparagraph (I) of this paragraph (d) shall be performed in the regularly announced office location of a licensed practicing dentist, and the dentist shall be personally liable for all treatment rendered to the patient. A dental assistant performing these tasks and procedures shall be properly identified as a dental assistant. No dentist shall utilize more than the number of dental assistants the dentist can reasonably supervise.

(III) Prior to any work being performed pursuant to subparagraph (I) of this paragraph (d), the patient shall first be examined by the treating dentist licensed to practice in this state who shall certify that the patient has no pathologic condition that requires surgical correction or other treatment prior to complete denture service.

(4) In addition to the procedure authorized in this section, a dental assistant may make repairs and relines of dentures pursuant to a dental laboratory work order signed by a licensed dentist.

(5) The board may make such reasonable rules as may be necessary to implement and enforce the provisions of this section.

Source: L. 2004: Entire article RC&RE, p. 841, § 1, effective July 1. **L. 2009:** (1) and (2) amended, (SB 09-129), ch. 181, p. 799, § 6, effective April 22.

Editor's note: This section is similar to former § 12-35-125 as it existed prior to 2003, and the former § 12-35-128 was relocated to § 12-35-131.

12-35-129. Causes for denial of issuance or renewal - suspension or revocation of licenses - other disciplinary action - unprofessional conduct defined - disciplinary panels - cease and desist. (1) The board may deny the issuance or renewal of, suspend for a specified time period, or revoke any license provided for by this article or may reprimand, censure, or place on probation any licensed dentist or dental hygienist after notice and hearing, which may be conducted by an administrative law judge, pursuant to the provisions of article 4 of title 24, C.R.S., or it may issue a letter of admonition without a hearing by certified mail (except that any licensed dentist or dental hygienist to whom such a letter of admonition is sent may, within twenty days after receipt of the letter, request in writing to the board a formal hearing thereon, and the letter of admonition shall be deemed vacated, and the board shall, upon such request, hold such a hearing) for any of the following causes:

(a) Resorting to fraud, misrepresentation, or deception in applying for, securing, renewing, or seeking reinstatement of a license to practice dentistry or dental hygiene in this state, in applying for professional liability coverage required pursuant to section 13-64-301, C.R.S., or in taking the examinations provided for in this article;

(b) Any conviction of a felony or any crime that would constitute a violation of this article. For purposes of this paragraph (b), conviction includes the entry of a plea of guilty or nolo contendere or a deferred sentence.

(c) Administering, dispensing, or prescribing any habit-forming drug or any controlled substance, as defined in section 18-18-102 (5), C.R.S., to any person, including himself or herself, other than in the course of legitimate professional practice;

(d) Conviction of violation of any federal or state law regulating the possession, distribution, or use of any controlled substance, as defined in section 18-18-102 (5), C.R.S., and, in determining if a license should be denied, revoked, or suspended or if the licensee should be placed on probation, the board shall be governed by the provisions of section 24-5-101, C.R.S.;

(e) Habitually abusing or excessively using any habit-forming drug or any controlled substance, as defined in section 18-18-102 (5), C.R.S., or alcohol;

(f) Misusing any drug or controlled substance, as defined in section 18-18-102 (5), C.R.S.;

(g) Aiding or abetting, in the practice of dentistry or dental hygiene, any person not licensed to practice dentistry or dental hygiene as defined under this article or of any person whose license to practice dentistry or dental hygiene is suspended;

(h) Except as otherwise provided in sections 25-3-103.7, 12-35-116, and 12-35-124 (3), C.R.S., practicing dentistry or dental hygiene as a partner, agent, or employee of or in joint venture with any person who does not hold a license to practice dentistry or dental hygiene within this state or practicing dentistry or dental hygiene as an employee of or in joint venture with any partnership, association, or corporation. A licensee holding a license to practice dentistry or dental hygiene in this state may accept employment from any person, partnership, association, or corporation to examine, prescribe, and treat the employees of such person, partnership, association, or corporation.

(i) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this article or lawful rule or order of the board;

(j) Such physical or mental disability as to render the licensee unable to perform dental or dental hygiene services with reasonable skill and with safety to the patient;

(k) An act or omission constituting grossly negligent dental or dental hygiene practice or that fails to meet generally accepted standards of dental or dental hygiene practice;

(l) Advertising in a manner that is misleading, deceptive, or false;

(m) Engaging in a sexual act with a patient during the course of patient care or within six months immediately following the termination of the licensee's professional relationship with the patient. "Sexual act", as used in this paragraph (m), means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.

- (n) Refusing to make patient records available to a patient pursuant to a written authorization-request under section 25-1-802, C.R.S.;
- (o) False billing in the delivery of dental or dental hygiene services, including, but not limited to, performing one service and billing for another, billing for any service not rendered, and committing a fraudulent insurance act, as defined in section 10-1-128, C.R.S.;
- (p) Abuse of health insurance pursuant to section 18-13-119, C.R.S.;
- (q) Failing to notify the board, in writing, of the entry of a final judgment by a court of competent jurisdiction in favor of any party and against the licensee involving negligent malpractice of dentistry or dental hygiene. Such notice shall be given within ninety days after the entry of such judgment and shall contain the name of the court, the case number, and the names of all parties to the action.
- (r) Failing to report a dental or dental hygiene malpractice judgment or malpractice settlement to the board by the licensee within ninety days;
- (s) Failing to furnish unlicensed persons with laboratory work orders pursuant to section 12-35-133;
- (t) Employing a solicitor or other agent to obtain patronage, except as provided in section 12-35-137;
- (u) Willfully deceiving or attempting to deceive the board or its agents with reference to any matter relating to the provisions of this article;
- (v) Sharing any professional fees with anyone except those with whom the dentist or dental hygienist is lawfully associated in the practice of dentistry or dental hygiene; except that it shall not be considered a violation of this paragraph (v) if a licensed dentist or dental hygienist pays to an independent advertising or marketing agent compensation for advertising or marketing services rendered on the licensed dentist's or dental hygienist's behalf by such agent, including compensation that is paid for the results or performance of such services on a per-patient basis;
- (w) The abandonment of a patient by failure to provide reasonably necessary referral of the patient to other licensed dentists or licensed health care professionals for consultation or treatment when such failure to provide referral does not meet generally accepted standards of dental care;
- (x) Failure of a dental hygienist to recommend to any patient that such patient be examined by a dentist or failure of a dental hygienist to refer a patient to a dentist when the dental hygienist detects a condition that requires care beyond the scope of practicing supervised or unsupervised dental hygiene;
- (y) Engaging in any of the following activities and practices:
 - (I) Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies;
 - (II) The administration, without clinical justification, of treatment that is demonstrably unnecessary;
 - (III) In addition to the provisions of paragraph (x) of this subsection (1), the failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care for the profession;
 - (IV) Ordering or performing, without clinical justification, any service, X ray, or treatment that is contrary to recognized standards of the practice of dentistry or dental hygiene as interpreted by the board;
- (z) Falsifying or repeatedly making incorrect essential entries or repeatedly failing to make essential entries on patient records;
 - (aa) Violating the provisions of section 8-42-101 (3.6), C.R.S.;
 - (bb) Violating the provisions of section 12-35-202 or any rule of the board adopted pursuant to said section;
 - (cc) Administering general anesthesia or deep conscious sedation without obtaining a permit from the board in accordance with section 12-35-107 (1) (h);
 - (dd) Failure to report within ninety days after final disposition to the board the surrender of a license to, or adverse action taken against a license by, a licensing agency in another state, territory, or country, a governmental agency, a law enforcement agency, or a court for an act or conduct that would constitute grounds for discipline pursuant to this article;

(ee) Failure to provide adequate or proper supervision when employing unlicensed persons in a dental or dental hygiene practice;

(ff) Engaging in any conduct that constitutes a crime as defined in title 18, C.R.S., which conduct relates to the licensee's practice as a dentist or dental hygienist;

(gg) Practicing outside the scope of dental or dental hygiene practice;

(hh) Failing to establish and continuously maintain financial responsibility as required by section 13-64-301, C.R.S.;

(ii) Advertising or otherwise holding oneself out to the public as practicing a dental specialty in which the dentist has not successfully completed the education specified for the dental specialty as defined by the American dental association.

(2) Any person whose license to practice is revoked is rendered ineligible to apply for any license under this article for at least two years after the date of revocation or surrender of the license. Any subsequent application for licensure shall be treated as an application for a new license.

(3) Any member of the board or professional review committee authorized by the board, any member of the board's or professional review committee's staff, any person acting as a witness or consultant to the board or committee, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board or committee member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

(4) The discipline of a licensee by another state, territory, or country shall be deemed the equivalent of unprofessional conduct under this article; except that this subsection (4) shall apply only to discipline that is based upon an act or omission in such other state, territory, or country that is defined substantially the same as unprofessional conduct pursuant to this article.

(5) (a) Nothing in this section shall be construed to deprive any dental patient of the right to choose or replace any professionally recognized restorative material, nor to permit disciplinary action against a dentist solely for removing or placing any professionally recognized restorative material.

(b) Nothing in paragraph (a) of this subsection (5) shall be construed to prevent disciplinary action against a dentist for practicing dentistry in violation of this article.

(6) Complaints relating to the conduct of any dentist or dental hygienist shall be in writing and may be made by any person and, if so made, shall be signed by such person or may be initiated by the board on its own motion. The dentist or dental hygienist complained of shall be given notice of such complaint.

(7) (a) If the board has reasonable cause to believe that a person licensed to practice dentistry or dental hygiene in this state is unable to practice dentistry or dental hygiene with reasonable skill and safety to patients, because of a physical or mental disability or because of excessive use of any habit-forming drug or substance or controlled substance, as defined in section 18-18-102 (5), C.R.S., the board may require such licensed dentist or dental hygienist to submit to mental or physical examinations by a qualified professional designated by the board.

(b) Upon the failure of such licensed dentist or dental hygienist to submit to such mental or physical examinations, unless the failure is due to circumstances beyond the dentist's or dental hygienist's control, the board may suspend such dentist's or dental hygienist's license to practice dentistry or dental hygiene in this state until such time as the dentist or dental hygienist submits to the examinations.

(c) Every person licensed to practice dentistry or dental hygiene in this state shall be deemed, by so practicing or by applying for a renewal of the person's license to practice dentistry or dental hygiene in this state, to have given consent to submit to mental or

physical examinations when directed in writing by the board, and further to have waived all objections to the admissibility of the examining qualified professional's testimony or examination reports on the ground of privileged communication.

(d) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than before the board.

(e) Investigations, examinations, hearings, meetings, or any other proceedings of the board conducted pursuant to this section shall be exempt from the provisions of any law requiring that proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to this section are open to public inspection; except that the final action of the board taken pursuant to this section shall be open to the public.

(f) If an investigation discloses an instance of conduct that, in the opinion of the board, does not warrant formal board action and should be dismissed, but in which the board has noticed indications of possible errant conduct that could lead to serious consequences if not corrected, a confidential letter of concern shall be sent to the licensee against whom the complaint was made. The person making the complaint shall be sent a notice that a letter of concern has been issued by the board.

(g) The board may include, in any disciplinary order that allows the dentist or dental hygienist to continue to practice, such conditions as the board may deem appropriate to assure that the dentist or dental hygienist is physically, mentally, and otherwise qualified to practice dentistry or dental hygiene in accordance with generally accepted professional standards of practice. Such an order may include any or all of the following:

(I) Submission by the licensee to such examinations as the board may order to determine the licensee's physical or mental condition or professional qualifications;

(II) The taking by the licensee of such therapy, courses of training, or education as may be needed to correct deficiencies found by the board or by such examinations;

(III) The review or supervision of the licensee's practice as may be necessary to determine its quality and to correct any deficiencies;

(IV) The imposition of restrictions on the licensee's practice to assure that such practice does not exceed the limits of the licensee's capabilities.

(8) (a) If a professional review committee is established pursuant to this section to investigate complaints against a person licensed to practice dentistry under this article, the committee shall include in its membership at least three persons licensed to practice dentistry under this article, but such committee may be authorized to act only by:

(I) The board; or

(II) A society or an association of persons licensed to practice dentistry under this article whose membership includes not less than one-third of the persons licensed to practice dentistry under this article residing in this state if the licensee whose services are the subject of review is a member of such society or association.

(b) Any member of the board or a professional review committee authorized by the board and any witness or consultant appearing before the board or such professional review committee shall be immune from suit in any civil action brought by a licensee who is the subject of a professional review proceeding if such member, witness, or consultant acts in good faith within the scope of the function of the board or such committee, has made a reasonable effort to obtain the facts of the matter as to which such member, witness, or consultant acts, and acts in the reasonable belief that the action taken by such member, witness, or consultant is warranted by the facts. The immunity provided by this paragraph (b) shall extend to the members of an authorized professional review committee of a society or an association of persons licensed pursuant to this article and witnesses or consultants appearing before such committee if such committee is authorized to act as provided in subparagraph (II) of paragraph (a) of this subsection (8).

(9) A professional review committee of a society or an association of persons licensed pursuant to this article shall:

(a) Notify the board within sixty days after the review committee analyzes care provided by a licensee and determines that such care may not meet generally accepted standards or has otherwise violated any provision of this article. Such care may be subject to disciplinary action by the board.

(b) Allow a periodic audit of records of the review committee to be performed by the board or designee of the board who shall be a licensed or retired dentist from any state. Such audit shall be conducted no more than twice annually. If any pattern of behavior of a licensee is identified that may constitute reasonable grounds to believe there has been a violation of this article, all relevant records of the review committee shall be subject to a subpoena issued by the board.

(10) The proceedings and records of a review committee shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action against a dentist arising out of the matters that are the subject of evaluation and review by such committee. However, records of closed proceedings and investigations shall be available to the particular licensee under review and the complainant involved in the proceedings. No person who was in attendance at a meeting of such committee shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such committee or as to any findings, recommendations, evaluations, opinions, or other actions of such committee or any members thereof. However, information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such civil action merely because they were presented during proceedings of such committee, and any documents or records that have been presented to the review committee by any witness shall be returned to the witness, if requested by the witness or if ordered to be produced by a court in any action, with copies thereof to be retained by the committee at its discretion. Any person who testifies before such committee or who is a member of such committee shall not be prevented from testifying as to matters within such person's knowledge, but the person shall not be asked about his or her testimony before such a committee or opinions he or she formed as a result of said committee hearings.

(11) If the board finds the charges proven and orders that discipline be imposed, it may also order the licensee to take such courses of training or education as may be needed to correct deficiencies found as a result of the hearing.

(12) (a) On and after January 1, 2005, the chairperson of the board shall divide those members of the board other than the chairperson into two panels of six members each.

(b) Each panel shall act as both an inquiry panel and a hearing panel. Members of the board may be reassigned from one panel to the other by the chairperson. The chairperson may be a member of both panels, but in no event shall the chairperson or any other member who has considered a complaint as a member of a panel acting as an inquiry panel take any part in the consideration of a formal complaint involving the same matter.

(c) All matters referred to one panel for investigation shall be heard, if referred for formal hearing, by the other panel or a committee of such panel. However, in its discretion, either inquiry panel may elect to refer a case for formal hearing to a qualified administrative law judge in lieu of a hearing panel of the board for an initial decision pursuant to section 24-4-105, C.R.S.

(d) The initial decision of an administrative law judge may be reviewed pursuant to section 24-4-105 (14) and (15), C.R.S., by the filing of exception to the initial decision with the hearing panel that would have heard the case if it had not been referred to an administrative law judge or by review upon the motion of such hearing panel. The respondent or the board's counsel shall file such exception.

(e) An investigation shall be under the supervision of the panel to which the investigation is assigned. The person making such investigation shall report the results of the investigation to the assigning panel for appropriate action.

(13) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(14) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public or a person is acting or has acted without the required license, the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have

constituted the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (14), the respondent may request a hearing on the question of whether acts or practices in violation of this part 1 have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(15) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 1, then, in addition to any specific powers granted pursuant to this part 1, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (15) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (15) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (15). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (15) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (15) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this part 1, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (15), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(16) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this part 1, any rule promulgated pursuant to this part 1, any order issued pursuant to this part 1, or any act or practice constituting grounds for administrative sanction pursuant to this part 1, the board may enter into a stipulation with such person.

(17) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(18) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-35-130.

Source: **L. 2004:** Entire article RC&RE, p. 843, § 1, effective July 1; IP(1) amended and (13) added, p. 1864, § 124, effective August 4. **L. 2006:** (1)(h) amended, p. 1166, § 2, effective May 25; (14) to (18) added, p. 793, § 24, effective July 1.

Editor's note: This section is similar to former § 12-35-118 as it existed prior to 2003, and the former § 12-35-129 was relocated to § 12-35-132.

ANNOTATION

Annotator's note. Since § 12-35-129 is similar to § 12-35-118 as it existed prior to the 2003 repeal of article 35 of title 12, and former § 12-35-118 is similar to repealed laws antedated to CSA, C. 52, § 12, relevant cases construing those provisions have been included in the annotations to this section.

"Suspension" vs. "revocation" construed. Suspension means a temporary interruption of a privilege while revocation means a permanent cancellation of a privilege. Suspension is a lesser sanction than revocation because a suspended license remains viable, although withheld, during the suspension. *Bassett v. State Bd. of Dental Exam'rs*, 727 P.2d 864 (Colo. App. 1986).

Statute does not restrict time period for revoked licensee to apply for a new license. The "Dental Practice Law" does not contain a provision restricting the time period in which a revoked licensee may apply for a new license and, therefore, board exceeded its statutory authority by revoking dentist's license for a fixed period of time. *Bassett v. State Bd. of Dental Exam'rs*, 727 P.2d 864 (Colo. App. 1986).

Failure to pass all parts of required examination renders a person unqualified to practice dentistry. Colo. State Bd. of Dental Exam'rs v. Major, 996 P.2d 246 (Colo. App. 1999).

The federal Americans with Disabilities Act does not require the issuance of a license to a person who is otherwise unqualified to practice dentistry. Colo. State Bd. of Dental Exam'rs v. Major, 996 P.2d 246 (Colo. App. 1999).

Unprofessional conduct means that which is by general opinion considered to be grossly unprofessional because immoral or dishonorable, as distinguished from a mere violation of a code of professional ethics prescribed by a board of health. *State Bd. of Dental Exam'rs v. Savelle*, 90 Colo. 177, 8 P.2d 693, appeal dismissed, 287 U.S. 562, 53 S. Ct. 5, 77 L. Ed. 496 (1932).

Evidence insufficient to support finding of "unprofessional conduct" by reason of abandonment. *Lee v. State Bd. of Dental Exam'rs*, 654 P.2d 839 (Colo. 1982).

"Gross incompetence" construed. The term "gross incompetence", in the context of dentistry, connotes such an extreme deficiency on the part of a dentist in the basic knowledge and

skill necessary to dental diagnosis and treatment that one may reasonably question his ability to practice dentistry at the threshold level of professional competence. *Lee v. State Bd. of Dental Exam'rs*, 654 P.2d 839 (Colo. 1982).

Evidence insufficient to support finding of "gross incompetence". *Lee v. State Bd. of Dental Exam'rs*, 654 P.2d 839 (Colo. 1982).

Evidence sufficient to support finding of "gross incompetence". *Bassett v. State Bd. of Dental Exam'rs*, 727 P.2d 864 (Colo. App. 1986) (decided under law in effect prior to 1986 repeal and reenactment of subsection (1)).

"Negligent malpractice" construed. In the case of dentistry, the phrase "negligent malpractice" means the failure of a dentist to exercise that degree of knowledge, skill and care used by other dentists engaging in the same type of practice in the same or a similar community. *Lee v. State Bd. of Dental Exam'rs*, 654 P.2d 839 (Colo. 1982).

Evidence sufficient to support finding of "negligent malpractice". *Lee v. State Bd. of Dental Exam'rs*, 654 P.2d 839 (Colo. 1982).

"Abandonment" construed. In the context of former subsection (2)(s) (now subsection (1)(w)), "abandonment" connotes an unjustified renunciation by the dentist of his professional relationship with the patient and a repudiation of his responsibility for the patient's condition. This type of conduct generally involves a higher degree of culpability than the failure to use reasonable care associated with substandard treatment. *Lee v. State Bd. of Dental Exam'rs*, 654 P.2d 839 (Colo. 1982).

Dentists, although licensed, who engage in the practice of their profession as employees of a dental corporation which has been ousted from practice in the state, held guilty of gross violation of their professional duties. *State Bd. of Dental Exam'rs v. Savelle*, 90 Colo. 177, 8 P.2d 693, appeal dismissed, 287 U.S. 562, 53 S. Ct. 5, 77 L. Ed. 496 (1932).

It was held that a complaint to revoke a dentist's license, alleging generally gross violation of professional duty, might destroy itself by specifying a particular act in support of the charge which appears on its face to be innocent, because in such a case the general allegation might have yielded to the specific, and the complaint would have been demurrable on jurisdictional grounds. *State Bd. of Dental Exam'rs v. Savelle*, 90 Colo. 177, 8 P.2d 693, appeal dis-

missed, 287 U.S. 562, 53 S. Ct. 5, 77 L. Ed. 496 (1932).

A pattern of record-keeping in which the dentist licensee repeatedly makes incorrect critical entries or regularly omits essential entries concerning patients may constitute a basis for disciplinary action under this section. State Bd. of Dental Exam'rs v. Micheli, 928 P.2d 839 (Colo. App. 1996).

Record-keeping that is significant in terms of a patient's care and treatment but not characterized by falsity or repetitiveness may be addressed under former subsection (1)(j) (now subsection (1)(k)), while record-keeping that is characterized by falsity or by repetitiveness can be properly addressed under former subsection (1)(y) (now subsection (1)(z)). State Bd. of Dental Exam'rs v. Micheli, 928 P.2d 839 (Colo. App. 1996).

Public interest prohibiting fee splitting, as expressed in subsection (1)(v), outweighs any private interests in enforcing the payment terms of agreement in which fees payable to defendants were a direct percentage of fees paid for dental services. Although voiding the contract works some degree of inequity upon defendants, they are not unreasonably prejudiced, as the law likely permits them to recover the reasonable value of the services they have provided. Mason v. Orthodontic Ctrs. of Colo., 516 F. Supp. 2d 1205 (D. Colo. 2007).

Judicial review of board orders in disciplinary proceedings was specifically provided for in former subsection (3), which was repealed in 1977. Cross v. Colo. State Bd. of Dental Exam'rs, 37 Colo. App. 504, 552 P.2d 38 (1976).

12-35-130. Review of board action. (1) The court of appeals, by appropriate proceedings under section 24-4-106 (11), C.R.S., may review any final action of the board to:

- (a) Deny or refuse to issue or renew a license;
- (b) Suspend a license;
- (c) Revoke a license;
- (d) Censure a licensee;
- (e) Issue a letter of admonition to a licensee;
- (f) Place a licensee on probation;
- (g) Issue a reprimand to a licensee; or
- (h) Issue an order to cease and desist.

(2) The provisions of this section apply to a license issued to a dentist or dental hygienist.

Source: L. 2004: Entire article RC&RE, p. 851, § 1, effective July 1. L. 2006: (1)(h) added, p. 795, § 25, effective July 1.

Editor's note: This section is similar to former § 12-35-115 as it existed prior to 2003, and the former § 12-35-130 was relocated to § 12-35-133.

ANNOTATION

Annotator's note. Since § 12-35-130 is similar to § 12-35-115 as it existed prior to the 2003 repeal of article 35 of title 12, relevant cases construing that provision have been included in the annotations to this section.

Supreme court may not act as licensing board. It is not within the scope of judicial review for the supreme court to act as a professional licensing board. In re Maul v. State Bd. of Dental Exam'rs, 668 P.2d 933 (Colo. 1983).

This section guarantees a hearing to every aggrieved applicant. Colo. State Bd. of Dental Exam'rs v. Schroeder, 174 Colo. 343, 483 P.2d 970 (1971).

Board's participation with hearing officer violates practitioner's protections. Where the board participates jointly with the hearing officer in conducting the proceedings involving a practitioner, in using the hearing officer as its legal advisor during its deliberations, and in entering the initial fact-finding decision, the board violates the statutory provisions of this article, and the practitioner is not required to demonstrate any prejudice to him as a result of these statutory violations. In re Maul v. State Bd. of Dental Exam'rs, 668 P.2d 933 (Colo. 1983).

12-35-131. Use of forged or invalid diploma or certificate. It is unlawful for any person to use or attempt to use as his or her own a diploma of a dental college or school, or a license or license renewal certificate, of any other person, or to use or attempt to use

a forged diploma, license, license renewal certificate, or identification. It is also unlawful for any person to file with the board a forged document in response to a request by the board for documentation of an applicant's qualifications for licensure.

Source: L. 2004: Entire article RC&RE, p. 851, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-128 as it existed prior to 2003, and the former § 12-35-131 was relocated to § 12-35-134.

12-35-132. Sale of forged or invalid diploma or license certificate. (1) It is unlawful to sell or offer to sell a diploma conferring a dental or dental hygiene degree or a license or license renewal certificate granted pursuant to this article or prior dental practice laws, or to procure such diploma or license or license renewal certificate:

(a) With the intent that it be used as evidence of the right to practice dentistry or dental hygiene by a person other than the one upon whom it was conferred or to whom such license or license renewal certificate was granted; or

(b) With fraudulent intent to alter the document and use or attempt to use it when it is so altered.

Source: L. 2004: Entire article RC&RE, p. 851, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-129 as it existed prior to 2003, and the former § 12-35-132 was relocated to § 12-35-135.

12-35-133. Employment of unlicensed person by dentist - penalty. (1) Every duly licensed dentist who uses the services of any unlicensed person for the purpose of constructing, altering, repairing, or duplicating any denture, plate, partial plate, bridge, splint, or orthodontic or prosthetic appliance shall be required to furnish such unlicensed person with a written laboratory work order in such form as shall be approved by the board, which form shall be dated and signed by such dentist for each separate and individual piece of work. Said laboratory work order shall be made in duplicate form, the duplicate copy to be retained by the dentist in a permanent file for a period of two years and the original copy to be retained in a permanent file for a period of two years by the unlicensed person to whom it was furnished, and both of such permanent files shall be open to inspection at any reasonable time by the board or its duly constituted agent.

(2) Failure of the dentist to keep such permanent records of laboratory work orders shall subject such dentist to disciplinary action as deemed appropriate by the board.

(3) Failure of any such unlicensed person to have in the person's possession a laboratory work order signed by a licensed dentist, or a written work order signed by the initial recipient of the laboratory work order that is identifiable with each denture, plate, partial plate, bridge, splint, or orthodontic or prosthetic appliance in the possession of such unlicensed person, shall be prima facie evidence of a violation of this section.

Source: L. 2004: Entire article RC&RE, p. 852, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-130 as it existed prior to 2003, and the former § 12-35-133 was relocated to § 12-35-136.

12-35-134. Soliciting or advertisements by unlicensed persons. It is unlawful for any unlicensed person, corporation, entity, partnership, or group of persons to solicit or advertise to the general public to construct, reproduce, or repair prosthetic dentures, bridges, plates, or other appliances to be used or worn as substitutes for natural teeth.

Source: L. 2004: Entire article RC&RE, p. 852, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-131 as it existed prior to 2003, and the former § 12-35-134 was relocated to § 12-35-137.

12-35-135. Unauthorized practice - penalties. (1) Any person who practices or offers or attempts to practice dentistry or dental hygiene without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and, for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Repealed.

Source: L. 2004: Entire article RC&RE, p. 852, § 1, effective July 1. L. 2006: (2) repealed, p. 795, § 26, effective July 1; (1) amended, p. 87, § 25, effective August 7.

Editor's note: This section is similar to former § 12-35-132 as it existed prior to 2003, and the former § 12-35-135 was relocated to § 12-35-122.

ANNOTATION

Annotator's note. Since § 12-35-135 is similar to § 12-35-132 as it existed prior to the 2003 repeal of article 35 of title 12, a relevant case construing that provision has been included in the annotations to this section.

In a suit for an injunction under this section against the owner of a dental laboratory, where there was an issue as to whether the

person who committed the alleged violation was the owner or his agent, it made no difference as far as the injunction was concerned, because the injunction could not have been avoided even had the violator been an agent. *People ex rel. Dunbar v. Kogul*, 179 Colo. 394, 501 P.2d 738 (1972).

12-35-136. Attorney general shall represent board and members. The attorney general of the state of Colorado shall counsel with and advise the board in connection with its duties and responsibilities under this article. If litigation is brought against the board or any of its individual members in connection with actions taken by it or them under the provisions of this article and such actions are free of malice, fraud, or willful neglect of duty, the attorney general shall defend such litigation without cost to the board or to any individual member thereof.

Source: L. 2004: Entire article RC&RE, p. 853, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-133 as it existed prior to 2003, and the former § 12-35-136 was relocated to § 12-35-123.

ANNOTATION

Annotator's note. Since § 12-35-136 is similar to § 12-35-133 as it existed prior to the 2003 repeal of article 35 of title 12, a relevant case construing that provision has been included in the annotations to this section.

Applied in *In re Maul v. State Bd. of Dental Exam'rs*, 668 P.2d 933 (Colo. 1983).

12-35-137. Independent advertising or marketing agent - injunctive proceedings. (1) Notwithstanding section 12-35-129 (1) (t), a licensed dentist or dental hygienist may employ an independent advertising or marketing agent to provide advertising or marketing services on the dentist's or dental hygienist's behalf, and the same shall not be considered unprofessional conduct.

(2) The board shall not have the authority to regulate, directly or indirectly, advertising or marketing activities of independent advertising or marketing agents except as provided in this section. The board may, in the name of the people of the state of Colorado, apply for

an injunction in district court to enjoin any independent advertising or marketing agent from the use of advertising or marketing that the court finds on the basis of the evidence presented by the board to be misleading, deceptive, or false; except that a licensed dentist or dental hygienist shall not be subject to discipline by the board, injunction, or prosecution in the courts under this article or any other law for advertising or marketing by an independent advertising or marketing agent if the factual information that the licensed dentist or dental hygienist provides to the independent advertising or marketing agent is accurate and not misleading, deceptive, or false.

Source: L. 2004: Entire article RC&RE, p. 853, § 1, effective July 1.

Editor's note: This section is similar to former § 12-35-134 as it existed prior to 2003.

12-35-138. Dentist peer health assistance fund. (1) (a) Effective July 1, 2004, as a condition of renewal in this state, every renewal applicant shall pay to the administering entity that has been selected by the board pursuant to the provisions of paragraph (b) of this subsection (1) an amount not to exceed fifty-nine dollars per year, which maximum amount may be adjusted on January 1, 2005, and annually thereafter by the board to reflect changes in the United States bureau of statistics consumer price index for the Denver-Boulder consolidated metropolitan statistical area for all urban consumers or goods, or its successor index. Such fee shall be used to support designated providers that have been selected by the board to provide assistance to dentists needing help in dealing with physical, emotional, or psychological problems that may be detrimental to their ability to practice dentistry. Such fee shall not exceed one hundred dollars per year per licensee.

(b) The board shall select one or more peer health assistance programs as designated providers. To be eligible for designation by the board, a peer health assistance program shall:

(I) Provide for the education of dentists with respect to the recognition and prevention of physical, emotional, and psychological problems and provide for intervention when necessary or under circumstances that may be established by rules promulgated by the board;

(II) Offer assistance to a dentist in identifying physical, emotional, or psychological problems;

(III) Evaluate the extent of physical, emotional, or psychological problems and refer the dentist for appropriate treatment;

(IV) Monitor the status of a dentist who has been referred for treatment;

(V) Provide counseling and support for the dentist and for the family of any dentist referred for treatment;

(VI) Agree to receive referrals from the board;

(VII) Agree to make its services available to all licensed Colorado dentists.

(c) The administering entity shall be a qualified, nonprofit private foundation that is qualified under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, and shall be dedicated to providing support for charitable, benevolent, educational, and scientific purposes that are related to dentistry, dental education, dental research and science, and other dental charitable purposes.

(d) The responsibilities of the administering entity shall be to:

(I) Collect the required annual payments, directly or through the board;

(II) Verify to the board, in a manner acceptable to the board, the names of all dentist applicants who have paid the fee set by the board;

(III) Distribute the moneys collected, less expenses, to the designated provider, as directed by the board;

(IV) Provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(V) Post a surety performance bond in an amount specified by the board to secure performance under the requirements of this section. The administering entity may recover the actual administrative costs incurred in performing its duties under this section in an amount not to exceed ten percent of the total amount collected.

(e) .The board, at its discretion, may collect the required annual payments payable to the administering entity for the benefit of the administering entity and shall transfer all such payments to the administering entity. All required annual payments collected or due to the board for each fiscal year shall be deemed custodial funds that are not subject to appropriation by the general assembly, and such funds shall not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

(2) (a) Any dentist who is a referred participant in a peer health assistance program shall enter into a written agreement with the board prior to such dentist becoming a participant in such program. Such agreement shall contain specific requirements and goals to be met by the participant, including the conditions under which the program will be successfully completed or terminated, and a provision that a failure to comply with such requirements and goals shall be promptly reported to the board and that such failure shall result in disciplinary action by the board.

(b) Notwithstanding section 12-35-129 and section 24-4-104, C.R.S., the board may immediately suspend the license of any dentist who is referred to a peer health assistance program by the board and who fails to attend or to complete such program. If such dentist objects to such suspension, he or she may submit a written request to the board for a formal hearing on such suspension within ten days after receiving notice of such suspension, and the board shall grant such request. In such hearing the dentist shall bear the burden of proving that his or her license should not be suspended.

(c) Any dentist who is accepted into a peer health assistance program in lieu of disciplinary action by the board shall affirm that, to the best of his or her knowledge, information, and belief, he or she knows of no instance in which he or she has violated this article or the rules of the board, except in those instances affected by the dentist's physical, emotional, or psychological problems.

(3) Nothing in this section shall be construed to create any liability on behalf of the board or the state of Colorado for the actions of the board members in making grants to peer assistance programs, and no civil action may be brought or maintained against the board or the state for an injury alleged to have been the result of the activities of any state-funded peer assistance program or the result of an act or omission of a dentist participating in or referred by a state-funded peer assistance program. However, the state shall remain liable under the provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., if an injury alleged to have been the result of an act or omission of a dentist participating in or referred by a state-funded peer assistance program occurred while such dentist was performing duties as an employee of the state.

(4) The board is authorized to promulgate rules necessary to implement the provisions of this section.

Source: L. 2004: Entire article RC&RE, p. 853, § 1, effective July 1. L. 2010: (1)(d)(I) amended and (1)(e) added, (HB 10-1128), ch. 172, p. 611, § 6, effective April 29.

Editor's note: This section is similar to former § 12-35-123.5 as it existed prior to 2003.

PART 2

SAFETY TRAINING FOR UNLICENSED X-RAY TECHNICIANS

Cross references: For similar provisions in article 32 of this title regulating podiatrists, see part 2 of said article; for similar provisions in article 33 of this title regulating chiropractors, see part 2 of said article; for similar provisions in article 36 of this title regulating medical practitioners, see part 2 of said article.

12-35-201. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that public exposure to the hazards of ionizing radiation used for diagnostic purposes should be minimized wherever possible. Accordingly, the general assembly finds, determines, and declares that for any dentist or dental hygienist to allow an untrained person to operate a machine source of ionizing radiation, including without

limitation a device commonly known as an “X-ray machine”, or to administer such radiation to a patient for diagnostic purposes is a threat to the public health and safety.

(2) It is the intent of the general assembly that dentists and dental hygienists utilizing unlicensed persons in their practices provide those persons with a minimum level of education and training before allowing them to operate machine sources of ionizing radiation; however, it is not the general assembly’s intent to discourage education and training beyond this minimum. It is further the intent of the general assembly that established minimum training and education requirements correspond as closely as possible to the requirements of each particular work setting as determined by the state board of dental examiners pursuant to this part 2.

(3) The general assembly seeks to ensure, and accordingly declares its intent, that in promulgating the rules authorized by this part 2, the board will make every effort, consistent with its other statutory duties, to avoid creating a shortage of qualified individuals to operate machine sources of ionizing radiation for beneficial medical purposes in any area of the state.

Source: L. 2004: Entire article RC&RE, p. 856, § 1, effective July 1.

12-35-202. Board authorized to issue rules. (1) (a) The state board of dental examiners shall adopt rules prescribing minimum standards for the qualifications, education, and training of unlicensed persons operating machine sources of ionizing radiation and administering such radiation to patients for diagnostic medical use. No licensed dentist or dental hygienist shall allow any unlicensed person to operate any machine source of ionizing radiation or to administer such radiation to any patient unless such person has met the standards then in effect under rules adopted pursuant to this section. The board may adopt rules allowing a grace period in which newly hired operators of machine sources of ionizing radiation shall receive the training required pursuant to this section.

(b) For purposes of this part 2, “unlicensed person” means a person who does not hold a current and active license entitling the person to practice dentistry or dental hygiene under the provisions of this article.

(2) The board shall seek the assistance of licensed dentists or licensed dental hygienists in developing and formulating the rules promulgated pursuant to this section.

(3) The required number of hours of training and education for all unlicensed persons operating machine sources of ionizing radiation and administering such radiation to patients shall be established by the board by rule. This standard shall apply to all persons in dental settings other than hospitals and similar facilities licensed by the department of public health and environment pursuant to section 25-1.5-103, C.R.S. Such training and education may be obtained through programs approved by the appropriate authority of any state or through equivalent programs and training experience, including on-the-job training as determined by the board.

Source: L. 2004: Entire article RC&RE, p. 856, § 1, effective July 1.

ARTICLE 35.5

Massage Therapists

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12-35.5-101. Short title. This article shall be known and may be cited as the “Massage Therapy Practice Act”.

Source: L. 2008: Entire article added, p. 1982, § 2, effective July 1.

12-35.5-102. Legislative declaration. (1) The general assembly hereby finds and declares that it is in the interest of the public health, safety, and welfare to require registration of massage therapists. Because proper and safe massage therapy is of statewide concern, this article is deemed to be an exercise of the police powers of the state.

(2) The general assembly further declares that the practice of massage therapy by any person not registered pursuant to this article is adverse to the best interests of the people of this state. It is not, however, the intent of the general assembly in enacting this article to prevent, restrict, or inhibit the practice of massage therapy by any duly registered person.

Source: L. 2008: Entire article added, p. 1982, § 2, effective July 1.

12-35.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Advertise” means to publish, display, or disseminate information and includes, but is not limited to, the issuance of any card, sign, or direct mail, or causing or permitting any sign or marking on or in any building or structure or in any newspaper, magazine, or directory, or any announcement or display via any televised, computerized, electronic, or telephonic networks or media.

(2) “Applicant” means a person applying for massage therapy registration.

(3) “Approved massage school” means:

(a) A massage therapy educational school that has a valid certificate of approval from the division of private and occupational schools in accordance with the provisions of article 59 of this title;

(b) A massage therapy educational program certified by the Colorado community college system; or

(c) A massage therapy educational entity or program that is accredited by a nationally recognized accrediting agency.

(4) “Compensation” means something of value or benefit, whether in cash, in kind, or in any other form.

(5) “Director” means the director of the division.

(6) “Division” means the division of professions and occupations in the department of regulatory agencies.

(7) “Massage” or “massage therapy” means a system of structured touch, palpation, or movement of the soft tissue of another person’s body in order to enhance or restore the general health and well-being of the recipient. Such system includes, but is not limited to, techniques such as effleurage, commonly called stroking or gliding; petrissage, commonly called kneading; tapotement or percussion; friction; vibration; compression; passive and active stretching within the normal anatomical range of movement; hydromassage; and thermal massage. Such techniques may be applied with or without the aid of lubricants, salt or herbal preparations, water, heat, or a massage device that mimics or enhances the actions possible by human hands. “Massage” or “massage therapy” does not include therapeutic exercise, intentional joint mobilization or manipulation, or any of the methods described in section 12-35.5-110 (1) (e).

(8) “Massage therapist” means an individual registered by this state to engage in the practice of massage therapy. The terms “masseuse” and “masseur” are synonymous with the term “massage therapist”.

(9) "Person" means a natural person only.

(10) "Registrant" means a massage therapist registered pursuant to this article.

Source: L. 2008: Entire article added, p. 1982, § 2, effective July 1.

12-35.5-104. Use of massage titles restricted. Only a person registered under this article as a massage therapist may use the titles "massage therapist", "registered massage therapist", "massage practitioner", "masseuse", "masseur", the letters "M.T." or "R.M.T.", or any other generally accepted terms, letters, or figures that indicate that the person is a massage therapist.

Source: L. 2008: Entire article added, p. 1983, § 2, effective July 1.

12-35.5-105. Limitations on authority. (1) Nothing in this article shall be construed as authorizing a massage therapist to perform any of the following acts:

- (a) The practice of medicine pursuant to article 36 of this title;
- (b) The practice of physical therapy pursuant to article 41 of this title;
- (c) The practice of chiropractic pursuant to article 33 of this title; or
- (d) Any other forms of healing or healing arts not authorized by this article.

Source: L. 2008: Entire article added, p. 1983, § 2, effective July 1.

12-35.5-106. Registration required. On or after April 1, 2009, except as otherwise provided in this article, a person in this state who practices massage therapy or who represents oneself as being able to practice massage therapy must possess a valid registration issued by the director pursuant to this article and rules promulgated pursuant to this article.

Source: L. 2008: Entire article added, p. 1983, § 2, effective July 1.

12-35.5-107. Registration - reciprocity - denial of registration application. (1) Every applicant for a registration to practice massage therapy shall:

- (a) Attain a degree, diploma, or otherwise successfully complete a massage therapy program that consists of at least five hundred total hours of course work and clinical work from an approved massage school;
- (b) Pass one of the following examinations:
 - (I) The massage and bodywork licensing examination offered by the federation of state massage therapy boards;
 - (II) A national certification examination offered by the national certification board for therapeutic massage and bodywork; or
 - (III) An examination approved by the director;
- (c) Submit an application in the form and manner specified by the director;
- (d) Pay a fee in an amount determined by the director; and
- (e) Submit to a criminal history record check in the form and manner as described in subsection (2) of this section.

(2) In addition to the requirements of subsection (1) of this section, each applicant shall have his or her fingerprints taken by a local law enforcement agency for the purpose of obtaining a fingerprint-based criminal history record check. The applicant is required to submit payment by certified check or money order for the fingerprints and for the actual costs of the record check at the time the fingerprints are submitted to the Colorado bureau of investigation. Upon receipt of fingerprints and receipt of the payment for costs, the Colorado bureau of investigation shall conduct a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation and shall forward the results of the criminal history record check to the director.

(3) After an applicant has fulfilled the requirements of subsections (1) and (2) of this section, the director shall issue a registration to the applicant.

(4) For a period of one year after the date that applications for registration are made available, the director may issue a registration to a person who submits the application, fee, and criminal history record check pursuant to paragraphs (c), (d), and (e) of subsection (1) of this section and who:

(a) Has at least five years of professional experience practicing massage therapy and has completed at least three hundred hours of massage training; or

(b) Meets one of the following qualifications:

(I) The applicant has attained a degree, diploma, or otherwise successfully completed a massage therapy program that consists of at least five hundred total hours of course work and clinical work from an approved massage school; or

(II) The applicant has passed an examination described in paragraph (b) of subsection (1) of this section.

(5) The director shall issue a registration to an applicant who otherwise meets the qualifications set forth in this article and who submits satisfactory proof and certifies under penalty of perjury that the applicant currently possesses an unrestricted license or registration, in good standing, to practice massage therapy under the laws of another state or territory of the United States or a foreign country if:

(a) The director determines that the qualifications for massage therapy licensure or registration in the other state, territory, or foreign country are substantially equivalent to those required by this section;

(b) The applicant submits proof of experience and competency on a form determined by the director;

(c) The applicant submits to a criminal history record check pursuant to subsection (2) of this section; and

(d) The director reviews any disciplinary actions taken against the applicant.

(6) Notwithstanding any provision of this section, the director may deny a registration if the applicant has committed any act that would be grounds for disciplinary action under section 12-35.5-111 or if the director determines, subsequent to the criminal history record check, that the applicant was convicted of or plead guilty to a charge of unlawful sexual behavior as defined in section 16-22-102, C.R.S., or any prostitution-related offense, whether or not the act was committed in Colorado.

Source: L. 2008: Entire article added, p. 1984, § 2, effective July 1. **L. 2010:** (6) amended, (HB 10-1128), ch. 172, p. 612, § 7, effective April 29.

12-35.5-108. Registration expiration - effect - renewal - reinstatement - penalty.

(1) Registrations issued pursuant to this article shall be valid for the period of time established by the director. Registrations shall be renewed in accordance with the schedule set forth by the director.

(2) A registration not renewed within the time period specified in the schedule established by the director shall be deemed expired. A person in possession of an expired registration shall not practice massage therapy until he or she reinstates such registration.

(3) The director shall establish application forms and fee amounts for renewal of registrations and reinstatement of expired registrations. A person renewing or reinstating a registration shall submit an application in the form and manner set forth by the director and shall pay a fee in an amount set forth by the director.

Source: L. 2008: Entire article added, p. 1985, § 2, effective July 1.

12-35.5-109. Fees. All fees collected pursuant to this article shall be determined, collected, and appropriated in the manner set forth in section 24-34-105, C.R.S., and periodically adjusted in accordance with section 24-75-402, C.R.S. The fees shall be adequate to cover the direct and indirect expenses incurred for implementation of this article.

Source: L. 2008: Entire article added, p. 1986, § 2, effective July 1.

12-35.5-110. Scope of article - exclusions - authority for clinical setting. (1) Nothing in this article prohibits or requires a massage therapy registration for any of the following:

(a) The practice of massage therapy that is a part of a program of study by students enrolled in a massage therapy program at an approved massage therapy school. Students enrolled in such programs shall be identified as "student massage therapists" and shall not hold themselves out as registered massage therapists. Student massage therapists shall practice massage therapy only under the immediate supervision of a massage therapist holding a valid and current registration. Faculty members teaching nonclinical aspects of massage therapy shall not be required to be registered massage therapists.

(b) The practice of massage therapy by a person employed by the United States government or any federal governmental entity while acting in the course and scope of such employment;

(c) The practice of massage therapy by a person who is a resident of another state and who is in Colorado temporarily under one of the following circumstances:

(I) The person is traveling with and administering massage therapy to members of a professional or amateur sports organization, dance troupe, or other such athletic organization;

(II) The person provides massage therapy, without compensation, at a public athletic event such as the olympic games, special olympics, youth olympics, or marathons, if the massage therapy is provided no earlier than forty-eight hours prior to the commencement of the event and no later than twenty-four hours after the conclusion of the event;

(III) The person is part of an emergency response team or is otherwise working with or for disaster relief officials to provide massage therapy in connection with a disaster situation; or

(IV) The person is participating as a student in or instructor of an educational program, if:

(A) The program does not exceed sixteen days in duration; or

(B) The program exceeds sixteen days in duration and the person obtains a grant of an extension of time from the director prior to the seventeenth day;

(d) The person provides massage therapy to members of the person's immediate family;

(e) The person provides alternative methods that employ contact and does not hold himself or herself out as a massage therapist. For the purposes of this paragraph (e), "alternative methods that employ contact" include, but are not limited to:

(I) Practices in which only the soft tissue of a person's hands, feet, or ears are manipulated;

(II) Practices using touch, words, and directed movements to deepen a person's awareness of movement patterns in his or her body, such as the Feldenkrais method, the Trager approach, and body-mind centering;

(III) Practices using touch to affect the human energy systems, such as reiki, shiatsu, and Asian or polarity bodywork therapy;

(IV) Structural integration practices such as Rolfing and Hellerwork; and

(V) The process of muscle activation techniques.

(f) (I) The practice of animal massage if the person performing massage on an animal:

(A) Does not prescribe drugs, perform surgery, or diagnose medical conditions; and

(B) Has earned a degree or certificate in animal massage from a school approved by the private occupational school division of the Colorado department of higher education under article 59 of this title, an out-of-state school offering an animal massage program with an accreditation recognized by the United States department of education, or a school that is exempt under section 12-59-104.

(II) As used in this paragraph (f), "animal massage" means a method of treating the body of an animal for remedial or hygienic purposes through techniques that include rubbing, stroking, kneading, or tapping with the hand or an instrument or both, which techniques may be applied with or without the aid of a massage device that mimics the actions possible using human hands.

Source: L. 2008: Entire article added, p. 1986, § 2, effective July 1. L. 2011: IP(1) amended and (1)(f) added, (SB 11-091), ch. 207, p. 898, § 27, effective July 1.

12-35.5-111. Grounds for discipline - definitions. (1) The director is authorized to take disciplinary action pursuant to section 12-35.5-112 against any person who has:

(a) Advertised, represented, or held himself or herself out as a registered massage therapist after the expiration, suspension, or revocation of his or her registration;

(b) Engaged in a sexual act with a client while a therapeutic relationship exists. For the purposes of this paragraph (b):

(I) "Sexual act" means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.

(II) "Therapeutic relationship" means the period of time commencing with the initial session of massage and ending upon written termination of the relationship from either party.

(c) Failed to refer a patient to a general health care practitioner when the services required by the client are beyond the level of competence of the massage therapist or beyond the scope of massage practice;

(d) Falsified information in any application or attempted to obtain or obtained a registration by fraud, deception, or misrepresentation;

(e) Fraudulently obtained or furnished a massage therapy registration; a renewal or reinstatement of a registration, diploma, certificate, or record; or aided and abetted any such acts;

(f) A dependence on or addiction to alcohol or any habit-forming drug or abuses or engages in the habitual or excessive use of any such habit-forming drug or any controlled substance as defined in section 18-18-102, C.R.S., but the director may take into account the registrant's participation in a rehabilitation program when considering disciplinary action;

(g) A physical or mental condition or disability that renders the registrant unable to provide massage therapy with reasonable skill and safety or that may endanger the health or safety of clients receiving massage services;

(h) Refused to submit to a physical or mental examination when so ordered by the director pursuant to section 12-35.5-114;

(i) Failed to notify the director, in writing, of the entry of a final judgment by a court of competent jurisdiction in favor of any party and against the licensee for malpractice of massage therapy or any settlement by the licensee in response to charges or allegations of malpractice of massage therapy. Such notice shall be given within ninety days after the entry of the judgment or settlement and, in the case of a judgment, shall contain the name of the court, the case number, and the names of all parties to the action.

(j) Been convicted of a felony or pled guilty or nolo contendere to a felony or committed any act specified in this section. A certified copy of the judgment of a court of competent jurisdiction of a conviction or plea shall be conclusive evidence of the conviction or plea. In considering the disciplinary action, the director shall be governed by the provisions of section 24-5-101, C.R.S.

(k) Advertised, represented, held himself or herself out in any manner, or used any designation in connection with his or her name as a massage therapist without being registered or exempt pursuant to this article;

(l) Violated or aided or abetted a violation of any provision of this article, any rule adopted under this article, or any lawful order of the director; or

(m) Been convicted of or pled guilty to a charge of unlawful sexual behavior as defined in section 16-22-102, C.R.S., or any prostitution-related offense, whether or not the act was committed in Colorado.

Source: L. 2008: Entire article added, p. 1987, § 2, effective July 1. L. 2010: (1)(k) and (1)(l) amended and (1)(m) added, (HB 10-1128), ch. 172, p. 612, § 8, effective April 29.

12-35.5-112. Disciplinary proceedings - injunctions - investigations - hearings - judicial review. (1) The director may revoke, suspend, deny, or refuse to renew a registration of or place on probation a registrant in accordance with the disciplinary

proceedings described in this section upon proof that the person committed a violation of section 12-35.5-111.

(2) The director may request the attorney general to seek an injunction, in any court of competent jurisdiction, to enjoin any person from committing an act prohibited by this article. When seeking an injunction under this subsection (2), the attorney general shall not be required to allege or prove the inadequacy of any remedy at law or that substantial or irreparable damage is likely to result from a continued violation of this article.

(3) (a) The director is authorized to investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director pursuant to article 4 of title 24, C.R.S., and this article.

(b) The director or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the director. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings, take evidence, and make findings and report them to the director.

(c) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or registrant resides or conducts business, upon application by the director with notice to the subpoenaed person or registrant, may issue to the person or registrant an order requiring that person or registrant to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(4) (a) The director, the director's staff, any person acting as a witness or consultant to the director, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts.

(b) A person who in good faith makes a complaint or report or participates in an investigative or administrative proceeding pursuant to this article shall be immune from liability, civil or criminal, that otherwise might result from such participation.

(5) An employer of a massage therapist shall report to the director any disciplinary action taken against the massage therapist or the resignation of such massage therapist in lieu of disciplinary action for conduct that violates this article.

(6) On completion of an investigation, the director shall find one of the following:

(a) The complaint is without merit and no further action need be taken with reference thereto;

(b) There is no reasonable cause to warrant further action; or

(c) The complaint discloses misconduct by the registrant that warrants formal action. When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution. Rather, the director shall initiate disciplinary proceedings pursuant to subsection (7) of this section.

(7) (a) A disciplinary proceeding shall be commenced when the director has reasonable grounds to believe that a registrant has committed any act that violates section 12-35.5-111.

(b) Disciplinary proceedings shall be conducted pursuant to article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to that article by the director or by an administrative law judge, at the director's discretion.

(c) If, after the hearing, the director finds the charges proven and orders that discipline be imposed, he or she shall also determine the extent of such discipline. The director may revoke, suspend, deny, or refuse to renew a registration, or place a registrant on probation.

(d) If the director finds the charges against the registrant proved and orders that discipline be imposed, the director may require, as a condition of reinstatement, that the registrant take therapy or courses of training or education as may be needed to correct any deficiency found.

(8) A final action of the director may be judicially reviewed by the court of appeals in accordance with section 24-4-106 (11), C.R.S., and judicial proceedings for the enforcement of an order of the director may be instituted in accordance with section 24-4-106, C.R.S.

Source: L. 2008: Entire article added, p. 1988, § 2, effective July 1.

12-35.5-113. Cease-and-desist orders. (1) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a registrant is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required registration, the director may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (1), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(2) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other provision of this article, then, in addition to any specific powers granted pursuant to this article, the director may issue to such person an order to show cause as to why the director should not issue a final order directing such person to cease and desist from the unlawful act.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) shall be promptly notified by the director of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (2) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (2). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (2) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the director reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required registration, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or unregistered practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (2), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has

been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(3) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged in or is about to engage in any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the director may enter into a stipulation with such person.

(4) If any person fails to comply with a final cease-and-desist order or a stipulation, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(5) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order as provided in subsection (2) of this section.

Source: L. 2008: Entire article added, p. 1990, § 2, effective July 1.

12-35.5-114. Mental and physical examination of registrants. (1) If the director has reasonable cause to believe that a registrant is unable to practice with reasonable skill and safety, the director may order the registrant to take a mental or physical examination administered by a physician or other licensed health care professional designated by the director. Refusal by a registrant to submit to a mental or physical examination that has been properly ordered by the director pursuant to subsection (2) of this section, unless due to circumstances beyond the registrant's control, constitutes grounds for discipline pursuant to section 12-35.5-111, and the director may suspend the registrant's registration in accordance with section 12-35.5-112 until the results of the examination are known, and the director has made a determination of the registrant's fitness to practice. The director shall proceed with any such order for examination and determination in a timely manner.

(2) An order to a registrant pursuant to subsection (1) of this section to undergo a mental or physical examination shall contain the basis of the director's reasonable cause to believe that the registrant is unable to practice with reasonable skill and safety. For the purposes of any disciplinary proceeding authorized under this article, the registrant shall be deemed to have waived all objections to the admissibility of the examining physician's testimony or examination reports on the ground that they are privileged communications.

(3) The registrant may submit to the director testimony or examination reports from a physician or other licensed health care professional chosen by the registrant and pertaining to any condition that the director has alleged may preclude the registrant from practicing with reasonable skill and safety. These may be considered by the director in conjunction with, but not in lieu of, testimony and examination reports of the physician or other licensed health care professional designated by the director.

(4) The results of a mental or physical examination ordered by the director shall not be used as evidence in any proceeding other than one before the director and shall not be deemed public records nor made available to the public.

Source: L. 2008: Entire article added, p. 1992, § 2, effective July 1.

12-35.5-115. Unauthorized practice - criminal penalties. A person who practices or offers or attempts to practice massage therapy without an active registration issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and for the second or any subsequent offense, the person commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 2008: Entire article added, p. 1993, § 2, effective July 1.

12-35.5-116. Professional liability insurance required. It is unlawful for any person to practice massage therapy within this state unless the person purchases and maintains professional liability insurance in an amount not less than fifty thousand dollars per claim with an aggregate liability limit for all claims during the year of three hundred thousand dollars. Professional liability insurance required by this section shall cover all acts within the scope of massage therapy practice as defined by section 12-35.5-103.

Source: L. 2008: Entire article added, p. 1993, § 2, effective July 1.

12-35.5-117. Rule-making authority. The director shall promulgate rules for the administration of this article.

Source: L. 2008: Entire article added, p. 1993, § 2, effective July 1.

12-35.5-118. Local government - regulations - enforcement. (1) No city, county, city and county, or other political subdivision of this state shall enact or enforce any local ordinance that regulates the practice or the profession of massage therapy.

(2) Local government law enforcement agencies may inspect massage therapy registrations and the business premises where massage therapy is practiced for compliance with applicable laws. Nothing in this section shall be construed to preclude criminal prosecution for a violation of any criminal law. If such inspection reveals the practice of massage therapy by a person without a valid registration, the person shall be charged with a misdemeanor pursuant to section 12-35.5-115.

Source: L. 2008: Entire article added, p. 1993, § 2, effective July 1.

12-35.5-119. Severability. If any provision of this article is held to be invalid, such invalidity shall not affect other provisions of this article that can be given effect without such invalid provision, and to this end the provisions of this article are declared to be severable.

Source: L. 2008: Entire article added, p. 1994, § 2, effective July 1.

12-35.5-120. Repeal of article - review of functions. (1) This article is repealed, effective September 1, 2013.

(2) (a) The registration functions of the director as set forth in this article are repealed, effective September 1, 2013.

(b) Prior to such repeal, the registration functions shall be reviewed pursuant to section 24-34-104, C.R.S.

Source: L. 2008: Entire article added, p. 1994, § 2, effective July 1.

ARTICLE 36

Medical Practice

Cross references: For the use of physical force by a physician, see § 18-1-703 (1) (e); for the “Colorado Medical Treatment Decision Act”, see article 18 of title 15; for exemption of physicians and surgeons from civil liability for giving emergency assistance, see § 13-21-108; for the exemption from civil liability for persons administering tests to persons suspected of alcohol- or drug-related traffic offenses, see § 42-4-1301.1 (6); for the exemption from civil or criminal liability for physicians examining or treating minor victims of sexual assault, see § 13-22-106; for the exemption from civil or criminal liability for physicians acting pursuant to a declaration under the “Colorado Medical Treatment Decision Act”, see § 15-18-110; for limitation on liability regarding transplants and transfusions of blood, see § 13-22-104; for the donation of human tissue, organ, or blood or a component thereof under the “Uniform Commercial Code”, see § 4-2-102.

Law reviews: For article, "The Interprofessional Code", see 15 Colo. Law. 1795, 1977, and 2183 (1986) and 16 Colo. Law. 31 (1987); for article, "Administrative Subpoenas Under CRS Title 12: Defending Potential Abuse", see 22 Colo. Law. (1993); for article, "The Physician as the Hospital's Employee: SB 95-212", see 24 Colo. Law. 2345 (1995); for article, "Advance Medical Directives and the Authority to Compel Medical Treatment", see 29 Colo. Law. 59 (March 2000).

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PART 1

GENERAL PROVISIONS

12-36-101. Short title. This article shall be known and may be cited as the "Colorado Medical Practice Act".

Source: L. 51: p. 562, § 2. CSA: C. 109, § 33(2). CRS 53: § 91-1-2. C.R.S. 1963: § 91-1-2. L. 79: Entire section amended, p. 507, § 1, effective July 1.

ANNOTATION

This article is known as the "medical practice act", Colo. Chiropractic Ass'n v. State, 171 Colo. 395, 467 P.2d 795 (1970).

This article represents the basic law on the healing arts. Colo. Chiropractic Ass'n v. State, 171 Colo. 395, 467 P.2d 795 (1970).

Moreover, this article is the legislative declaration of the prevailing policy of this state in connection with the practice of medicine. Moon v. Mercy Hosp., 150 Colo. 430, 373 P.2d 944 (1962).

Title to former act held sufficient and valid. See Harding v. People, 10 Colo. 387, 15 P. 727 (1887); People ex rel. Colo. Bar Ass'n v. Erbaugh, 42 Colo. 480, 94 P. 349 (1908); People

v. Max, 70 Colo. 100, 198 P. 150 (1921) (cases decided under repealed laws antecedent to CSA, C. 109, § 1).

Application of article. The supreme court ruled that § 24-4-104 (4), dealing with procedure for issuance, suspension, revocation, or renewal of licenses, was the authority for the state board of medical examiners' summary suspension of a license to practice medicine pending a full hearing, and rejected the view that this article, dealing with medical practice, and § 24-4-103, dealing with rule-making procedure, applied. Colo. State Bd. of Med. Exam'rs v. District Court, 191 Colo. 158, 551 P.2d 194 (1976).

12-36-102. Legislative declaration. (1) The general assembly declares it to be in the interests of public health, safety, and welfare to enact laws regulating and controlling the practice of the healing arts to the end that the people shall be properly protected against unauthorized, unqualified, and improper practice of the healing arts in this state, and this article shall be construed in conformity with this declaration of purpose.

(2) Repealed.

Source: L. 51: p. 562, § 1. CSA: C. 109, § 33(1). CRS 53: § 91-1-1. C.R.S. 1963: § 91-1-1. L. 93: Entire section amended, p. 1697, § 10, effective July 1. L. 2003: (2) repealed, p. 911, § 11, effective August 6.

Cross references: For the physicians' peer health assistance fund, see § 12-36-123.5.

ANNOTATION

What constitutes the practice of medicine under the Medical Practice Act must be construed in light of the purpose stated in this section. State Bd. of Med. Exam'rs v. McCroskey, 940 P.2d 1044 (Colo. App. 1996).

The board has exclusive jurisdiction to revoke licensure privileges within Colorado re-

gardless of whether the "unprofessional conduct" occurred within or outside of Colorado. State Bd. of Med. Exam'rs v. Sullivan, 976 P.2d 885 (Colo. App. 1999).

Applied in Coe v. United States Dist. Court, 676 F.2d 411 (10th Cir. 1982).

12-36-102.5. Definitions. As used in this article, unless the context otherwise requires:

(1) (a) "Approved fellowship" means a program that meets the following criteria:

(I) Is specialized, clearly defined, and delineated;

(II) Follows the completion of an approved residency;

(III) Provides additional training in a medical specialty or subspecialty; and

(IV) Is either:

(A) Performed in a hospital conforming to the minimum standards for fellowship training established by the accreditation council for graduate medical education or the American osteopathic association, or by a successor of either organization; or

(B) Any other program that is approved by the accreditation council for graduate medical education or the American osteopathic association or a successor of either organization.

(b) "Approved fellowship" includes any other fellowship that the board, upon its own investigation, approves for purposes of issuing a physician training license pursuant to section 12-36-122.

(2) (a) "Approved internship" means an internship:

(I) Of at least one year in a hospital conforming to the minimum standards for intern training established by the accreditation council for graduate medical education or the American osteopathic association or a successor of either organization; or

(II) Approved by either of the organizations specified in subparagraph (I) of this paragraph (a).

(b) "Approved internship" includes any other internship approved by the board upon its own investigation.

(3) (a) "Approved medical college" means a college that:

(I) Conforms to the minimum educational standards for medical colleges as established by the liaison committee on medical education or any successor organization that is the official accrediting body of educational programs leading to the degree of doctor of medicine and recognized for such purpose by the federal department of education and the council on postsecondary accreditation;

(II) Conforms to the minimum education standards for osteopathic colleges as established by the American osteopathic association or any successor organization that is the official accrediting body of education programs leading to the degree of doctor of osteopathy; or

(III) Is approved by either of the organizations specified in subparagraphs (I) and (II) of this paragraph (a).

(b) "Approved medical college" includes any other medical college approved by the board upon its own investigation of the educational standards and facilities of the medical college.

(4) (a) "Approved residency" means a residency:

(I) Performed in a hospital conforming to the minimum standards for residency training established by the accreditation council for graduate medical education or the American osteopathic association or any successor of either organization; or

(II) Approved by either of the organizations specified in subparagraph (I) of this paragraph (a).

(b) "Approved residency" means any other residency approved by the board upon its own investigation.

(5) "Board" means the Colorado medical board created in section 12-36-103 (1).

(6) "License" means the authority to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant under this article.

(7) "Licensee" means any physician, physician assistant, or anesthesiologist assistant who is licensed pursuant to this article.

(8) "Telemedicine" means the delivery of medical services and any diagnosis, consultation, or treatment using interactive audio, interactive video, or interactive data communication.

Source: L. 2010: Entire section added with relocations, (HB 10-1260), ch. 403, p. 1972, § 41, effective July 1. L. 2012: (6) and (7) amended, (HB 12-1332), ch. 238, p. 1051, § 1, effective August 8.

Editor's note: Subsection (1) is similar to former § 12-36-110.5, subsection (2) is similar to former § 12-36-109, subsection (3) is similar to former § 12-36-108, subsection (4) is similar to former § 12-36-110, and subsection (7) is similar to former § 12-36-106 (6), as they existed prior to 2010.

12-36-103. Colorado medical board - immunity - subject to termination - repeal of article. (1) (a) (I) There is hereby created the Colorado medical board, referred to in this article as the "board". The board shall consist of sixteen members appointed by the governor and possessing the qualifications specified in this article and as follows:

(A) Eleven physician members;

(B) One member licensed under this article as a physician assistant; and

(C) Four members from the public at large who have no financial or professional association with the medical profession.

(II) The terms of the members of the board shall be four years. For the two physician and one physician assistant appointees added to the board during the calendar year beginning January 1, 2010, the term for one of the physician member appointees shall expire four years after the appointment; the term for the other physician member appointee shall expire three years after the appointment; and the term for the physician assistant appointee shall expire two years after the appointment. Thereafter, the terms of the members of the board shall be four years.

(b) (Deleted by amendment, L. 2003, p. 911, § 12, effective August 6, 2003.)

(2) The board shall be comprised at all times of eight members having the degree of doctor of medicine, three members having the degree of doctor of osteopathy, and one physician assistant, all of whom shall have been licensed in good standing and actively engaged in the practice of their professions in this state for at least three years next preceding their appointments, and four members of the public at large.

(3) If a vacancy in the membership of the board occurs for any cause other than expiration of a term, the governor shall appoint a successor to fill the unexpired portion of the term of the member whose office has been so vacated and shall appoint the new member in the same manner as members for a full term. Members of the board shall remain in office until their successors have been appointed. A member of the board may be removed by the governor for continued neglect of duty, incompetence, or unprofessional or dishonorable conduct.

(4) The board shall elect biennially from its members a president and a vice-president. Meetings of the board or any panel established pursuant to this article shall be held as scheduled by the board in the state of Colorado. Except as provided in section 12-36-118 (6), a majority of the board shall constitute a quorum for the transaction of all business. All meetings of the board shall be deemed to have been duly called and regularly held, and all decisions, resolutions, and proceedings of the board shall be deemed to have been duly authorized, unless the contrary be proved.

(5) (Deleted by amendment, L. 2004, p. 1827, § 67, effective August 4, 2004.)

(6) (a) (I) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the Colorado medical board created by this section.

(II) The review required by this subsection (6) shall include an analysis of physician responsibilities related to recommendations for medical marijuana and the provisions of section 25-1.5-106, C.R.S.

(b) This article is repealed, effective July 1, 2019.

(7) (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1948, § 14, effective July 1, 2010.)

Source: L. 51: p. 562, § 3. CSA: C. 109, § 33(3). CRS 53: § 91-1-3. C.R.S. 1963: §§ 91-1-3, 91-1-39. L. 67: p. 812, § 1. L. 73: p. 1027, § 7. L. 76: (1), (2), and (4) amended and (7) added, p. 417, § 1, effective July 1; (6) added, p. 624, § 19, effective July 1. L. 79: (4) amended, p. 507, § 2, effective July 1; (4) amended, p. 910, § 9, effective July 1. L. 87: (1) amended, p. 904, § 7, effective June 15. L. 88: (1) amended, p. 521, § 1, effective July 1. L. 91: (6) amended, p. 682, § 26, effective April 20. L. 95: (4), (5), and (6)(b) amended, p. 1056, § 1, effective July 1. L. 2000: (1)(a) amended, p. 173, § 2, effective March 17. L. 2001: (2) amended, p. 1269, § 12, effective June 5. L. 2003: (1) amended, p. 911, § 12, effective August 6. L. 2004: (3) and (5) amended, p. 1827, § 67, effective August 4. L. 2010: (6)(a) amended, (SB 10-109), ch. 356, p. 1696, § 5, effective June 7; (1)(a), (2), (3), (4), (6)(a), (6)(b), and (7) amended, (HB 10-1260), ch. 403, pp. 1948, 1943, §§ 14, 1, effective July 1.

Editor's note: Amendments to subsection (6)(a) by House Bill 10-1260 and Senate Bill 10-109 were harmonized.

Cross references: For the legislative declaration contained in the 2000 act amending subsection (1)(a), see section 1 of chapter 55, Session Laws of Colorado 2000.

ANNOTATION

Law reviews. For note, "Licensing of Occupations and Professions in Colorado", see 35 Dicta 235 (1958).

Annotator's note. Since § 12-36-103 is similar to repealed laws antecedent to CSA, C. 109, § 1, relevant cases construing those provisions have been included in the annotations to this section.

A point was made that this section was unconstitutional, in that it provides for the appointment of the state board of medical examiners by the governor, whereas, under the provision of § 6 of art. IV, Colo. Const., it is contended the governor should "nominate, and by and with the consent of the senate appoint". *People v. Osborne*, 7 Colo. 605, 4 P. 1074 (1884).

The constitutional provision was construed as not applicable to offices created by statute to be filled as therein otherwise provided. *Brown v. People*, 11 Colo. 109, 17 P. 104 (1888).

The general assembly under the police power of the state could create the state board of medical examiners and fix its powers and duties. *Smith v. People*, 51 Colo. 270, 117 P. 612, 36 L.R.A. (n.s.) 158 (1911).

The police power of the state relates to the preservation and promotion of the health, safety, and morals of the people. *Smith v. People*, 51 Colo. 270, 117 P. 612, 36 L.R.A. (n.s.) 158 (1911).

The law is settled that the general assembly may control the practice of medicine. *Smith v.*

People, 51 Colo. 270, 117 P. 612, 36 L.R.A. (n.s.) 158 (1911).

Such enactments emanate from that branch of the police power of the state having to do with the protection of the public health. *Smith v. People*, 51 Colo. 270, 117 P. 612, 36 L.R.A. (n.s.) 158 (1911).

It was held, independent of this, that the office being de jure, one appointed to it was de facto an officer, notwithstanding the mode of appointment may have been unconstitutional. *Brown v. People*, 11 Colo. 109, 17 P. 104 (1888).

Immunity of members. Members who performed statutory functions, both adjudicatory and prosecutorial in nature, are entitled to the common law absolute immunity from damages liability under 42 U.S.C. § 1983 which has historically been afforded judges, prosecutors, and other officials involved in the judicial process. *Horwitz v. Bd. of Medical Examiners*, 822 F.2d 1508 (10th Cir. 1987), cert. denied, 484 U.S. 964, 108 S. Ct. 453, 98 L. Ed.2d 394 (1987).

Majority of board not needed in disciplinary actions. The bifurcation of disciplinary proceedings, by § 12-36-118, into initial investigations by one panel and, upon recommendation, formal hearings by another panel indicates the general assembly's intent to remove the requirement of four votes, formerly in subsection (4), in order to revoke a license after a formal disci-

plinary hearing. Colo. State Bd. of Medical Exam'rs v. Jorgensen, 198 Colo. 275, 599 P.2d 869 (1979).

Applied in *Coe v. United States Dist. Court*, 676 F.2d 411 (10th Cir. 1982).

12-36-104. Powers and duties of board. (1) In addition to all other powers and duties conferred and imposed upon the board by this article, the board has the following powers and duties to:

(a) Adopt and promulgate, under the provisions of section 24-4-103, C.R.S., such rules and regulations as the board may deem necessary or proper to carry out the provisions and purposes of this article which shall be fair, impartial, and nondiscriminatory;

(b) (I) Make investigations, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the board.

(II) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board.

(III) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(c) (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1951, § 16, effective July 1, 2010.)

(d) Repealed.

(e) Aid law enforcement in the enforcement of this article and in the prosecution of all persons, firms, associations, or corporations charged with the violation of any of its provisions.

(2) Repealed.

(3) To facilitate the licensure of qualified applicants and address the unlicensed practice of medicine, the unlicensed practice as a physician assistant, and the unlicensed practice as an anesthesiologist assistant, the president of the board shall establish a licensing panel in accordance with section 12-36-111.3 to perform licensing functions in accordance with this article and review and resolve matters relating to the unlicensed practice of medicine, unlicensed practice as a physician assistant, and unlicensed practice as an anesthesiologist assistant. Two panel members constitute a quorum of the panel. Any action taken by a quorum of the panel constitutes action by the board.

Source: L. 51: p. 564, § 4. CSA: C. 109, § 33(4). CRS 53: § 91-1-4. C.R.S. 1963: § 91-1-4. L. 64: p. 150, § 91. L. 76: (1)(d) repealed, p. 421, § 8, effective July 1. L. 77: (1)(b) amended, p. 677, § 1, effective July 1. L. 79: (1)(b) and (2) amended, p. 508, § 3, effective July 1. L. 83: (2) amended, p. 830, § 20, July 1. L. 94: (3) added, p. 501, § 1, effective March 31. L. 96: (2) amended, p. 1243, § 105, effective August 7. L. 97: (2) repealed, p. 1479, § 27, effective June 3. L. 2004: (1)(b) amended, p. 1827, § 68, effective August 4. L. 2010: (1)(c), (1)(e), and (3) amended, (HB 10-1260), ch. 403, p. 1951, § 16, effective July 1. L. 2012: (3) amended, (HB 12-1332), ch. 238, p. 1051, § 2, effective August 8.

Cross references: For the legislative declaration contained in the 1996 act amending subsection (2), as said subsection existed prior to 1997, see section 1 of chapter 237, Session Laws of Colorado 1996.

ANNOTATION

This section does not deny due process of law because it creates a tribunal, provides for notice and hearing, for evidence and argument. *People v. Max*, 70 Colo. 100, 198 P. 150 (1921).

In order to accomplish the purpose of this article, protecting the public against unauthorized, unqualified, and improper practice of the healing arts in this state, the state board of medical examiners must have the discretion to determine the generally accepted standard of medical practice. *State Bd. of Med. Exam'rs v. McCroskey*, 880 P.2d 1188 (Colo. 1994).

A trial court has no jurisdiction to interfere with officers of the state whose duties are imposed by statute. *Colo. State Bd. of Med. Exam'rs v. District Court*, 138 Colo. 227, 331 P.2d 502 (1958).

Therefore, a district court does not have jurisdiction to prohibit a branch of the executive department such as the state board of medical examiners from carrying out its statutory functions. *Colo. State Bd. of Med. Exam'rs v. District Court*, 138 Colo. 227, 331 P.2d 502 (1958).

This section explicitly allows the board of medical examiners to request and receive complete records of physician review proceedings from a hospital. *Colo. State Bd. of Med. Exam'rs v. Khan*, 984 P.2d 670 (Colo. App. 1999).

When read in conjunction with § 12-36-118 (4), this section authorizes the attorney general to issue subpoenas and make investigations before and after the filing of the formal complaint. *Norton v. Colo. Bd. of Med. Exam'rs*, 821 P.2d 897 (Colo. App. 1991).

This section authorizes state board of medical examiners to issue subpoenas in connection with any investigation described in § 12-36-118 (4). *Bd. of Med. Exam'rs v. Duhon*, 867 P.2d 20 (Colo. App. 1993), *aff'd*, 895 P.2d 143 (Colo. 1995).

State board of medical examiners is not required to demonstrate that subpoena duces tecum is justified by more than speculation or conjecture; rather, board is required only to demonstrate that the subpoena was issued for a lawful purpose under the procedures established by this article. *Bd. of Med. Exam'rs v. Duhon*, 867 P.2d 20 (Colo. App. 1993), *aff'd*, 895 P.2d 143 (Colo. 1995).

1995 amendment to § 12-36-118 allows investigation of a physician by the inquiry panel prior to the initiation of the informal complaint procedure and there is nothing in that section that would indicate that the permissible scope of the pre-response investigation excludes the issuance of subpoenas. *Colo. State Bd. of Med. Exam'rs v. Khan*, 984 P.2d 670 (Colo. App. 1999).

Probable cause to believe a statutory violation has occurred is not required before issuing an investigative subpoena under this section. Rather, justification for issuance is grounded upon a showing that: (1) the investigation is for a lawfully authorized purpose; (2) the information sought is relevant to the issues being investigated; and (3) the subpoena is sufficiently specific to obtain documents that are adequate but not excessive for the inquiry. *Bd. of Med. Exam'rs v. Duhon*, 867 P.2d 20 (Colo. App. 1993), *aff'd*, 895 P.2d 143 (Colo. 1995).

Subpoena duces tecum issued under this section that required doctor to produce complete office records for all cases in which device was used could not be enforced where board could not produce copy of written complaint and clear exposition of act or omission which, if found to have occurred, would constitute unprofessional conduct. *Bd. of Med. Exam'rs v. Duhon*, 867 P.2d 20 (Colo. App. 1993), *aff'd*, 895 P.2d 143 (Colo. 1995).

12-36-104.5. Limitation on authority. The authority granted the board under the provisions of this article shall not be construed to authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

Source: L. 89: Entire section added, p. 672, § 12, effective July 1.

Cross references: For the legislative declaration contained in the 1989 act enacting this section, see section 1 of chapter 111, Session Laws of Colorado 1989.

12-36-105. Surety bond. (Repealed)

Source: L. 51: p. 565, § 5. CSA: C. 109, § 33(5). CRS 53: § 91-1-5. C.R.S. 1963: § 91-1-5. L. 76: Entire section amended, p. 418, § 2, effective July 1. L. 79: Entire section repealed, p. 525, § 31, effective July 1.

12-36-106. Practice of medicine defined - exemptions from licensing requirements - unauthorized practice by physician assistants and anesthesiologist assistants - penalties - rules. (1) For the purpose of this article, "practice of medicine" means:

(a) Holding out one's self to the public within this state as being able to diagnose, treat, prescribe for, palliate, or prevent any human disease, ailment, pain, injury, deformity, or physical or mental condition, whether by the use of drugs, surgery, manipulation, electricity, telemedicine, the interpretation of tests, including primary diagnosis of pathology specimens, images, or photographs, or any physical, mechanical, or other means whatsoever;

(b) Suggesting, recommending, prescribing, or administering any form of treatment, operation, or healing for the intended palliation, relief, or cure of any physical or mental disease, ailment, injury, condition, or defect of any person;

(c) The maintenance of an office or other place for the purpose of examining or treating persons afflicted with disease, injury, or defect of body or mind;

(d) Using the title M.D., D.O., physician, surgeon, or any word or abbreviation to indicate or induce others to believe that one is licensed to practice medicine in this state and engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind, except as otherwise expressly permitted by the laws of this state enacted relating to the practice of any limited field of the healing arts;

(e) Performing any kind of surgical operation upon a human being; or

(f) The practice of midwifery, except:

(I) Services rendered by certified nurse-midwives properly licensed and practicing in accordance with the provisions of article 38 of this title; or

(II) Repealed.

(g) The delivery of telemedicine. Nothing in this paragraph (g) authorizes physicians to deliver services outside their scope of practice or limits the delivery of health services by other licensed professionals, within the professional's scope of practice, using advanced technology, including, but not limited to, interactive audio, interactive video, or interactive data communication.

(2) If a person who does not possess and has not filed a license to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant in this state, as provided in this article, and who is not exempted from the licensing requirements under this article, performs any of the acts that constitute the practice of medicine as defined in this section, the person shall be deemed to be practicing medicine, practicing as a physician assistant, or practicing as an anesthesiologist assistant in violation of this article.

(3) A person may engage in, and is not required to obtain a license or a physician training license under this article with respect to, any of the following acts:

(a) The gratuitous rendering of services in cases of emergency;

(b) The occasional rendering of services in this state by a physician if the physician:

(I) Is licensed and lawfully practicing medicine in another state or territory of the United States without restrictions or conditions on the physician's license;

(II) Does not have any established or regularly used medical staff membership or clinical privileges in this state;

(III) Is not party to any contract, agreement, or understanding to provide services in this state on a regular or routine basis;

(IV) Does not maintain an office or other place for the rendering of such services;

(V) Has medical liability insurance coverage in the amounts required pursuant to section 13-64-302, C.R.S., for the services rendered in this state; and

(VI) Limits the services provided in this state to an occasional case or consultation.

(c) The practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) The practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) The practice of optometry under the conditions and limitations defined by the laws of this state;

(f) The practice of chiropractic under the conditions and limitations defined by the laws of this state;

(g) The practice of religious worship;

- (h) The practice of Christian Science, with or without compensation;
- (i) The performance by commissioned medical officers of the armed forces of the United States of America or of the United States public health service or of the United States veterans administration of their lawful duties in this state as such officers;
- (j) The rendering of nursing services and delegated medical functions by registered or other nurses in the lawful discharge of their duties as such;
- (k) The rendering of services by students currently enrolled in an approved medical college;
- (l) The rendering of services, other than the prescribing of drugs, by persons qualified by experience, education, or training, under the personal and responsible direction and supervision of a person licensed under the laws of this state to practice medicine, but nothing in this exemption shall be deemed to extend or limit the scope of any license, and this exemption shall not apply to persons otherwise qualified to practice medicine but not licensed to so practice in this state;
- (m) The practice by persons licensed or registered under any law of this state to practice a limited field of the healing arts not specifically designated in this section, under the conditions and limitations defined by such law;
- (n) (Deleted by amendment, L. 2000, p. 30, § 1, effective March 10, 2000.)
- (o) (I) The administration and monitoring of medications in facilities as provided in part 3 of article 1.5 of title 25, C.R.S.
(II) Repealed.
- (p) The rendering of acupuncture services subject to the conditions and limitations provided in article 29.5 of this title;
- (q) (I) The administration of nutrition or fluids through gastrostomy tubes as provided in section 27-10.5-103 (2) (k), C.R.S., as a part of residential or day program services provided through service agencies approved by the department of human services pursuant to section 27-10.5-104.5, C.R.S.;
(II) Repealed.
- (r) (I) The administration of topical and aerosol medications within the scope of physical therapy practice as provided in section 12-41-113 (2);
(II) The performance of wound debridement under a physician's order within the scope of physical therapy practice as provided in section 12-41-113 (3);
- (s) The rendering of services by an athletic trainer subject to the conditions and limitations provided in article 29.7 of this title;
- (t) (I) The rendering of prescriptions by an advanced practice nurse pursuant to section 12-38-111.6.
(II) Repealed.
- (II.5) On or after July 1, 2010, a physician who serves as a preceptor or mentor to an advanced practice nurse pursuant to sections 12-36-106.4 and 12-38-111.6 (4.5) shall have a license in good standing without disciplinary sanctions to practice medicine in Colorado and an unrestricted registration by the drug enforcement administration for the same schedules as the collaborating advanced practice nurse.
- (III) Repealed.
- (IV) It is unlawful and a violation of this article for any person, corporation, or other entity to require payment or employment as a condition of entering into a mentorship relationship with the advanced practice nurse pursuant to sections 12-36-106.4 and 12-38-111.6 (4.5), but the mentor may request reimbursement of reasonable expenses and time spent as a result of the mentorship relationship.
- (u) (I) The provision, to a treating physician licensed in this state, of the results of laboratory tests, excluding histopathology tests and cytology tests, performed in a laboratory certified under the federal "Clinical Laboratories Improvement Act of 1967", as amended, 42 U.S.C. sec. 263a, to perform high complexity testing, as such term is used in 42 CFR 493.1701 and any related or successor provision.
(II) The provision, to a pathologist licensed in this state, of the results of histopathology tests and cytology tests performed in a laboratory certified under the federal "Clinical Laboratories Improvement Act of 1967", as amended, 42 U.S.C. sec. 263a, to perform high

complexity testing, as such term is used in 42 CFR 493.1701 and any related or successor provision.

(v) The rendering of services by any person serving an approved internship, residency, or fellowship as defined by this article for an aggregate period not to exceed sixty days.

(w) A physician lawfully practicing medicine in another state or territory providing medical services to athletes or team personnel registered to train at the United States olympic training center at Colorado Springs or providing medical services at an event in this state sanctioned by the United States olympic committee. The physician's medical practice shall be contingent upon the requirements and approvals of the United States olympic committee and shall not exceed ninety days per calendar year.

(x) Repealed.

(y) The rendering of services by an emergency medical service provider certified under section 25-3.5-203, C.R.S., if the services rendered are consistent with rules adopted by the executive director or chief medical officer, as applicable, under section 25-3.5-206, C.R.S., defining the duties and functions of emergency medical service providers.

(3.2) Nothing in this section shall be construed to prohibit patient consultation between a practicing physician licensed in Colorado and a practicing physician licensed in another state or jurisdiction.

(3.5) (Deleted by amendment, L. 2009, (SB 09-026), ch. 373, p. 2031, § 2, effective July 1, 2009.)

(4) All licensees designated or referred to in subsection (3) of this section, who are licensed to practice a limited field of the healing arts, shall confine themselves strictly to the field for which they are licensed and to the scope of their respective licenses, and shall not use any title, word, or abbreviation mentioned in paragraph (d) of subsection (1) of this section, except to the extent and under the conditions expressly permitted by the law under which they are licensed.

(5) (a) A person licensed under the laws of this state to practice medicine may delegate to a physician assistant licensed by the board pursuant to section 12-36-107.4 the authority to perform acts that constitute the practice of medicine to the extent and in the manner authorized by rules promulgated by the board, including the authority to prescribe medication, including controlled substances, and dispense only such drugs as designated by the board. Such acts shall be consistent with sound medical practice. Each prescription issued by a physician assistant licensed by the board shall be imprinted with the name of his or her supervising physician. Nothing in this subsection (5) shall limit the ability of otherwise licensed health personnel to perform delegated acts. The dispensing of prescription medication by a physician assistant shall be subject to the provisions of section 12-42.5-118 (6).

(b) (I) If the authority to perform an act is delegated pursuant to paragraph (a) of this subsection (5), the act shall not be performed except under the personal and responsible direction and supervision of a person licensed under the laws of this state to practice medicine. A licensed physician may be responsible for the direction and supervision of up to four physician assistants at any one time, and may be responsible for the direction and supervision of more than four physician assistants upon receiving specific approval from the board. The board, by rule, may define what constitutes appropriate direction and supervision of a physician assistant.

(II) For purposes of this subsection (5), "personal and responsible direction and supervision" means that the direction and supervision of a physician assistant is personally rendered by a licensed physician practicing in the state of Colorado and is not rendered through intermediaries. The extent of direction and supervision shall be determined by rules promulgated by the board and as otherwise provided in this paragraph (b); except that, when a physician assistant is performing a delegated medical function in an acute care hospital, the board shall allow supervision and direction to be performed without the physical presence of the physician during the time the delegated medical functions are being implemented if:

(A) Such medical functions are performed where the supervising physician regularly practices or in a designated health manpower shortage area;

(B) The licensed supervising physician reviews the quality of medical services rendered by the physician assistant by reviewing the medical records to assure compliance with the physicians' directions; and

(C) The performance of the delegated medical function otherwise complies with the board's regulations and any restrictions and protocols of the licensed supervising physician and hospital.

(III) Repealed.

(c) to (f) (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1966, § 35, effective July 1, 2010.)

(g) Pursuant to section 12-36-129 (6), the board may apply for an injunction to enjoin any person from performing delegated medical acts that are in violation of this section or of any rules promulgated by the board.

(h) This subsection (5) shall not apply to any person who performs delegated medical tasks within the scope of the exemption contained in paragraph (1) of subsection (3) of this section.

(i) and (j) (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1966, § 35, effective July 1, 2010.)

(k) Repealed. / (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1966, § 35, effective July 1, 2010.)

(6) Repealed.

(7) (a) A physician licensed in this state that practices as an anesthesiologist may delegate tasks constituting the practice of medicine to an anesthesiologist assistant licensed pursuant to section 12-36-107.3 who has been educated and trained in accordance with rules promulgated by the board. The delegated medical tasks referred to in this paragraph (a) are limited to the medical functions that constitute the delivery or provision of anesthesia services as practiced by the supervising physician.

(b) An anesthesiologist assistant shall perform delegated medical tasks only under the direct supervision of a physician who practices as an anesthesiologist. A patient or the patient's representative shall be advised if an anesthesiologist assistant is involved in the care of a patient. Unless approved by the board, a supervising physician shall not concurrently supervise more than three anesthesiologist assistants; except that the board may, by rule, allow an anesthesiologist to supervise up to four anesthesiologist assistants on and after July 1, 2016. The board may consider information from anesthesiologists, anesthesiologist assistants, patients, and other sources when considering a ratio change of supervision of anesthesiologist assistants. Direct supervision of anesthesiologist assistants may be transferred between anesthesiologists of the same group or practice in accordance with generally accepted standards of care.

(c) Nothing in this subsection (7) affects the practice of dentists and dental assistants practicing pursuant to article 35 of this title.

Source: L. 51: p. 565, § 6. CSA: C. 109, § 33(6). CRS 53: § 91-1-6. C.R.S. 1963: § 91-1-6. L. 73: p. 1025, § 1. L. 77: (1)(f) amended and (3)(n) added, p. 684, §§ 1, 2, effective May 23. L. 79: (1)(d) and (4) amended, p. 508, § 4, effective July 1. L. 80: (1)(f) and (3)(n) amended, p. 494, § 2, effective July 1. L. 83: (3)(l) amended and (5) added, p. 537, § 1, effective July 1. L. 84: (5)(a) amended, p. 419, § 1, effective March 16. L. 85: (5)(a), (5)(c)(III), (5)(d), (5)(i), and (5)(j) amended and (5)(c)(IV) added, p. 518, § 3, effective July 1. L. 86: (3)(m) amended, p. 653, § 30, effective July 1; (5)(d) R&RE and (5)(e) and (5)(j) amended, pp. 638, 639, §§ 7, 8, effective July 1. L. 88: (3)(o) added, p. 1001, § 4, effective July 1. L. 89: (3)(p) added, p. 661, § 2, effective June 6. L. 90: (3)(j) amended, p. 819, § 2. L. 91: (3)(q) added, p. 1162, § 2, effective March 29; (3)(o)(II) amended, p. 929, § 3, effective April 1; (3)(s) and (3.5) added, p. 1640, § 1, effective May 7; (3)(r) added, p. 1667, § 3, effective July 1. L. 92: (5)(b) amended, p. 2055, § 2, effective April 23; (3)(q)(II) repealed, p. 2010, § 3, effective June 2; (3)(o) amended, p. 1148, § 2, effective July 1. L. 93: (1)(f) amended, p. 1911, § 1, effective July 1. L. 94: (3)(q)(I) amended, p. 2637, § 78, effective July 1. L. 95: (3)(t) added, p. 1087, § 11, and (3.5)(d)(V), (5)(a), (5)(e), and (5)(j) amended, p. 1057, § 2, effective July 1. L. 96: (1)(f)(II) amended, p. 400, § 10, effective April 17; (3)(o)(II) amended, p. 797, § 8, effective May 23; (3.5)(f) amended, p. 1226, § 36, effective August 7. L. 98: (1)(a) and (3)(b) amended and (3)(u) and (3.2) added, pp. 1104, 1105, §§ 1, 2, effective July 1; (3)(o) amended, p. 542, § 2, effective July 1. L. 2000: (1)(f) and (3)(n) amended, p. 30, § 1,

effective March 10. **L. 2001:** (1)(f)(II)(B) amended, p. 1258, § 1, effective June 5; (3)(r) amended, p. 1256, § 18, effective July 1; (5)(a), (5)(b)(III), IP(5)(c), (5)(d), (5)(e), (5)(f), and (5)(i) amended and (6) added, p. 176, § 2, effective August 8; (1)(g) added, p. 1162, § 7, effective January 1, 2002. **L. 2002:** IP(3) and (3)(k) amended and (3)(v) added, p. 545, § 1, effective August 7. **L. 2003:** (3)(o)(I) amended, p. 701, § 11, effective July 1. **L. 2006:** (5)(e) amended, p. 1492, § 19, effective June 1; (1)(g) amended, p. 1546, § 2, effective July 1; (5)(b)(III) repealed, p. 795, § 27, effective July 1; (5)(k) added, p. 87, § 26, effective August 7. **L. 2009:** (3)(o)(II) repealed, (SB 09-128), ch. 365, p. 1914, § 4, effective July 1; (3)(s) and (3.5) amended, (SB 09-026), ch. 373, p. 2031, § 2, effective July 1; (3)(t)(II) and (3)(t)(III) amended and (3)(t)(II.5) and (3)(t)(IV) added, (SB 09-239), ch. 401, p. 2181, § 25, effective July 1. **L. 2010:** (3)(w) and (3)(x) added, (HB 10-1128), ch. 172, p. 612, § 9, effective April 29; (1)(b), (1)(g), (2), IP(3), (3)(b), (5)(a), (5)(b)(I), IP(5)(b)(II), (5)(b)(II)(B), (5)(c) to (5)(g), (5)(i), (5)(j), and (5)(k) amended, (3)(x), (5)(k), and (6) repealed, and (3)(y) and (3)(z) added, (HB 10-1260), ch. 403, pp. 1957, 1966, 1959, 1974, 1948, §§ 25, 35, 26, 44, 13, effective July 1. **L. 2011:** (5)(a) amended, (HB 11-1303), ch. 264, p. 1150, § 12, effective August 10. **L. 2012:** IP(3) and (3)(y) amended, (HB 12-1059), ch. 271, p. 1432, § 7, effective July 1; (5)(a) amended, (HB 12-1311), ch. 281, p. 1611, § 15, effective July 1; (2) amended and (7) added, (HB 12-1332), ch. 238, p. 1052, § 3, effective August 8.

Editor's note: (1) Subsection (5)(c) was relocated to § 12-36-107.4 (1), subsection (5)(d) was relocated to § 12-36-107.4 (2), subsection (5)(e) was relocated to § 12-36-107.4 (4), subsection (5)(f) was relocated to § 12-36-107.4 (5), subsection (5)(i) was relocated to § 12-36-107.4 (6), and subsection (6) was relocated to § 12-36-102.5 (7) in 2010.

(2) Amendments to subsection (5)(k) by sections 35 and 44 of House Bill 10-1260 were harmonized.

(3) Subsection (3)(z) was lettered as (3)(w) in House Bill 10-1260, but has been relettered on revision since it is identical to section 12-36-106 (3)(w) as added by House Bill 10-1128.

(4) Subsection (3)(t)(II) provided for the repeal of subsection (3)(t)(II), effective July 1, 2010. (See L. 2009, p. 2181.)

(5) Subsection (3)(t)(III)(D) provided for the repeal of subsection (3)(t)(III), effective July 1, 2010. (See L. 2009, p. 2181.)

(6) Subsection (1)(f)(II)(B) provided for the repeal of subsection (1)(f)(II), effective July 1, 2011. (See L. 2001, p. 1258.)

(7) Section 26 of chapter 271, Session Laws of Colorado 2012, provides that the act amending the introductory portion to subsection (3) and subsection (3)(y) applies to acts committed on or after July 1, 2012.

Cross references: For the legislative declaration contained in the 1996 act amending subsection (3.5)(f), see section 1 of chapter 237, Session Laws of Colorado 1996. For the legislative declaration contained in the 2001 act enacting subsection (1)(g), see section 1 of chapter 300, Session Laws of Colorado 2001.

ANNOTATION

Law reviews. For comment on *Moon v. Mercy Hosp.*, appearing below, see 35 U. Colo. L. Rev. 612 (1963). For article, "The Physician-Patient Privilege in Colorado", see 37 U. Colo. L. Rev. 349 (1965). For article, "Telemedicine and Licensing: Effect of the Current Regime", see 30 Colo. Law. 71 (May 2001). For article, "Who is Helping the Doctor: Physicians' Delegation of Medical Services", see 32 Colo. Law. 81 (December 2003).

Annotator's note. Since § 12-36-106 is similar to repealed CSA. C. 109, § 14, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Midwives' equal protection rights are not violated by section because the prohibition of lay midwifery bears a rational relationship to the state's legitimate interest in protecting the health of the pregnant woman and her child. *People v. Rosburg*, 805 P.2d 432 (Colo. 1991).

Subsection prohibiting practice by lay midwives is not unconstitutionally vague. *People v. Rosburg*, 805 P.2d 432 (Colo. 1991).

Term "practice of midwifery" is not unconstitutionally vague on its face. *People v. Rosburg*, 805 P.2d 432 (Colo. 1991).

The state has the right to determine and define what constitutes the practice of medicine. *Smith v. People*, 51 Colo. 270, 117 P. 612

(1911), citing *Harding v. People*, 10 Colo. 387, 15 P. 727 (1887).

This section defines the phrase, “practice of medicine”, in great detail. *Moon v. Mercy Hosp.*, 150 Colo. 430, 373 P.2d 944 (1962); *Colo. Chiropractic Ass’n v. State*, 171 Colo. 395, 467 P.2d 795 (1970).

Record-keeping is part of the practice of medicine. *State Bd. of Med. Exam’rs v. McCroskey*, 940 P.2d 1044 (Colo. App. 1996).

“Practice of medicine” is the closest term to “medical attendance” to be found in the articles relating to the healing arts. *Colo. Chiropractic Ass’n v. State*, 171 Colo. 395, 467 P.2d 795 (1970).

The practice of medicine has been judicially defined as judging the nature, character, and symptoms of the disease, determining the proper remedy for the disease, and giving or prescribing the application of the remedy to the disease. *Hurley v. People*, 99 Colo. 510, 63 P.2d 1227 (1936).

An exception to the practice of medicine, as defined, is made for the practice of chiropractic, as well as other limited fields of the healing arts, under conditions and limitations specifically defined in the statutes. *Colo. Chiropractic Ass’n v. State*, 171 Colo. 395, 467 P.2d 795 (1970).

Although this section defines general aspects of the practice of medicine and provides significant guidance, it remains the Board’s responsibility to determine whether specific acts fall within the broad scope of medical practice for the purpose of discipline under § 12-36-117. *State Bd. of Med. Exam’rs v. McCroskey*, 940 P.2d 1044 (Colo. App. 1996).

Statute gives adequate warning of proscribed activity and therefore is not impermis-

sibly vague. *People v. Jeffers*, 690 P.2d 194 (Colo. 1984).

The meaning of subsection (1)(b) encompasses a continuing process of treatment and healing, not just isolated moments or acts within a course of treatment. *People ex rel. McFarlane v. Pfeiffer*, 725 P.2d 19 (Colo. App. 1986).

Respondent’s advertising, in which he holds himself out as one capable of treating the medical condition of obesity and recommends Prozac to all potential patients as a form of treatment for that condition, falls within the definition of the practice of medicine. *State Bd. of Med. Exam’rs v. Thompson*, 944 P.2d 547 (Colo. App. 1996).

Physician assistant may render medical opinion in workers’ compensation hearing on question of temporary disability. *Sims v. Indus. Claim Appeals Office*, 797 P.2d 777 (Colo. App. 1990).

The general assembly made clear its intention to restrict the practice of those licensed to practice in a limited field of the healing arts. *Colo. Chiropractic Ass’n v. State*, 171 Colo. 395, 467 P.2d 795 (1970).

The courses of study of the several limited branches of the healing arts are not determinative of the scope of practice permitted under any given license. *Colo. Chiropractic Ass’n v. State*, 171 Colo. 395, 467 P.2d 795 (1970).

For discussion of an earlier statute, see *Higgins v. State Bd. of Med. Exam’rs*, 46 Colo. 476, 104 P. 953 (1909).

Craniosacral manipulation for the relief of pain from temporomandibular joint dysfunction constitutes the practice of dentistry and is therefore exempt from the medical licensing requirements. *Colo. Bd. of Med. Exam’rs v. Raemer*, 794 P.2d 1075 (Colo. App. 1990), appeal dismissed, 801 P.2d 536 (Colo. 1990).

12-36-106.3. Collaborative agreements with advanced practice nurses - repeal. (Repealed)

Source: L. 95: Entire section added, p. 1088, § 12, effective July 1. L. 2001: (1) amended, p. 178, § 3, effective August 8. L. 2009: (1) amended and (4) added, (SB 09-239), ch. 401, p. 2179, § 23, effective July 1.

Editor’s note: Subsection (4) provided for the repeal of this section, effective July 1, 2010. (See L. 2009, p. 2179.)

12-36-106.4. Collaboration with advanced practice nurses with prescriptive authority - preceptorships - mentorships - board rules. (1) (a) A physician licensed pursuant to this article may, and is encouraged to, serve as a preceptor or mentor to an advanced practice nurse who is applying for prescriptive authority pursuant to section 12-38-111.6 (4.5). A physician who serves as a preceptor or mentor to an advanced practice nurse seeking prescriptive authority shall:

(I) Be practicing in Colorado and shall have education, training, experience, and active practice that corresponds with the role and population focus of the advanced practice nurse; and

(II) Have a license in good standing without disciplinary sanctions to practice medicine

in Colorado and an unrestricted registration by the drug enforcement administration for the same schedules as the advanced practice nurse.

(b) A physician serving as a preceptor or mentor to an advanced practice nurse pursuant to section 12-38-111.6 (4.5) shall not require payment or employment as a condition of entering into the preceptorship or mentorship relationship, but the physician may request reimbursement of reasonable expenses and time spent as a result of the preceptorship or mentorship relationship.

(c) Upon successful completion of a mentorship as described in section 12-38-111.6 (4.5) (b) (I), the physician shall verify by his or her signature that the advanced practice nurse has successfully completed the mentorship within the required period.

(2) While serving as a mentor pursuant to section 12-38-111.6 (4.5) (b) (I), a physician shall assist the advanced practice nurse in developing an articulated plan for safe prescribing, as described in section 12-38-111.6 (4.5) (b) (II) and shall verify through his or her signature that the advanced practice nurse has developed an articulated plan in compliance with said section.

(3) For purposes of an advanced practice nurse who obtained prescriptive authority prior to July 1, 2010, as described in section 12-38-111.6 (4.5) (c), or who has prescriptive authority from another state and obtains prescriptive authority in this state, as described in section 12-38-111.6 (4.5) (d), physicians may, and are encouraged to, assist those advanced practice nurses in developing the articulated plans required by those sections and verifying, through the physician's signature, the development of the required plans. The physician verifying an advanced practice nurse's articulated plan shall be practicing in Colorado and have education, training, experience, and active practice that corresponds with the role and population focus of the advanced practice nurse.

(4) (a) Except as provided in paragraph (b) of this subsection (4), the board shall adopt rules to implement this section, which rules shall take effect on July 1, 2010. The board shall consider the recommendations of the nurse-physician advisory task force for Colorado health care submitted in accordance with section 24-34-109, C.R.S., concerning the role of physicians in collaborating with advanced practice nurses with prescriptive authority. The rules shall be complementary to rules adopted by the state board of nursing pursuant to section 12-38-111.6 (4.5) (f) (I).

(b) (I) The director of the division of professions and occupations in the department of regulatory agencies shall review the rules adopted by the board pursuant to this subsection (4) to determine if the rules complement the rules of the state board of nursing. If the director determines that the rules of the two boards are not complementary, the director shall adopt rules that supersede and replace the rules of the two boards regarding prescriptive authority of advanced practice nurses and collaboration between advanced practice nurses and physicians, and such rules shall take effect on July 2, 2010.

(II) If the director determines that the two boards have adopted complementary rules regarding the prescriptive authority of advanced practice nurses and collaboration between advanced practice nurses and physicians, the director shall not adopt rules that supersede and replace the rules of the two boards, but the director shall review any amendments to those rules by either board to ensure that the rules remain complementary. If the director determines that an amendment to the rules by the Colorado medical board or the state board of nursing results in rules on prescriptive authority and collaboration that are no longer complementary, the amendment shall not take effect.

Source: L. 2009: Entire section added, (SB 09-239), ch. 401, p. 2180, § 24, effective July 1. **L. 2010:** (4)(b) amended, (HB 10-1260), ch. 403, p. 1952, § 18, effective July 1.

12-36-106.5. Child health associates - scope of practice. On and after July 1, 1990, any person who, on June 30, 1990, was certified only as a child health associate under the laws of this state shall, upon application to the board, be granted licensure as a physician assistant. The practice of any such person shall be subject to sections 12-36-106 (5) and 12-36-107.4; except that such practice shall be limited to patients under the age of twenty-one.

Source: **L. 86:** Entire section added, p. 639, § 9, effective July 1. **L. 2001:** Entire section amended, p. 178, § 4, effective August 8. **L. 2010:** Entire section amended, (HB 10-1260), ch. 403, p. 1980, § 57, effective July 1.

12-36-107. Qualifications for licensure. (1) Subject to the other conditions and provisions of this article, a license to practice medicine shall be granted by the board to an applicant only upon the basis of:

- (a) The passing by the applicant of an examination approved by the board;
- (b) The applicant's passage of examinations conducted by the national board of medical examiners, the national board of examiners for osteopathic physicians and surgeons, the federation of state medical boards, or any successor to said organizations, as approved by the board;
- (c) Any combination of the examinations provided in paragraphs (a) and (b) of this subsection (1) approved by the board;
- (d) (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1959, § 27, effective July 1, 2010.)
- (e) (I) Endorsement, if the applicant for licensure by endorsement:
 - (A) Files an application and pays a fee as prescribed by the board;
 - (B) Holds a current, valid license in a jurisdiction that requires qualifications substantially equivalent to the qualifications for licensure in this state as specified in this section;
 - (C) Submits written verification that he or she has actively practiced medicine in another jurisdiction for at least five of the immediately preceding seven years or has otherwise maintained continued competency as determined by the board; and
 - (D) Submits proof satisfactory to the board that he or she has not been and is not subject to final or pending disciplinary or other action by any state or jurisdiction in which the applicant is or has been previously licensed; except that, if the applicant is or has been subject to such action, the board may review the action to determine whether the underlying conduct warrants refusal of a license pursuant to section 12-36-116.
- (II) Upon receipt of all documents required by this paragraph (e), the board shall review the application and make a determination of the applicant's qualification to be licensed by endorsement.

(2) No person shall be granted a license to practice medicine as provided by subsection (1) of this section unless such person:

- (a) Is at least twenty-one years of age;
 - (b) Is a graduate of an approved medical college; and
 - (c) Has completed either an approved internship of at least one year or at least one year of postgraduate training approved by the board.
- (3) to (5) Repealed.

Source: **L. 51:** p. 567, § 7. **CSA:** C. 109, § 33(7). **CRS 53:** § 91-1-7. **C.R.S. 1963:** § 91-1-7. **L. 73:** pp. 525, 1025, §§ 48, 2. **L. 76:** (1), (1)(b), and (2) amended, p. 413, § 6, effective July 1. **L. 77:** (2) amended, p. 642, § 3, effective March 15. **L. 79:** Entire section amended, p. 509, § 5, effective July 1. **L. 81:** (3) added, p. 776, § 1, effective May 18. **L. 83:** (4) added, p. 540, § 1, effective May 26. **L. 84:** (3)(a) R&RE and (3)(b) amended, pp. 420, 421, §§ 1, 2, effective March 19. **L. 85:** (2) amended, p. 519, § 4, effective July 1. **L. 95:** (2) amended, p. 1057, § 3, effective July 1. **L. 99:** (5) added, p. 182, § 2, effective March 31. **L. 2004:** (3)(b) amended, p. 379, § 2, effective April 8. **L. 2006:** IP(3)(a)(I) and (3)(b) amended and (3)(c) added, p. 1168, § 1, effective May 25. **L. 2010:** (4) and (5) repealed, (HB 10-1128), ch. 172, p. 613, § 10, effective April 29; IP(1), (1)(b), (1)(d), (2)(b), and (2)(c) amended, (1)(e) added, and (3), (4), and (5) repealed, (HB 10-1260), ch. 403, pp. 1959, 1967, 1955, §§ 27, 36, 21, effective July 1.

Editor's note: Subsection (3) was relocated to § 12-36-107.2 in 2010.

Cross references: For the legislative declaration contained in the 1999 act enacting subsection (5), see section 1 of chapter 63, Session Laws of Colorado 1999. For the legislative declaration contained in the 2004 act amending subsection (3)(b), see section 1 of chapter 118, Session Laws of Colorado 2004.

ANNOTATION

- I. General Consideration.
- II. Hospitals not Licensed to Practice Medicine.

I. GENERAL CONSIDERATION.

This section lays down the conditions under which one may be licensed to practice medicine. Moon v. Mercy Hosp., 150 Colo. 430, 373 P.2d 944 (1962).

Under this section, "a license to practice medicine shall be granted by the board to an applicant" who meets certain requirements. Moon v. Mercy Hosp., 150 Colo. 430, 373 P.2d 944 (1962).

Requirements of this section work in conjunction with the requirements of § 12-36-107.6. State Bd. of Med. Exam'rs v. Sadoris, 825 P.2d 39 (Colo. 1992) (decided under law in effect prior to 1988 repeal of § 12-36-107.5 and amendment of § 12-36-107.6).

Past events. A plain reading of subsection (2) allows the board to consider past events in determining whether an applicant should be denied a medical license on grounds of unprofessional conduct. Hall v. State Bd. of Med. Exam'rs, 876 P.2d 77 (Colo. App. 1994).

Board has wide discretion in deciding whether to deny a license, and decision shall be upheld if it was related to the applicant's conduct and abilities, was not an abuse of discretion, and was not manifestly excessive in relation to the needs of the public. Hall v. State Bd. of Med. Exam'rs, 876 P.2d 77 (Colo. App. 1994).

II. HOSPITALS NOT LICENSED TO PRACTICE MEDICINE.

A license to practice medicine does not contemplate hospital operations as coming within its terms. Purcell v. Poor Sisters of St. Francis Seraph, 147 Colo. 478, 364 P.2d 184 (1961); Moon v. Mercy Hosp., 150 Colo. 430, 373 P.2d 944 (1962).

This enactment is an expression of the legislative will that hospitals and doctors require different licenses. Purcell v. Poor Sisters of St. Francis Seraph, 147 Colo. 478, 364 P.2d 184

(1961); Moon v. Mercy Hosp., 150 Colo. 430, 373 P.2d 944 (1962).

These licenses authorize related but different activities, and the issuance of the one does not permit operation under the other. Purcell v. Poor Sisters of St. Francis Seraph, 147 Colo. 478, 364 P.2d 184 (1961); Moon v. Mercy Hosp., 150 Colo. 430, 373 P.2d 944 (1962).

The general assembly plainly and unequivocally has treated these pursuits as separate and distinct, requiring different licenses. Purcell v. Poor Sisters of St. Francis Seraph, 147 Colo. 478, 364 P.2d 184 (1961); Moon v. Mercy Hosp., 150 Colo. 430, 373 P.2d 944 (1962).

A licensed physician is the principal when performing medical services in a hospital. Moon v. Mercy Hosp., 150 Colo. 430, 373 P.2d 944 (1962).

The hospital and its employees subserve him in his ministrations to the patient, he having the sole and final control in the matter of diagnosis, treatment and surgery. Moon v. Mercy Hosp., 150 Colo. 430, 373 P.2d 944 (1962).

Possessed of this authority, it follows that his actions as doctor are his responsibility. Moon v. Mercy Hosp., 150 Colo. 430, 373 P.2d 944 (1962).

Since the relationship between physician and patient is personal, a hospital which employs physicians on its staff is not liable for the negligence of a physician in the discharge of his professional duty. It is powerless under the law to command or forbid any act in the practice of his profession unless it knows or should know of the want of skill of such physician. Moon v. Mercy Hosp., 150 Colo. 430, 373 P.2d 944 (1962).

Hospital is not liable for actions of resident physicians who are employed by the hospital even though not licensed by the state. Rodriguez v. City & County of Denver, 702 P.2d 1349 (Colo. App. 1984).

Unless it employs those whose want of skill is known, or should be known, to it, or by some special conduct or neglect makes itself responsible for their malpractice, it cannot be held liable therefor. Moon v. Mercy Hosp., 150 Colo. 430, 373 P.2d 944 (1962).

12-36-107.2. Distinguished foreign teaching physician license - qualifications.

(1) Notwithstanding any other provision of this article, an applicant of noteworthy and recognized professional attainment who is a graduate of a foreign medical school and who is licensed in a foreign jurisdiction, if that jurisdiction has a licensing procedure, may be granted a distinguished foreign teaching physician license to practice medicine in this state, upon application to the board in the manner determined by the board, if the following conditions are met:

(a) The applicant has been invited by a medical school in this state to serve as a full-time member of its academic faculty for the period of his or her appointment, at a rank equal to an associate professor or higher;

(b) The applicant's medical practice is limited to that required by his or her academic position, the limitation is so designated on the license in accordance with board procedure, and the medical practice is also limited to the core teaching hospitals affiliated with the medical school, as identified by the board, on which the applicant is serving as a faculty member.

(2) An applicant who meets the qualifications and conditions set forth in subsection (1) of this section but is not offered the rank of associate professor or higher may be granted a temporary license, for one year only, to practice medicine in this state, as a member of the academic faculty, at the discretion of the board and in the manner determined by the board. If the applicant is granted a temporary license, he or she shall practice only under the direct supervision of a person who has the rank of associate professor or higher.

(3) A distinguished foreign teaching physician license is effective and in force only while the holder is serving on the academic staff of a medical school. The license expires one year after the date of issuance and may be renewed annually only after the board has specifically determined that the conditions specified in subsection (1) of this section will continue during the ensuing period of licensure. The board may require an applicant for licensure under this section to present himself or herself to the board for an interview. The board may withdraw licensure granted under this section prior to the expiration of the license for unprofessional conduct as defined in section 12-36-117.

(4) The board may establish and charge a fee for a distinguished foreign teaching physician license pursuant to section 24-34-105, C.R.S., not to exceed the amount of the fee for renewal of a physician's license.

(5) The board shall promulgate rules specifying standards related to the qualification and supervision of distinguished foreign teaching physicians.

Source: L. 2010: Entire section added with relocations, (HB 10-1260), ch. 403, p. 1967, § 37, effective July 1.

Editor's note: This section is similar to former § 12-36-107 (3) as it existed prior to 2010.

12-36-107.3. Anesthesiologist assistant license - qualifications - effective date.

(1) To be licensed as an anesthesiologist assistant under this article, an applicant must be at least twenty-one years of age and must have:

(a) Successfully completed an education program for anesthesiologist assistants that conforms to standards delineated by the commission on accreditation of allied health education programs, or its successor organization, and approved by the board;

(b) Successfully completed the national certifying examination for anesthesiologist assistants that is administered by the national commission for certification of anesthesiologist assistants or a successor organization; and

(c) Submitted an application to the board in the manner designated by the board and paid the appropriate fee established by the board pursuant to section 24-34-105, C.R.S.

(2) A person applying for a license to practice as an anesthesiologist assistant in this state shall notify the board, in connection with his or her application for licensure, of the commission of any act that would be grounds for disciplinary action against a licensed anesthesiologist assistant under section 12-36-117, along with an explanation of the circumstances of the act. The board may deny licensure to any applicant as set forth in section 12-36-116.

(3) A person licensed to practice as an anesthesiologist assistant shall not perform any act that constitutes the practice of medicine within a hospital or ambulatory surgical center licensed pursuant to part 1 of article 3 of title 25, C.R.S., or required to obtain a certificate of compliance pursuant to section 25-1.5-103 (1) (a) (II), C.R.S., unless the licensed anesthesiologist assistant obtains authorization from the governing board of the hospital or ambulatory surgical center. The governing board of a hospital or ambulatory surgical center may grant, deny, or limit a licensed anesthesiologist assistant's authorization based on the governing board's established procedures.

(4) The board may take any disciplinary action with respect to an anesthesiologist assistant license as it may with respect to the license of a physician, in accordance with section 12-36-118.

(5) The board shall license and keep a record of anesthesiologist assistants who have been licensed pursuant to this section. A licensed anesthesiologist assistant shall renew his or her license in accordance with section 12-36-123.

(6) This section takes effect July 1, 2013.

Source: L. 2012: Entire section added, (HB 12-1332), ch. 238, p. 1052, § 4, effective August 8.

12-36-107.4. Physician assistant license - qualifications. (1) To be licensed as a physician assistant under this article, an applicant shall be at least twenty-one years of age and shall have:

(a) Successfully completed an education program for physician assistants that conforms to standards approved by the board, which standards may be established by utilizing the assistance of any responsible accrediting organization;

(b) Successfully completed the national certifying examination for physician assistants that is administered by the national commission on certification of physician assistants or a successor organization or successfully completed any other examination approved by the board; and

(c) Submitted an application to the board in the manner designated by the board and paid the appropriate fee established by the board pursuant to section 24-34-105, C.R.S.

(2) The board may determine whether any applicant for licensure as a physician assistant possesses education, experience, or training in health care that is sufficient to be accepted in lieu of the qualifications required for licensure under subsection (1) of this section.

(3) A person applying for a license to practice as a physician assistant in this state shall notify the board, in connection with his or her application for licensure, of the commission of any act that would be grounds for disciplinary action against a licensed physician assistant under section 12-36-117, along with an explanation of the circumstances of the act. The board may deny licensure to any applicant as set forth in section 12-36-116.

(4) A person licensed as a physician assistant shall not perform any act that constitutes the practice of medicine within a hospital or nursing care facility that is licensed pursuant to part 1 of article 3 of title 25, C.R.S., or that is required to obtain a certificate of compliance pursuant to section 25-1.5-103 (1) (a) (II), C.R.S., without authorization from the governing board of the hospital or nursing care facility. The governing board may grant, deny, or limit a physician assistant's authorization based on its own established procedures.

(5) The board may take any disciplinary action with respect to a physician assistant license as it may with respect to the license of a physician, in accordance with section 12-36-118.

(6) The board shall license and keep a record of physician assistants who have been licensed pursuant to this section. A licensed physician assistant shall renew his or her license in accordance with section 12-36-123.

Source: L. 2010: Entire section added with relocations, (HB 10-1260), ch. 403, p. 1968, § 37, effective July 1.

Editor's note: This section is similar to former § 12-36-106 (5)(c), (5)(d), (5)(e), (5)(f), and (5)(i) as they existed prior to 2010.

12-36-107.5. Colorado resident physicians trained at foreign medical schools. (Repealed)

Source: L. 77: Entire section added, p. 686, § 1, effective July 1. **L. 79:** (1)(g) amended, p. 510, § 6, effective July 1. **L. 88:** Entire section repealed, p. 527, § 12, effective July 1.

12-36-107.6. Foreign medical school graduates - degree equivalence. (1) For graduates of schools other than those approved by the liaison committee for medical education or the American osteopathic association, or the successor of either entity, the board may require three years of postgraduate clinical training approved by the board. An applicant whose foreign medical school is not an approved medical college is eligible for licensure at the discretion of the board if the applicant meets all other requirements for licensure and holds specialty board certification, current at the time of application for licensure, conferred by a regular member board of the American board of medical specialties or the American osteopathic association. The factors to be considered by the board in the exercise of its discretion in determining the qualifications of such applicants shall include the following:

- (a) The information available to the board relating to the medical school of the applicant; and
 - (b) The nature and length of the post-graduate training completed by the applicant.
- (2) Repealed.

Source: L. 79: Entire section added, p. 510, § 7, effective July 1. L. 85: Entire section amended, p. 519, § 5, effective July 1. L. 88: Entire section amended, p. 522, § 2, effective July 1. L. 90: Entire section amended, p. 818, § 1, effective March 27. L. 91: Entire section amended, p. 1638, § 1, effective March 29. L. 95: (2) repealed, p. 1058, § 4, effective July 1. L. 2010: IP(1) amended, (HB 10-1260), ch. 403 p. 1974, § 42, effective July 1.

ANNOTATION

Rule that fails to comply with § 24-4-103 (12.5) may not be relied upon or cited against a person, because such rule was not made available to the public in accordance with § 24-4-103. *Saddoris v. Bd. of Med. Exam'rs*, 802 P.2d 1136 (Colo. App. 1990), rev'd on other grounds, 825 P.2d 39 (Colo. 1992).

Requirements of this section work in conjunction with the requirements of § 12-36-107. *State Bd. of Med. Exam'rs v. Saddoris*, 825 P.2d 39 (Colo. 1992) (decided under law in effect prior to 1988 repeal of § 12-36-107.5 and amendment of § 12-36-107.6).

Approval of a foreign medical school is left to the discretion of the board even if the applicant for a medical license is board certified at the time of the application. *Colo. State Bd. of Med. Exam'rs v. Johnson*, 68 P.3d 500 (Colo. App. 2002).

Factors to be considered by the board in the exercise of its discretion in determining the qualifications of an applicant are not limited to the factors listed in subsection (1). *Colo. State Bd. of Med. Exam'rs v. Johnson*, 68 P.3d 500 (Colo. App. 2002).

12-36-108. Approved medical college. (Repealed)

Source: L. 51: p. 568, § 8. CSA: C. 109, § 33(8). CRS 53: § 91-1-8. C.R.S. 1963: § 91-1-8. L. 95: Entire section amended, p. 1058, § 5, effective July 1. L. 2010: Entire section repealed, (HB 10-1260), ch. 403, p. 1974, § 44, effective July 1.

Editor's note: This section was relocated to § 12-36-102.5 (3) in 2010.

12-36-109. Approved internship. (Repealed)

Source: L. 51: p. 568, § 9. CSA: C. 109, § 33(9). CRS 53: § 91-1-9. C.R.S. 1963: § 91-1-9. L. 95: Entire section amended, p. 1058, § 6, effective July 1. L. 2010: Entire section repealed, (HB 10-1260), ch. 403, p. 1974, § 44, effective July 1.

Editor's note: This section was relocated to § 12-36-102.5 (2) in 2010.

12-36-110. Approved residency. (Repealed)

Source: L. 51: p. 568, § 10. **CSA:** C. 109, § 33(10). **CRS 53:** § 91-1-10. **C.R.S. 1963:** § 91-1-10. **L. 95:** Entire section amended, p. 1059, § 7, effective July 1. **L. 2010:** Entire section repealed, (HB 10-1260), ch. 403, p. 1974, § 44, effective July 1.

Editor's note: This section was relocated to § 12-36-102.5 (4) in 2010.

12-36-110.5. Approved fellowship. (Repealed)

Source: L. 2002: Entire section added, p. 545, § 2, effective August 7. **L. 2010:** Entire section repealed, (HB 10-1260), ch. 403, p. 1974, § 44, effective July 1.

Editor's note: This section was relocated to § 12-36-102.5 (1) in 2010.

12-36-111. Applications for license. (1) Every person desiring a license to practice medicine shall make application to the board, such application to be verified by oath and to be in such form as shall be prescribed by the board. Such application shall be accompanied by the license fee and such documents, affidavits, and certificates as are necessary to establish that the applicant possesses the qualifications prescribed by this article, apart from any required examination by the board. The burden of proof shall be upon the applicant, but the board may make such independent investigation as it may deem advisable to determine whether the applicant possesses such qualifications and whether the applicant has at any time committed any of the acts or offenses defined in this article as unprofessional conduct.

(2) Repealed.

Source: L. 51: p. 568, § 11. **CSA:** C. 109, § 33(11). **CRS 53:** § 91-1-11. **C.R.S. 1963:** § 91-1-11. **L. 73:** p. 1026, § 3. **L. 95:** (2) amended, p. 1059, § 8, effective July 1. **L. 2010:** (2) repealed, (HB 10-1260), ch. 403, p. 1974, § 45, effective July 1.

12-36-111.3. Licensing panel. (1) (a) The president of the board shall establish a licensing panel consisting of three members of the board as follows:

(I) One panel member shall be a licensed physician having the degree of doctor of medicine;

(II) One panel member shall be a licensed physician having the degree of doctor of osteopathy; and

(III) One panel member shall be a public member of the board.

(b) The president may rotate the licensing panel membership and the membership on the inquiry and hearing panels established pursuant to section 12-36-118 so that all members of the board, including the board president, may serve on each of the board panels.

(c) If the president determines that the board lacks a member to serve on the licensing panel that meets the criteria specified in paragraph (a) of this subsection (1), the president may appoint another board member to fill the vacancy on the panel.

(2) The licensing panel shall review and make determinations on applications for a license under this article.

(3) The licensing panel shall review and resolve matters relating to the unlicensed practice of medicine. If it appears to the licensing panel, based upon credible evidence in a written complaint by any person or upon credible evidence in a motion of the licensing panel, that a person is practicing or has practiced medicine, practiced as a physician assistant, or practiced as an anesthesiologist assistant without a license as required by this article, the licensing panel may issue an order to cease and desist the unlicensed practice. The order must set forth the particular statutes and rules that have been violated, the facts alleged to have constituted the violation, and the requirement that all unlicensed practices immediately cease. The respondent may request a hearing on a cease-and-desist order in accordance with section 12-36-118 (14) (b). Section 12-36-118 (10), exempting board disciplinary proceedings and records from open meetings and public records requirements,

does not apply to a hearing or any other proceeding held by the licensing panel pursuant to this subsection (3) regarding the unlicensed practice of medicine. The procedures specified in section 12-36-118 (15), (16), (17), and (18) apply to allegations and orders regarding the unlicensed practice of medicine before the licensing panel.

Source: L. 2010: Entire section added, (HB 10-1260), ch. 403, p. 1950, § 15, effective July 1. L. 2012: (3) amended, (HB 12-1332), ch. 238, p. 1053, § 5, effective August 8.

12-36-111.5. Michael Skolnik medical transparency act - disclosure of information about licensees - rules. (Repealed)

Source: L. 2007: Entire section added, p. 1202, § 1, effective January 1, 2008. L. 2009: (3)(a), IP(3)(d)(I), (3)(f), IP(3)(g), and (6) amended, (HB 09-1188), ch. 72, p. 243, § 1, effective March 30. L. 2010: Entire section repealed, (SB 10-124), ch. 416, p. 2057, § 2, effective August 11.

Editor's note: This section was relocated to § 24-34-110 in 2010.

ANNOTATION

Law reviews. For article, "Physician Accountability in Colorado: The Michael Skolnik Medical Transparency Act", see 37 Colo. Law. 53 (September 2008).

12-36-112. License fee. (Repealed)

Source: L. 51: p. 569, § 12. CSA: C. 109, § 33(12). CRS 53: § 91-1-12. C.R.S. 1963: § 91-1-12. L. 67: p. 812, § 2. L. 76: Entire section amended, p. 419, § 3, effective July 1. L. 79: Entire section amended, p. 510, § 8, effective July 1. L. 93: Entire section amended, p. 1697, § 11, effective July 1. L. 95: Entire section repealed, p. 1060, § 9, effective July 1.

12-36-113. Examinations. (Repealed)

Source: L. 51: p. 569, § 13. CSA: C. 109, § 33(13). CRS 53: § 91-1-13. C.R.S. 1963: § 91-1-13. L. 76: (1) and (2) amended, p. 413, § 7, effective July 1. L. 79: (1) and (2) amended and (3) repealed, pp. 510, 525, §§ 9, 31, effective July 1. L. 85: (1) and (2) amended, p. 519, § 6, effective July 1. L. 95: (2) amended, p. 1060, § 10, effective July 1. L. 2010: Entire section repealed, (HB 10-1260), ch. 403, p. 1975, § 46, effective July 1.

12-36-114. Issuance of licenses - prior practice prohibited. (1) If the board determines that an applicant possesses the qualifications required by this article, the board shall issue to the applicant a license to practice medicine.

(2) Prior to the approval of such license, the applicant shall not engage in the practice of medicine in this state, and any person who practices medicine in this state without first obtaining approval of such license shall be deemed to have violated the provisions of this article.

(3) All holders of a license to practice medicine granted by the board, or by the state board of medical examiners as constituted under any prior law of this state, shall be accorded equal rights and privileges under all laws of the state of Colorado, shall be subject to the same duties and obligations, and shall be authorized to practice medicine, as defined by this article in all its branches.

Source: **L. 51:** p. 570, § 14. **CSA:** C. 109, § 33(14). **CRS 53:** § 91-1-14. **C.R.S. 1963:** § 91-1-14. **L. 79:** (1) amended, p. 511, § 10, effective July 1. **L. 85:** (2) amended, p. 520, § 7, effective July 1. **L. 2010:** (1) amended, (HB 10-1260), ch. 403, p. 1980, § 58, effective July 1.

12-36-114.3. Pro bono license - qualifications - reduced fee - rules. (1) Notwithstanding any other provision of this article, the board may issue a pro bono license to a physician to practice medicine in this state for not more than sixty days in a calendar year if the physician:

(a) Holds an active and unrestricted license to practice medicine in Colorado and is in active practice in this state;

(II) Has been on inactive status pursuant to section 12-36-137 for not more than two years; or

(III) Holds an active and unrestricted license to practice medicine in another state or territory of the United States;

(b) Attests to the board that he or she:

(I) Does not charge for his or her services; except that the facility at which the services are provided may charge on a not-for-profit basis for the provision of services; or

(II) Works for and may be compensated by an organization that does not charge Colorado patients for its services;

(c) Has never had a license to practice medicine in this state or in another state or territory revoked or suspended, as verified by the applicant in the manner prescribed by the board;

(d) Is not the subject of an unresolved complaint;

(e) Maintains commercial professional liability insurance coverage in accordance with section 13-64-301, C.R.S.; and

(f) Pays the fee established by the board.

(2) The board shall establish and charge an application fee for an initial and renewal pro bono license, not to exceed one-half the amount of the fee for a renewal of a physician's license and not to exceed the cost of administering the license.

(3) A pro bono license is subject to the renewal requirements set forth in section 12-36-123.

(4) A physician granted a pro bono license under this section shall not simultaneously hold a full license to practice medicine issued under this article.

(5) A physician granted a pro bono license under this section is subject to discipline by the board for committing unprofessional conduct, as defined in section 12-36-117, or any other act prohibited by this article.

(6) The board may refrain from issuing a pro bono license in accordance with section 12-36-116.

(7) The board may adopt rules as necessary to implement this section.

Source: **L. 2010:** Entire section added, (HB 10-1260), ch. 403, p. 1954, § 20, effective July 1.

12-36-114.5. Reentry license. (1) Notwithstanding any other provision of this article, the board may issue a reentry license to a physician, physician assistant, or anesthesiologist assistant who has not actively practiced medicine, practiced as a physician assistant, or practiced as an anesthesiologist assistant, as applicable, for the two-year period immediately preceding the filing of an application for a reentry license, or who has not otherwise maintained continued competency during such period, as determined by the board. The board may charge a fee for a reentry license.

(2) (a) In order to qualify for a reentry license, the physician, physician assistant, or anesthesiologist assistant shall submit to evaluations, assessments, and an educational program as required by the board. The board may work with a private entity that specializes in physician, physician assistant, or anesthesiologist assistant assessment to:

(I) Determine the applicant's competency and areas in which improvement is needed, if any;

(II) Develop an educational program specific to the applicant; and

(III) Upon completion of the educational program, conduct an evaluation to determine the applicant's competency.

(b) (I) If, based on the assessment, the board determines that the applicant requires a period of supervised practice, the board may issue a reentry license, allowing the applicant to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant, as applicable, under supervision as specified by the board.

(II) After satisfactory completion of the period of supervised practice, as determined by the board, the reentry licensee may apply to the board for conversion of the reentry license to a full license to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant, as applicable, under this article.

(c) If, based on the assessment and after completion of an educational program, if prescribed, the board determines that the applicant is competent and qualified to practice medicine without supervision or practice as a physician assistant or as an anesthesiologist assistant with supervision as specified in this article, the board may convert the reentry license to a full license to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant, as applicable, under this article.

(3) A reentry license shall be valid for no more than three years and shall not be renewable.

Source: L. 2010: Entire section added, (HB 10-1260), ch. 403, p. 1955, § 22, effective July 1. L. 2012: (1) and (2) amended, (HB 12-1332), ch. 238, p. 1054, § 6, effective August 8.

12-36-115. License must be recorded. (Repealed)

Source: L. 51: p. 570, § 15. CSA: C. 109, § 33(15). CRS 53: § 91-1-15. C.R.S. 1963: § 91-1-15. L. 79: Entire section repealed, p. 525, § 31, effective July 1.

12-36-116. Refusal of license - issuance subject to probation. (1) The board may refrain from issuing a license or may grant a license subject to terms of probation if the board determines that an applicant for a license:

- (a) Does not possess the qualifications required by this article;
- (b) Has engaged in unprofessional conduct, as defined in section 12-36-117;
- (c) Has been disciplined in another state or foreign jurisdiction with respect to his or her license to practice medicine, license to practice as a physician assistant, or license to practice as an anesthesiologist assistant; or
- (d) Has not actively practiced medicine, practiced as a physician assistant, or practiced as an anesthesiologist assistant for the two-year period immediately preceding the filing of such application or otherwise maintained continued competency during such period, as determined by the board.

(2) For purposes of this section, "discipline" includes any matter that must be reported pursuant to 45 CFR 60.8 and is substantially similar to unprofessional conduct, as defined in section 12-36-117.

(3) An applicant whose application is denied or whose license is granted subject to terms of probation may seek review pursuant to section 24-4-104 (9), C.R.S.; except that, if an applicant accepts a license that is subject to terms of probation, such acceptance shall be in lieu of and not in addition to the remedies set forth in section 24-4-104 (9), C.R.S.

Source: L. 51: p. 571, § 16. CSA: C. 109, § 33(16). CRS 53: § 91-1-16. C.R.S. 1963: § 91-1-16. L. 73: p. 525, § 49. L. 79: Entire section amended, p. 511, § 11, effective July 1. L. 95: Entire section amended, p. 1060, § 11, effective July 1. L. 2001: (1) and (2) amended, p. 178, § 5, effective August 8. L. 2012: (1)(c) and (1)(d) amended, (HB 12-1332), ch. 238, p. 1055, § 7, effective August 8.

ANNOTATION

Failure of the board to make specific findings is not prejudicial to an applicant for a license to practice, where the application was dismissed “on the ground that the board was not satisfied that he possessed the qualifications required by the statute to entitle him to a license”. State Bd. of Med. Exam’rs v. Brown, 70 Colo. 116, 198 P. 274 (1921) (decided under repealed laws antecedent to CSA, C. 109, 1311).

Board has wide discretion in deciding whether to deny a license, and decision shall be upheld if it was related to the applicant’s conduct and abilities, was not an abuse of discretion, and was not manifestly excessive in relation to the needs of the public. Hall v. State Bd. of Med. Exam’rs, 876 P.2d 77 (Colo. App. 1994).

12-36-117. Unprofessional conduct. (1) “Unprofessional conduct” as used in this article means:

(a) Resorting to fraud, misrepresentation, or deception in applying for, securing, renewing, or seeking reinstatement of a license to practice medicine or a license to practice as a physician assistant in this state or any other state, in applying for professional liability coverage, required pursuant to section 13-64-301, C.R.S., or privileges at a hospital, or in taking the examination provided for in this article;

(b) Procuring, or aiding or abetting in procuring, criminal abortion;

(c) to (e) Repealed.

(f) Any conviction of an offense of moral turpitude, a felony, or a crime that would constitute a violation of this article. For purposes of this paragraph (f), “conviction” includes the entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence.

(g) Administering, dispensing, or prescribing any habit-forming drug or any controlled substance as defined in section 18-18-102 (5), C.R.S., other than in the course of legitimate professional practice;

(h) Any conviction of violation of any federal or state law regulating the possession, distribution, or use of any controlled substance, as defined in section 18-18-102 (5), C.R.S., and, in determining if a license should be denied, revoked, or suspended, or if the licensee should be placed on probation, the board shall be governed by section 24-5-101, C.R.S. For purposes of this paragraph (h), “conviction” includes the entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence.

(i) Habitual or excessive use or abuse of alcohol, a habit-forming drug, or a controlled substance as defined in section 18-18-102 (5), C.R.S.;

(j) Repealed.

(k) The aiding or abetting, in the practice of medicine, of any person not licensed to practice medicine as defined under this article or of any person whose license to practice medicine is suspended;

(l) Repealed.

(m) (I) Except as otherwise provided in sections 12-36-134, 25-3-103.7, and 25-3-314, C.R.S., practicing medicine as the partner, agent, or employee of, or in joint venture with, any person who does not hold a license to practice medicine within this state, or practicing medicine as an employee of, or in joint venture with, any partnership or association any of whose partners or associates do not hold a license to practice medicine within this state, or practicing medicine as an employee of or in joint venture with any corporation other than a professional service corporation for the practice of medicine as described in section 12-36-134. Any licensee holding a license to practice medicine in this state may accept employment from any person, partnership, association, or corporation to examine and treat the employees of such person, partnership, association, or corporation.

(II) (A) Nothing in this paragraph (m) shall be construed to permit a professional services corporation for the practice of medicine, as described in section 12-36-134, to practice medicine.

(B) Nothing in this paragraph (m) shall be construed to otherwise create an exception to the corporate practice of medicine doctrine.

(n) Violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this article;

(o) Failing to notify the board, as required by section 12-36-118.5 (1), of a physical or mental illness or condition that impacts the licensee's ability to perform a medical service with reasonable skill and with safety to patients, failing to act within the limitations created by a physical or mental illness or condition that renders the licensee unable to perform a medical service with reasonable skill and with safety to the patient, or failing to comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-36-118.5;

(p) Any act or omission which fails to meet generally accepted standards of medical practice;

(q) Repealed.

(r) Engaging in a sexual act with a patient during the course of patient care or within six months immediately following the termination of the licensee's professional relationship with the patient. "Sexual act", as used in this paragraph (r), means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.

(s) Refusal of an attending physician to comply with the terms of a declaration executed by a patient pursuant to the provisions of article 18 of title 15, C.R.S., and failure of the attending physician to transfer care of said patient to another physician;

(t) (I) Violation of abuse of health insurance pursuant to section 18-13-119, C.R.S.; or

(II) Advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the licensee will perform any act prohibited by section 18-13-119 (3), C.R.S.;

(u) Violation of any valid board order or any rule or regulation promulgated by the board in conformance with law;

(v) Dispensing, injecting, or prescribing an anabolic steroid as defined in section 18-18-102 (3), C.R.S., for the purpose of the hormonal manipulation that is intended to increase muscle mass, strength, or weight without a medical necessity to do so or for the intended purpose of improving performance in any form of exercise, sport, or game;

(w) Dispensing or injecting an anabolic steroid as defined in section 18-18-102 (3), C.R.S., unless such anabolic steroid is dispensed from a pharmacy prescription drug outlet pursuant to a prescription order or is dispensed by any practitioner in the course of his professional practice;

(x) Prescribing, distributing, or giving to a family member or to oneself except on an emergency basis any controlled substance as defined in section 18-18-204, C.R.S., or as contained in schedule II of 21 U.S.C. sec. 812, as amended;

(y) Failing to report to the board, within thirty days after an adverse action, that an adverse action has been taken against the licensee by another licensing agency in another state or country, a peer review body, a health care institution, a professional or medical society or association, a governmental agency, a law enforcement agency, or a court for acts or conduct that would constitute grounds for disciplinary or adverse action as described in this article;

(z) Failing to report to the board, within thirty days, the surrender of a license or other authorization to practice medicine in another state or jurisdiction or the surrender of membership on any medical staff or in any medical or professional association or society while under investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as described in this article;

(aa) Failing to accurately answer the questionnaire accompanying the renewal form as required pursuant to section 12-36-123 (1) (b);

(bb) (I) Engaging in any of the following activities and practices: Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies; the administration, without clinical justification, of treatment which is demonstrably unnecessary; the failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care for the profession; or ordering or performing, without clinical justification, any service, X ray, or treatment which is contrary to recognized standards of the practice of medicine as interpreted by the board.

(II) In determining which activities and practices are not consistent with the standard of care or are contrary to recognized standards of the practice of medicine, the board shall utilize, in addition to its own expertise, the standards developed by recognized and

established accreditation or review organizations that meet requirements established by the board by rule. Such determinations shall include but not be limited to appropriate ordering of laboratory tests and studies, appropriate ordering of diagnostic tests and studies, appropriate treatment of the medical condition under review, appropriate use of consultations or referrals in patient care, and appropriate creation and maintenance of patient records.

(cc) Falsifying or repeatedly making incorrect essential entries or repeatedly failing to make essential entries on patient records;

(dd) Committing a fraudulent insurance act, as defined in section 10-1-128, C.R.S.;

(ee) Failing to establish and continuously maintain financial responsibility, as required in section 13-64-301, C.R.S.;

(ff) Repealed.

(gg) Failing to respond in an honest, materially responsive, and timely manner to a complaint issued pursuant to section 12-36-118 (4);

(hh) Advertising in a manner that is misleading, deceptive, or false;

(ii) Repealed.

(jj) Any act or omission in the practice of telemedicine that fails to meet generally accepted standards of medical practice;

(kk) Entering into or continuing in a mentorship relationship with an advanced practice nurse pursuant to sections 12-36-106.4 and 12-38-111.6 (4.5) that fails to meet generally acceptable standards of medical practice;

(ll) Verifying by signature the articulated plan developed by an advanced practice nurse pursuant to sections 12-36-106.4 and 12-38-111.6 (4.5) if the articulated plan fails to comply with the requirements of section 12-38-111.6 (4.5) (b) (II);

(mm) Failure to comply with the requirements of section 14 of article XVIII of the state constitution, section 25-1.5-106, C.R.S., or the rules promulgated by the state health agency pursuant to section 25-1.5-106 (3), C.R.S.

(1.5) (a) A licensee shall not be subject to disciplinary action by the board solely for prescribing controlled substances for the relief of intractable pain.

(b) For the purposes of this subsection (1.5), “intractable pain” means a pain state in which the cause of the pain cannot be removed and which in the generally accepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts including, but not limited to, evaluation by the attending physician and one or more physicians specializing in the treatment of the area, system, or organ of the body perceived as the source of the pain.

(2) The discipline of a license to practice medicine, of a license to practice as a physician assistant, or of a license to practice as an anesthesiologist assistant in another state, territory, or country shall be deemed to be unprofessional conduct. For purposes of this subsection (2), “discipline” includes any sanction required to be reported pursuant to 45 CFR 60.8. This subsection (2) applies only to discipline that is based upon an act or omission in such other state, territory, or country that is defined substantially the same as unprofessional conduct pursuant to subsection (1) of this section.

(3) (a) For purposes of this section, “alternative medicine” means those health care methods of diagnosis, treatment, or healing that are not generally used but that provide a reasonable potential for therapeutic gain in a patient’s medical condition that is not outweighed by the risk of such methods. A licensee who practices alternative medicine shall inform each patient in writing, during the initial patient contact, of such licensee’s education, experience, and credentials related to the alternative medicine practiced by such licensee. The board shall not take disciplinary action against a licensee solely on the grounds that such licensee practices alternative medicine.

(b) Nothing in paragraph (a) of this subsection (3) prevents disciplinary action against a licensee for practicing medicine, practicing as a physician assistant, or practicing as an anesthesiologist assistant in violation of this article.

Source: L. 51: p. 571, § 17. CSA: C. 109, § 33(17). CRS 53: § 91-1-17. C.R.S. 1963: § 91-1-17. L. 67: p. 813, §§ 3, 4. L. 69: p. 825, § 1. L. 73: p. 525, § 50. L. 75: (1)(p) added, p. 461, § 1, effective June 29. L. 79: (1)(c) to (1)(e), (1)(j), and (1)(l)

repealed, (1)(n) to (1)(p) amended, and (1)(q) and (2) added, pp. 511, 512, 525, §§ 12, 13, 31, effective July 1. **L. 81:** (1)(g) to (1)(i) amended, p. 735, § 11, effective July 1. **L. 85:** (1)(s) added, p. 613, § 2, effective May 9; (1)(f) and (1)(g) amended and (1)(r) added, p. 520, § 8, effective July 1; (1)(t) added, p. 682, § 7, effective July 1. **L. 87:** (1)(p) amended and (1)(u) added, pp. 501, 511, §§ 1, 3, effective March 13; (1)(v) and (1)(w) added, p. 501, § 3, effective May 20. **L. 88:** (1)(a) amended and (1)(x) and (1)(y) to (1)(aa) added, p. 522, § 3, effective July 1. **L. 89:** (1)(x) amended, p. 677, § 1, effective July 1; (1)(bb) to (1)(dd) added, p. 672, § 13, effective July 1. **L. 91:** (1)(ff) added, p. 1616, § 8, effective January 1; (1)(q) repealed, p. 884, § 3, effective July 1; (1)(ee) added, p. 1337, § 52, effective July 1. **L. 92:** (1)(v), (1)(w), and (1)(x) amended, p. 390, § 14, effective July 1. **L. 93:** (1)(m) amended, p. 723, § 5, effective May 6. **L. 94:** (1)(m) amended, p. 670, § 2, effective April 19. **L. 95:** (1)(a), (1)(f), (1)(h), (1)(p), (1)(r), (1)(aa), (1)(ee), and (2) amended and (1)(gg) and (1)(hh) added, p. 1061, § 12, effective July 1; (1)(ii) added, p. 1088, § 13, effective July 1. **L. 97:** (1.5) added, p. 396, § 1, effective August 6; (3) added, p. 325, § 1, effective August 6. **L. 2000:** (1)(gg) amended, p. 175, § 2, effective July 1. **L. 2001:** (1)(a), (1)(r), (1.5)(a), (2), and (3) amended, p. 179, § 6, effective August 8; (1)(jj) added, p. 1162, § 8, effective January 1, 2002. **L. 2003:** (1)(m) amended, p. 1600, § 3, effective July 1; (1)(dd) amended, p. 621, § 30, effective July 1. **L. 2004:** (1)(g) and (1)(i) amended, p. 1194, § 35, effective August 4. **L. 2009:** (1)(ii) amended and (1)(kk) and (1)(ll) added, (SB 09-239), ch. 401, p. 2182, § 26, effective July 1. **L. 2010:** (1)(ff) repealed, (HB 10-1128), ch. 172, p. 614, § 11, effective April 29; (1)(mm) added, (SB 10-109), ch. 356, p. 1696, § 3, effective June 7; (1)(i), (1)(o), (1)(y), (1)(z), and (1)(bb)(II) amended, (HB 10-1260), ch. 403, pp. 1962, 1961, §§ 31, 29, effective July 1; (1)(m)(I) amended, (HB 10-1244), ch. 221, p. 963, § 1, effective August 11. **L. 2012:** (1)(g), (1)(h), and (1)(i) amended, (HB 12-1311), ch. 281, p. 1611, § 16, effective July 1; (2) and (3)(b) amended, (HB 12-1332), ch. 238, p. 1055, § 8, effective August 8.

Editor's note: Subsection (1)(ii)(II) provided for the repeal of subsection (1)(ii), effective July 1, 2010. (See L. 2009, p. 2182.)

Cross references: (1) For the legislative declaration contained in the 1989 act enacting subsection (1)(bb) to (1)(dd), see section 1 of chapter 111, Session Laws of Colorado 1989. For the legislative declaration contained in the 2000 act amending subsection (1)(gg), see section 1 of chapter 56, Session Laws of Colorado 2000. For the legislative declaration contained in the 2001 act enacting subsection (1)(jj), see section 1 of chapter 300, Session Laws of Colorado 2001. For the legislative declaration contained in the 2003 act amending subsection (1)(m), see section 1 of chapter 240, Session Laws of Colorado 2003.

(2) For an exception to the provisions of subsection (1)(m), see § 6-18-303.

ANNOTATION

Law reviews. For article, "The Effect of Criminal Guilty Pleas in Administrative Hearings", see 22 Colo. 1889 (1993). For article, "Changes in the Medical Practice Act", see 24 Colo. Law. 2155 (1995). For article, "Fact and Folklore of Reporting Physician Misconduct to the Medical Board", see 25 Colo. Law. 33 (May 1996).

This section sets forth standards for conduct to which procedures of § 12-36-118 apply. Colo. State Bd. of Med. Exam'rs v. Jorgensen, 198 Colo. 275, 599 P.2d 869 (1979).

Quality of medical practice must be determined by standard of care of those in same field since, as a general rule, practitioners of one medical specialty are not competent to testify to standards of care of another specialty. Horwitz

v. Colo. State Bd. of Med. Exam'rs, 716 P.2d 131 (Colo. App. 1985), cert. denied, 479 U.S. 803, 107 S. Ct. 44, 93 L. Ed.2d 7 (1986).

The words in subsection (1)(p) point to a continued course of conduct rather than to two or more administrations of medication within the course of treatment of specific medical problem. People ex rel. McFarlane v. Pfeiffer, 725 P.2d 19 (Colo. App. 1986).

Subsection (1)(p) encompasses all acts of substandard practice, so to establish a violation of subsection (1)(g) it is necessary to prove actions different from or beyond those which are required to establish substandard medical practice. State Bd. of Med. Exam'rs v. Slonim, 844 P.2d 1207 (Colo. App. 1992).

The term "practice of medicine", as de-

fined in § 12-36-106 (1)(b), encompasses a continued process of treatment and healing, not just isolated moments or acts within a course of treatment. *People ex rel. McFarlane v. Pfeiffer*, 725 P.2d 19 (Colo. App. 1986).

Record-keeping is part of the practice of medicine under subsection (1)(p). *State Bd. of Med. Exam'rs v. McCroskey*, 940 P.2d 1044 (Colo. App. 1996).

A single act of medical practice may subsume within itself a diagnosis, a determination of treatment, as well as the treatment itself. *People ex rel. McFarlane v. Pfeiffer*, 725 P.2d 19 (Colo. App. 1986).

Treatment of single patient where the applicant made 14 to 16 attempts to draw blood over several hours in the morning and afternoon involved two or more acts of substandard care under subsection (1)(p). *Hall v. State Bd. of Med. Exam'rs*, 876 P.2d 77 (Colo. App. 1994).

Renewing a prescription was part of a single act of medical practice and did not constitute "two or more acts or omissions" under subsection (1)(p). *State Bd. of Med. Exam'rs v. Slonim*, 844 P.2d 1207 (Colo. App. 1992).

Prior felony not sufficient to warrant loss of license. A prior felony conviction, standing by itself, is not sufficient to warrant the denial or revocation of a license. *Colo. State Bd. of Med. Exam'rs v. Jorgensen*, 198 Colo. 275, 599 P.2d 869 (1979).

Evidence of circumstances which led to prior felony conviction may be considered by board of medical examiners in deciding to revoke a medical license. *Colo. State Bd. of Med. Exam'rs v. Jorgensen*, 198 Colo. 275, 599 P.2d 869 (1979).

Sanctions of doctor under this section not warranted. Where the practice complained of is a continuum, subsumed within the initial failure to evaluate adequately the patient's condition, it becomes a single act of medical practice. *People ex rel. McFarlane v. Pfeiffer*, 725 P.2d 19 (Colo. App. 1986).

The term "habitual intemperance" under subsection (1)(i) refers to repeated, uncontrolled, excessive drinking and is not an unconstitutionally vague term but is sufficiently specific so that persons licensed to practice medicine can distinguish between permissible and impermissible conduct. *Colo. State Bd. of Med. Exam'rs v. Hoffner*, 832 P.2d 1062 (Colo. App. 1992).

Subsection (1)(i) gives fair notice that habitual intemperance is unprofessional conduct and

there was no denial of due process in the application of this statutory standard to the evidence adduced at the hearing where respondent's conduct fell within the prohibition since record indicated the respondent was habitually drinking to excess from the fall of 1987 to January 29, 1990. *Colo. State Bd. of Med. Exam'rs v. Hoffner*, 832 P.2d 1062 (Colo. App. 1992).

Although evidence that physician's practice was not affected or that no patient had been harmed is relevant for the Board to consider in imposing appropriate discipline, the lack of such evidence is not determinative of the question of whether a physician is "habitually intemperate" under subsection (1)(i). *Colo. State Bd. of Med. Exam'rs v. Hoffner*, 832 P.2d 1062 (Colo. App. 1992).

The absence of any evidence that physician was using drugs illegally at the time of the hearing is not relevant to a finding that he violated subsection (1)(i). *Colo. State Bd. of Med. Exam'rs v. Davis*, 893 P.2d 1365 (Colo. App. 1995).

Evidence of two separate overdoses supports conclusion that applicant engaged in excessive use of a controlled substance under subsection (1)(i). *Hall v. State Bd. of Med. Exam'rs*, 876 P.2d 77 (Colo. App. 1994).

Under subsection (1)(o), unprofessional conduct includes a past mental disability that rendered the applicant at the time unable to perform medical services, and the board may consider the nature, extent, and time of the disability as well as any other relevant considerations and may tailor a sanction appropriate to the applicant's current qualifications to practice medicine. *Hall v. State Bd. of Med. Exam'rs*, 876 P.2d 77 (Colo. App. 1994).

Physician's conviction for wanton assault in the first degree in Kentucky was a conviction of a felony for purposes of subsection (1)(f) where the conviction was punishable by imprisonment for ten years in the Kentucky penitentiary. *Colo. Bd. of Med. Exam'rs v. Boyle*, 924 P.2d 1113 (Colo. App. 1996).

Neither paragraph (bb) or (cc) of subsection (1) requires proof of fraudulent intent. *Colo. State Bd. of Med. Exam'rs v. Khan*, 984 P.2d 670 (Colo. App. 1999).

It would be inconsistent with the declared purpose of the Colorado Medical Practice Act to consider "intent to mislead or deceive" to be a necessary element of false, deceptive, or misleading advertising under subsection (1)(hh). *State Bd. of Med. Exam'rs v. Thompson*, 944 P.2d 547 (Colo. App. 1996).

12-36-117.5. Prescriptions - requirement to advise patients. (1) A physician licensed under this article, or a physician assistant licensed by the board who has been delegated the authority to prescribe medication, may advise the physician's or the physician assistant's patients of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.

(2) A physician's or a physician assistant's failure to advise a patient under subsection

(1) of this section shall not be grounds for any disciplinary action against the physician's or the physician assistant's professional license issued under this article. Failure to advise a patient pursuant to subsection (1) of this section shall not be grounds for any civil action against a physician or physician's assistant in a negligence or tort action, nor shall such failure be evidence in any civil action against a physician or a physician's assistant.

Source: L. 2003: Entire section added, p. 765, § 6, effective March 25.

12-36-118. Disciplinary action by board - immunity - rules. (1) (a) The president of the board shall divide those members of the board other than the president into two panels of six members each, four of whom shall be physician members.

(b) Each panel shall act as both an inquiry and a hearings panel. Members of the board may be assigned from one panel to the other by the president. The president may be a member of both panels, but in no event shall the president or any other member who has considered a complaint as a member of a panel acting as an inquiry panel take any part in the consideration of a formal complaint involving the same matter.

(c) All matters referred to one panel for investigation shall be heard, if referred for formal hearing, by the other panel or a committee of such panel. However, in its discretion, either inquiry panel may elect to refer a case for formal hearing to a qualified administrative law judge in lieu of a hearings panel of the board, for an initial decision pursuant to section 24-4-105, C.R.S.

(d) The initial decision of an administrative law judge may be reviewed pursuant to section 24-4-105 (14) and (15), C.R.S., by the filing of exceptions to the initial decision with the hearings panel which would have heard the case if it had not been referred to an administrative law judge or by review upon the motion of such hearings panel. The respondent or the board's counsel shall file such exceptions.

(2) Investigations shall be under the supervision of the panel to which they are assigned. The persons making such investigation shall report the results thereof to the assigning panel for appropriate action.

(3) (a) In the discharge of its duties, the board may enlist the assistance of other licensees. Licensees have the duty to report to the board any licensee known, or upon information and belief, to have violated any of the provisions of section 12-36-117 (1); except that no licensee who is treating another licensee for a mental disability or habitual intemperance or excessive use of any habit-forming drug shall have a duty to report his or her patient unless, in the opinion of the treating licensee, the impaired licensee presents a danger to himself, herself, or others.

(b) Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this part 1, and any person who lodges a complaint pursuant to this part 1 shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this section shall be immune from any liability, civil or criminal, that otherwise might result by reason of such participation.

(4) (a) (I) Written complaints relating to the conduct of a licensee licensed or authorized to practice medicine in this state may be made by any person or may be initiated by an inquiry panel of the board on its own motion. The licensee complained of shall be given notice by first-class mail of the nature of the complaint and shall be given thirty days to answer or explain in writing the matters described in such complaint. Upon receipt of the licensee's answer or at the conclusion of thirty days, whichever occurs first, the inquiry panel may take further action as set forth in subparagraph (II) of this paragraph (a).

(II) The inquiry panel may then conduct a further investigation, which may be made by one or more members of the inquiry panel, one or more licensees who are not members of

the board, a member of the staff of the board, a professional investigator, or any other person or organization as the inquiry panel directs. Any such investigation shall be entirely informal.

(b) The board shall cause an investigation to be made when the board is informed of:

(I) Disciplinary actions taken by hospitals to suspend or revoke the privileges of a physician and reported to the board pursuant to section 25-3-107, C.R.S.;

(II) Disciplinary actions taken as a result of a professional review proceeding pursuant to part 1 of article 36.5 of this title against a physician. Such disciplinary actions shall be promptly reported to the board.

(III) An instance of a medical malpractice settlement or judgment against a licensee reported to the board pursuant to section 10-1-120, C.R.S.; or

(IV) Licensees who have been allowed to resign from hospitals for medical misconduct. Such hospitals shall report the same.

(c) On completion of an investigation, the inquiry panel shall make a finding that:

(I) The complaint is without merit and no further action need be taken with reference thereto;

(II) There is no reasonable cause to warrant further action with reference thereto;

(II.5) The investigation discloses an instance of conduct that does not warrant formal action by the board and should be dismissed but in which the inquiry panel has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected. In such a case, a confidential letter of concern shall be sent to the licensee against whom the complaint was made.

(III) (A) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(B) When a letter of admonition is sent by the board, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(C) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(IV) (A) The investigation discloses facts that warrant further proceedings by formal complaint, as provided in subsection (5) of this section, in which event the complaint shall be referred to the attorney general for preparation and filing of a formal complaint.

(B) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(d) All proceedings pursuant to this subsection (4) shall be expeditiously and informally conducted so that no licensee is subjected to unfair and unjust charges and that no complainant is deprived of his or her right to a timely, fair, and proper investigation of his or her complaint.

(e) Repealed.

(5) (a) to (d) (Deleted by amendment, L. 95, p. 1062, § 13, effective July 1, 1995.)

(e) All formal complaints shall be heard and determined in accordance with paragraph (f) of this subsection (5) and section 24-4-105, C.R.S. Except as provided in subsection (1) of this section, all formal hearings shall be conducted by the hearings panel. The licensee may be present in person and by counsel, if so desired, to offer evidence and be heard in his or her own defense. At formal hearings, the witnesses shall be sworn and a complete record shall be made of all proceedings and testimony.

(f) Except as provided in subsection (1) of this section, an administrative law judge shall preside at the hearing and shall advise the hearings panel, as requested, on legal matters in connection with the hearing. The administrative law judge shall provide advice or assistance as requested by the hearings panel in connection with its preparations of its findings and recommendations or conclusions to be made. The administrative law judge

may administer oaths and affirmations, sign and issue subpoenas, and perform other duties as authorized by the hearings panel.

(g) (I) To warrant a finding of unprofessional conduct, the charges shall be established as specified in section 24-4-105 (7), C.R.S. Except as provided in subsection (1) of this section, the hearings panel shall make a report of its findings and conclusions which, when approved and signed by a majority of those members of the hearings panel who have conducted the hearing pursuant to paragraphs (e) and (f) of this subsection (5), shall be and become the action of the board.

(II) If it is found that the charges are unproven, the hearings panel, or an administrative law judge sitting in lieu of the hearings panel pursuant to subsection (1) of this section, shall enter an order dismissing the complaint.

(III) If the hearings panel finds the charges proven and orders that discipline be imposed, it shall also determine the extent of such discipline, which must be in the form of a letter of admonition, suspension for a definite or indefinite period, or revocation of license to practice. The hearings panel also may impose a fine of up to five thousand dollars per violation. In determining appropriate disciplinary action, the hearings panel shall first consider sanctions that are necessary to protect the public. Only after the panel has considered such sanctions may it consider and order requirements designed to rehabilitate the licensee or applicant. If discipline other than revocation of a license to practice is imposed, the hearings panel may also order that the licensee be granted probation and allowed to continue to practice during the period of such probation. The hearings panel may also include in any disciplinary order that allows the licensee to continue to practice such conditions as the panel may deem appropriate to assure that the licensee is physically, mentally, morally, and otherwise qualified to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant in accordance with generally accepted professional standards of practice, including any or all of the following:

(A) Submission by the respondent to such examinations as the hearings panel may order to determine his physical or mental condition or his professional qualifications;

(B) The taking by him of such therapy or courses of training or education as may be needed to correct deficiencies found either in the hearing or by such examinations;

(C) The review or supervision of his practice as may be necessary to determine the quality of his practice and to correct deficiencies therein; and

(D) The imposition of restrictions upon the nature of his practice to assure that he does not practice beyond the limits of his capabilities.

(III.5) Any moneys collected pursuant to subparagraph (III) of this paragraph (g) shall be transmitted to the state treasurer, who shall credit the same to the general fund.

(IV) Upon the failure of the licensee to comply with any conditions imposed by the hearings panel pursuant to subparagraph (III) of this paragraph (g), unless due to conditions beyond the licensee's control, the hearings panel may order suspension of the licensee's license to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant in this state until such time as the licensee complies with such conditions.

(V) In making any of the orders provided in subparagraphs (III) and (IV) of this paragraph (g), the hearings panel may take into consideration the licensee's prior disciplinary record. If the hearings panel does take into consideration any prior discipline of the licensee, its findings and recommendations shall so indicate.

(VI) In all cases of revocation, suspension, or probation, the board shall enter in its records the facts of such revocation, suspension, or probation and of any subsequent action of the board with respect thereto.

(VII) to (IX) (Deleted by amendment, L. 79, p. 512, § 14, effective July 1, 1979.)

(X) In all cases involving alleged violations of section 12-36-117 (1) (mm), the board shall promptly notify the executive director of the department of public health and environment of its findings, including whether it found that the physician violated section 12-36-117 (1) (mm) and any restrictions it placed on the physician with respect to recommending the use of medical marijuana.

(h) The attorney general shall prosecute those charges which have been referred to him by the inquiry panel pursuant to subparagraph (IV) of paragraph (c) of subsection (4) of this section. The board may direct the attorney general to perfect an appeal.

(i) Any person whose license to practice medicine, to practice as a physician assistant, or to practice as an anesthesiologist assistant is revoked or who surrenders his or her license to avoid discipline is not eligible to apply for any license for two years after the date the license is revoked or surrendered. The two-year waiting period applies to any person whose license to practice medicine, to practice as a physician assistant, to practice as an anesthesiologist assistant, or to practice any other health care occupation is revoked by any other legally qualified board or regulatory entity.

(6) A majority of the members of the board, three members of the inquiry panel, or three members of the hearings panel shall constitute a quorum. The action of a majority of those present comprising such quorum shall be the action of the board, the inquiry panel, or the hearings panel.

(7) (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1951, § 17, effective July 1, 2010.)

(8) If any licensee is determined to be mentally incompetent or insane by a court of competent jurisdiction and a court enters, pursuant to part 3 or part 4 of article 14 of title 15 or section 27-65-109 (4) or 27-65-127, C.R.S., an order specifically finding that the mental incompetency or insanity is of such a degree that the licensee is incapable of continuing to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant, the board shall automatically suspend his or her license, and, anything in this article to the contrary notwithstanding, such suspension must continue until the licensee is found by such court to be competent to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant.

(9) (a) If the board has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety to patients because of a condition described in section 12-36-117 (1) (i) or (1) (o), it may require such licensee to submit to mental or physical examinations by physicians designated by the board. If a licensee fails to submit to such mental or physical examinations, the board may suspend the license until the required examinations are conducted.

(b) Every licensee shall be deemed, by so practicing or by applying for annual registration of such person's license, to have consented to submit to mental or physical examinations when directed in writing by the board. Further, such person shall be deemed to have waived all objections to the admissibility of the examining physician's testimony or examination reports on the ground of privileged communication. Subject to applicable federal law, such licensee shall be deemed to have waived all objections to the production of medical records to the board from health care providers that may be necessary for the evaluations described in paragraph (a) of this subsection (9).

(c) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than before the board.

(10) (a) Investigations, examinations, hearings, meetings, or any other proceedings of the board conducted pursuant to this section shall be exempt from any law requiring that proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to this section be open to public inspection. This subsection (10) shall not apply to investigations, examinations, hearings, meetings, or any other proceedings or records of the licensing panel created pursuant to section 12-36-111.3 related to the unlicensed practice of medicine.

(b) For purposes of the records related to a complaint filed pursuant to this section against a licensee, the board is considered a professional review committee, the records related to the complaint include all records described in section 12-36.5-102 (7), and section 12-36.5-104 (11) applies to those records.

(11) A licensee who, at the request of the board, examines another licensee shall be immune from suit for damages by the person examined if the examining person conducted the examination and made his or her findings or diagnosis in good faith.

(12) (Deleted by amendment, L. 95, p. 1062, § 13, effective July 1, 1995.)

(13) Within thirty days after the board takes final action, which is of public record, to revoke or suspend a license or to place a licensee on probation based on competence or professional conduct, the board shall send notice of the final action to any hospital in which the licensee has clinical privileges, as indicated by the licensee.

(14) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person or in its own motion, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public, the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (14), the respondent may request a hearing on the question of whether acts or practices in violation of this part 1 have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(15) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 1, then, in addition to any specific powers granted pursuant to this part 1, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (15) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (15) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (15). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (15) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (15) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this part 1, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (15), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom such order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(16) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this part 1, any rule promulgated pursuant to this part 1, any order issued pursuant to this part 1, or any act or practice constituting grounds for administrative sanction pursuant to this part 1, the board may enter into a stipulation with such person.

(17) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit

for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(18) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-36-119.

(19) If a physician has a restriction placed on his or her license, the restriction shall, if practicable, state whether the restriction prohibits the physician from making a medical marijuana recommendation.

Source: L. 51: p. 572 § 18. CSA: C. 109, § 33(18). CRS 53: § 91-1-18. C.R.S. 1963: § 91-1-18. L. 73: pp. 526, 1026, §§ 51, 4. L. 75: (1) and (2) R&RE, p. 461, § 2, effective June 29; (7) amended, p. 923, § 12, effective July 14. L. 76: (1) amended and (10) and (11) added, p. 419, § 4, effective July 1; (6) repealed, p. 416, § 13, effective July 1. L. 77: Entire section R&RE, p. 677, § 2, effective July 1. L. 79: (4)(a) and (5)(b) amended, p. 437, § 15, effective July 1; entire section amended, p. 512, § 14, effective July 1. L. 82: (1), (4)(a), (5)(a) to (5)(f), (5)(g)(I), (5)(g)(II), and (5)(h) amended, p. 259, § 1, effective March 2. L. 83: (3) and (9)(a) amended, p. 531, § 3, effective April 29. L. 85: (1), (3), (4)(c)(III), (5)(a), (5)(g)(I), and (7) amended, p. 520, § 9, effective July 1; (3), (4)(a), (4)(b)(I), (4)(b)(II), (4)(b)(III), (4)(b)(IV), (4)(c)(III), (4)(d), (5)(a), (5)(b), (5)(c), (5)(d), (5)(e), IP(5)(g)(III), (5)(g)(IV), (5)(g)(V), (8), (9)(a), (9)(b), (11), and (12)(a) amended, p. 500, § 14, effective July 1. L. 87: (1), (5)(f), and (5)(g)(II) amended, p. 947, § 37, effective March 13. L. 88: (3) and (4)(d) amended and (4)(c)(II.5), (4)(e), and (13) added, pp. 522-524, §§ 4-7, effective July 1. L. 89: (4)(b)(II) amended, p. 689, § 3, effective July 1. L. 91: (8) amended, p. 1782, § 7, effective July 1. L. 95: (1), (4)(a), (4)(b)(II), (4)(c)(II.5), (5)(a) to (5)(e), (5)(g)(II), IP(5)(g)(III), (9)(a), (9)(b), and (12) amended p. 1062, § 13, effective July 1. L. 97: (4)(e) repealed, p. 1479, § 28, effective June 3. L. 2001: (1)(a) amended, p. 1269, § 13, effective June 5; (3), (4)(a), (4)(b)(III), (4)(b)(IV), (4)(c)(II.5), (4)(c)(III), (4)(d), (5)(e), IP(5)(g)(III), (5)(g)(IV), (5)(g)(V), (8), (9)(a), (9)(b), (11), and (13) amended, p. 179, § 7, effective August 8. L. 2003: (4)(b)(III) amended, p. 621, § 31, effective July 1; IP(5)(g)(III) amended and (5)(g)(III.5) added, p. 828, § 1, effective August 6. L. 2004: (3), (4)(c)(III), and (4)(c)(IV) amended, p. 1828, § 69, effective August 4; (13) amended, p. 953, § 1, effective August 4. L. 2006: (4)(a)(I) amended and (14) to (18) added, p. 795, § 28, effective July 1. L. 2010: (8) amended, (SB 10-175), ch. 188, p. 778, § 9, effective April 29; (5)(g)(X) added, (SB 10-109), ch. 356, p. 1696, § 4, effective June 7; (5)(f), IP(5)(g)(III), (7), (10), (13), and (14)(a) amended and (5)(i) added, (HB 10-1260), ch. 403, pp. 1951, 1962, 1960, §§ 17, 32, 28, effective July 1. L. 2011: (19) added, (HB 11-1043), ch. 266, p. 1214, § 25, effective July 1. L. 2012: (10)(b) amended, (HB 12-1300), ch. 245, p. 1181, § 13, effective July 1; IP(5)(g)(III), (5)(g)(IV), (5)(i), (8) amended, (HB 12-1332), ch. 238, p. 1055, § 9, effective August 8.

Editor's note: Amendments to this section and subsections (4)(a) and (5)(b) by Senate Bill 79-293 and Senate Bill 79-296 were harmonized.

Cross references: For an alternative disciplinary action for persons licensed pursuant to this article, see § 24-34-106.

ANNOTATION

- I. General Consideration.
- II. Jurisdiction of State Board of Medical Examiners.
- III. Full and Fair Opportunity to be Heard.
- IV. Revocation of License.
 - A. In General.
 - B. Grounds for Revocation.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Law and Strategy in Licensing Disciplinary Proceedings", see 18

Colo. Law. 647 (1988). For article, "Changes in the Medical Practice Act", see 24 Colo. Law. 2155 (1995).

Annotator's note. Since § 12-36-118 is similar to repealed CSA, C. 109, § 13, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The attorney general has avoided violating due process and avoided the appearance of impropriety by establishing an internal system that allows the office to act as both an advocate

and an advisor to the decision-making body in the same administrative case. *People Ex Rel. Woodard v. Brown*, 770 P.2d 1373 (Colo. App. 1989), cert. denied, 783 P.2d 1223 (Colo. 1989).

Immunity of members. Members who performed statutory functions, both adjudicatory and prosecutorial in nature, are entitled to the common law absolute immunity from damages liability under 42 U.S.C. § 1983 which has historically been afforded judges, prosecutors, and other officials involved in the judicial process. *Horwitz v. Bd. of Med. Exam'rs*, 822 F.2d 1508 (10th Cir. 1987), cert. denied, 484 U.S. 964, 108 S. Ct. 453, 98 L. Ed.2d 394 (1987).

When read in conjunction with § 12-36-104 (1)(b), this section authorizes the attorney general to issue subpoenas and make investigations before and after filing of the formal complaint. *Norton v. Colo. Bd. of Med. Exam'rs*, 821 P.2d 897 (Colo. App. 1991).

State board of medical examiners is not required to demonstrate that subpoena duces tecum is justified by more than speculation or conjecture; rather, board is required only to demonstrate that the subpoena was issued for a lawful purpose under the procedures established under this article. *Bd. of Med. Exam'rs v. Duhon*, 867 P.2d 20 (Colo. App. 1993), aff'd, 895 P.2d 143 (Colo. 1995).

State board of medical examiners is authorized to exercise the subpoena powers specified in § 12-36-104 in connection with any investigation described in subsection (4) of this section. *Bd. of Med. Exam'rs v. Duhon*, 867 P.2d 20 (Colo. App. 1993), aff'd, 895 P.2d 143 (Colo. 1995).

Probable cause to believe a statutory violation has occurred is not required before issuing an investigative subpoena under this section. Rather, justification for issuance is grounded upon a showing that: (1) the investigation is for a lawfully authorized purpose; (2) the information sought is relevant to the issues being investigated; and (3) the subpoena is sufficiently specific to obtain documents that are adequate but not excessive for the inquiry. *Bd. of Med. Exam'rs v. Duhon*, 867 P.2d 20 (Colo. App. 1993), aff'd, 895 P.2d 143 (Colo. 1995).

Subpoena duces tecum issued under this section that required doctor to produce complete office records for all cases in which device was used could not be enforced where board could not produce copy of written complaint and clear exposition of act or omission which, if found to have occurred, would constitute unprofessional conduct. *Bd. of Med. Exam'rs v. Duhon*, 867 P.2d 20 (Colo. App. 1993), aff'd, 895 P.2d 143 (Colo. 1995).

1995 amendment to this section allows investigation of a physician by the inquiry panel prior to the initiation of the informal complaint procedure, and there is nothing in this section that would indicate that the permissible scope of

the pre-response investigation excludes the issuance of subpoenas. *Colo. State Bd. of Med. Exam'rs v. Khan*, 984 P.2d 670 (Colo. App. 1999).

Subsection (4)(a) does not prevent the attorney general from investigating complaints which are referred to the attorney general's office for preparation and filing of a formal complaint. *Norton v. Colo. Bd. of Med. Exam'rs*, 821 P.2d 897 (Colo. App. 1991).

Complaint contemplated by subsection (4) need not be factually specific and may be general in nature as long as it gives notice of all matters complained of; however, if the nature of the complaint will determine the jurisdiction of the board to act, the board must clearly demonstrate the nature of the complaint. *Bd. of Med. Exam'rs v. Duhon*, 867 P.2d 20 (Colo. App. 1993), aff'd, 895 P.2d 143 (Colo. 1995).

Statute does not require that there be an actual harmful effect on a medical practice before the board can take action against a physician. Rather, adverse manifest behavior affecting the practice, if any, is relevant to the degree of severity of the sanction imposed for the unprofessional conduct of habitual intemperance. *Colo. State Bd. of Med. Exam'rs v. Hoffner*, 832 P.2d 1062 (Colo. App. 1992); *Colo. Bd. of Med. Exam'rs v. Boyle*, 924 P.2d 1113 (Colo. App. 1996).

Although evidence that physician's practice was not affected or that no patient had been harmed is relevant for the board to consider in imposing appropriate discipline, the lack of such evidence is not determinative of the question of whether a physician is "habitually intemperate" under § 12-36-117 (1)(i). *Colo. State Bd. of Med. Exam'rs v. Hoffner*, 832 P.2d 1062 (Colo. App. 1992).

The board is allowed great discretion in its determination of the appropriate sanction for unprofessional conduct, and its determination should be upheld on review unless it bears no relation to the conduct, is a gross abuse of discretion, or is manifestly excessive in relation to the needs of the public. *Colo. State Bd. of Med. Exam'rs v. Hoffner*, 832 P.2d 1062 (Colo. App. 1992).

Subsection (10) does not create a privilege against discovery of the state board of medical examiners investigatory files in a civil lawsuit; however, the discovery process provided in discovery rules and case law must be followed by the trial court in considering privacy assertions. *DeSantis v. Simon*, 209 P.3d 1069 (Colo. 2009).

II. JURISDICTION OF STATE BOARD OF MEDICAL EXAMINERS.

Section is not an unconstitutional delegation of legislative authority to board of medical examiners to define "misconduct" because

"unprofessional conduct", defined in section 12-36-117, is the same as "misconduct", used in this section. Colo. State Bd. of Med. Exam'rs v. Jorgensen, 198 Colo. 275, 599 P.2d 869 (1979) (decided prior to 1985 amendment to subsection (5)(g)(I)).

Board need not adopt rules and regulations defining "misconduct" because the definition of "unprofessional conduct" given in § 12-36-117 gives advance notice of the application of "misconduct". Colo. State Bd. of Med. Exam'rs v. Jorgensen, 198 Colo. 275, 599 P.2d 869 (1979) (decided prior to 1985 amendment to subsection (5)(g)(I)).

The general assembly has power to enact laws regulating the practice of medicine, and in so doing may create within the executive department a board empowered to administer and enforce such laws. Colo. State Bd. of Med. Exam'rs v. District Court, 138 Colo. 227, 331 P.2d 502 (1958).

The sole original jurisdiction to grant or revoke licenses to practice medicine in compliance with the regulatory provisions of this statute is vested in the state board of medical examiners. Colo. State Bd. of Med. Exam'rs v. District Court, 138 Colo. 227, 331 P.2d 502 (1958).

The board's authority comes solely from the statute itself and it cannot create new grounds for the revocation of a license. Colo. State Bd. of Med. Exam'rs v. Weiler, 157 Colo. 244, 402 P.2d 606 (1965).

In addition to this section, the medical board claims that it has legislative powers, delegated to it by the general assembly, but the general assembly cannot delegate its powers, and there is no place in this article where it has been even attempted. Sapero v. State Bd. of Med. Exam'rs, 90 Colo. 568, 11 P.2d 555 (1932).

The general assembly may not delegate the power to make a law, but it may delegate power to determine some fact or a state of things upon which the law, as prescribed, depends. Sapero v. State Bd. of Med. Exam'rs, 90 Colo. 568, 11 P.2d 555 (1932).

The completeness of this section is one of the strongest proofs that no delegation of power was intended. Sapero v. State Bd. of Med. Exam'rs, 90 Colo. 568, 11 P.2d 555 (1932).

Board may review decision and adopt findings different from those of hearing officer where attorney general filed exceptions to decision, complaint charges were not unproven or unfounded, and board expressly concluded that findings were contrary to weight of evidence. Bd. of Med. Exam'rs v. Robertson, 751 P.2d 648 (Colo. App. 1987).

State board of medical examiners abused its discretion by requiring remedial course work for petitioner when it had made no findings of deficiencies at a hearing on the matter.

Horwitz v. Colo. State Bd. of Med. Exam'rs, 716 P.2d 131 (Colo. App. 1985), cert. denied, 479 U.S. 803, 107 S. Ct. 44, 93 L. Ed.2d 7 (1986).

The findings of the medical board are persuasive, but not conclusive, and an examination of the record with slavish adherence to the findings and without fidelity to the law and facts would not be a judicial review. Sapero v. State Bd. of Med. Exam'rs, 90 Colo. 568, 11 P.2d 555 (1932).

Where there is filed with the state medical board a sworn complaint charging a physician with one of the offenses denounced by § 12-36-117, the board has at once jurisdiction of the subject matter, and where the accused person appears and contests the complaint on its merits, this gives jurisdiction of the person. Thompson v. State Bd. of Med. Exam'rs, 59 Colo. 549, 151 P. 436 (1915).

Initial decision by ALJ on disciplinary action complaint referred to ALJ pursuant to subsection (5)(g)(II) is not final and is properly reviewable by board under § 12-36-119. State Bd. of Med. Exam'rs v. Slonim, 844 P.2d 1207 (Colo. App. 1992).

On review of the proceedings the court will not go beyond this and inquire as to the sufficiency of the evidence, or whether the board reached a correct conclusion therefrom. Thompson v. State Bd. of Med. Exam'rs, 59 Colo. 549, 151 P. 436 (1915).

In reviewing proceedings of board of medical examiners revoking physician's license, review is limited to whether the board had jurisdiction, abused its discretion, or regularly pursued its authority. Glenn v. Colo. State Bd. of Med. Exam'rs, 131 Colo. 586, 284 P.2d 230 (1955).

Applied in State Bd. of Med. Exam'rs v. Reiner, 786 P.2d 499 (Colo. App. 1989).

III. FULL AND FAIR OPPORTUNITY TO BE HEARD.

The provision of this section giving all persons summoned a full and fair opportunity to be heard is mandatory. Colo. State Bd. of Med. Exam'rs v. Palmer, 157 Colo. 40, 400 P.2d 914 (1965).

Statute does not mandate that a physician be allowed to testify. It requires only that the physician be given an opportunity to be heard. Norton v. Colo. Bd. of Med. Exam'rs, 821 P.2d 897 (Colo. App. 1991).

There was no denial of due process, and the physician's right to be heard was not violated, where the administrative law judge prohibited the physician from testifying at the hearing after the physician failed to appear for a deposition on five different occasions. Norton v. Colo. Bd. of Med. Exam'rs, 821 P.2d 897 (Colo. App. 1991).

Physician's right to due process was not violated where the opportunity was afforded to participate in the disciplinary hearing at a meaningful time and in a meaningful manner. Colo. Bd. of Med. Exam'rs v. Boyle, 924 P.2d 1113 (Colo. App. 1996).

This section provides for the mailing of notice, but such a provision is for convenience and is among the least satisfactory methods of providing for notice. Colo. State Bd. of Med. Exam'rs v. Palmer, 157 Colo. 40, 400 P.2d 914 (1965).

Therefore, personal service, with the return thereon showing actual communication of notice to the parties entitled thereto, is much more certain and susceptible of satisfactory proof, and one who receives it by such method cannot be prejudiced. Colo. State Bd. of Med. Exam'rs v. Palmer, 157 Colo. 40, 400 P.2d 914 (1965).

The time period to request a hearing pursuant to subsection (4)(c)(III) begins 20 days after receipt of the letter of admonition and not 20 days from the date the board determines the letter was undeliverable. The plain meaning of the term "receipt" in subsection (4)(c)(III) requires actual receipt by the physician. Colo. State Bd. of Med. Exam'rs v. Roberts, 42 P.3d 70 (Colo. App. 2001).

Due process certainly cannot be said to have been violated when that method is used. Colo. State Bd. of Med. Exam'rs v. Palmer, 157 Colo. 40, 400 P.2d 914 (1965).

Due process and notice must be differentiated from service or jurisdiction. Colo. State Bd. of Med. Exam'rs v. Palmer, 157 Colo. 40, 400 P.2d 914 (1965).

When specific time for a hearing is not expressly provided elsewhere, the administrative code provides that notice of the hearing must be timely, and the licensee shall have "opportunity to submit written data, views, and arguments" in order to afford due process. Colo. State Bd. of Med. Exam'rs v. Palmer, 157 Colo. 40, 400 P.2d 914 (1965).

Where the board on its own motion was advised that respondent had only two days notice, it should have set the matter at another time reasonably sufficient to give him all of the opportunities for defense to which he was entitled. Colo. State Bd. of Med. Exam'rs v. Palmer, 157 Colo. 40, 400 P.2d 914 (1965).

For the board to go forward and take evidence in his absence and to summarily act to revoke his license was an abuse of discretion and a violation of his rights to a fair and full hearing under procedural due process. Colo. State Bd. of Med. Exam'rs v. Palmer, 157 Colo. 40, 400 P.2d 914 (1965).

No licensee has a right to a secret, closed nonpublic hearing before the board. Coe v. United States Dist. Court, 676 F.2d 411 (10th Cir. 1982).

IV. REVOCATION OF LICENSE.

A. In General.

Quite clearly the causes designated in § 12-36-117 are exclusive. Graeb v. State Bd. of Med. Exam'rs, 55 Colo. 523, 139 P. 1099 (1913).

A physician's license cannot be revoked merely for a violation of professional ethics or the rules of a board of health, because to be actionable, his misdeeds must amount to a breach of law. Sapero v. State Bd. of Med. Exam'rs, 90 Colo. 568, 11 P.2d 555 (1932).

The state board of medical examiners has jurisdiction to enter an order revoking the license of a physician and surgeon to practice only when such order is based upon competent testimony, and it greatly abuses its discretion when it enters such an order without evidence to support it. McKay v. State Bd. of Med. Exam'rs, 103 Colo. 305, 86 P.2d 232 (1938).

Any conclusion of the board in a proceeding to revoke the license of a physician to practice must be based upon evidence produced before it. McKay v. State Bd. of Med. Exam'rs, 103 Colo. 305, 86 P.2d 232 (1938).

The opinion of the board members alone as to the merits of the charges is not sufficient, because in the event of a review of its action the court must have before it the evidence upon which the conclusions of the board were based. McKay v. State Bd. of Med. Exam'rs, 103 Colo. 305, 86 P.2d 232 (1938).

There is no statutory requirement that in proceedings before the state medical board the evidence shall be preserved, and one who neither asks that it be preserved by the board, or that he be permitted to preserve it, is in no position to urge, on certiorari brought, an abuse of discretion. Thompson v. State Bd. of Med. Exam'rs, 59 Colo. 549, 151 P. 436 (1915).

When the board disciplines a physician for actions that occur outside of Colorado, the board action is only applicable to the physician's practice of medicine within Colorado. State Bd. of Med. Exam'rs v. Sullivan, 976 P.2d 885 (Colo. App. 1999).

Where physician charged with conduct justifying revocation of his license frankly admitted guilt of the acts charged, the board of medical examiners could not do otherwise than revoke his license, because any other course would be unjustified leniency to the detriment of the public welfare. Glenn v. Colo. State Bd. of Med. Exam'rs, 131 Colo. 586, 284 P.2d 230 (1955).

B. Grounds for Revocation.

The term "unprofessional" is convertible with "dishonorable", in the common use of the word, and considered as dishonorable in the common judgment of mankind. Sapero v. State

Bd. of Med. Exam'rs, 90 Colo. 568, 11 P.2d 555 (1932).

The board has exclusive jurisdiction to revoke licensure privileges within Colorado regardless of whether the "unprofessional conduct" occurred within or outside of Colorado. State Bd. of Med. Exam'rs v. Sullivan, 976 P.2d 885 (Colo. App. 1999).

Former clause prohibiting advertisements relative to disease of sexual organs was unconstitutional. Chenoweth v. State Bd. of Med. Exam'rs, 57 Colo. 74, 141 P. 132 (1913).

The general assembly has no power to confer the authority upon a board of medical examiners to deny to a physician the right to advertise his business. Chenoweth v. State Bd. of Med. Exam'rs, 57 Colo. 74, 141 P. 132 (1914).

Publication of entirely harmless advertisements that could not injuriously affect the public health, safety, morals, or welfare do not justify revocation. Sapero v. State Bd. of Med. Exam'rs, 90 Colo. 568, 11 P.2d 555 (1932).

While such publication may be considered unethical by some, or even many, physicians, and may even constitute ground for exclusion from a medical society, it no more justifies the revocation of a physician's license to practice than would a mere breach of etiquette, or the exhibition of table manners that do not conform to the usage of polite society. Sapero v. State Bd. of Med. Exam'rs, 90 Colo. 568, 11 P.2d 555 (1932).

If this section attempted to make it a ground for revocation of a physician's license, it would be unconstitutional and void. Sapero v. State Bd. of Med. Exam'rs, 90 Colo. 568, 11 P.2d 555 (1932).

Such advertising does not come within the prohibition of this section. Sapero v. State Bd. of Med. Exam'rs, 90 Colo. 568, 11 P.2d 555 (1932).

The publication of libelous matter may be sufficient ground for revoking the license of a physician who publishes the libel. State Bd. of Med. Exam'rs v. Spears, 79 Colo. 588, 247 P. 563, 54 A.L.R. 1498 (1926), appeal dismissed, 275 U.S. 508, 48 S. Ct. 158, 72 L. Ed. 398 (1928).

The state board of medical examiners is supposed to know better than laymen the ethics of their profession and what constitutes reprehensible conduct that makes one unfit to engage or continue in the practice of medicine, but an average layman would not experience much difficulty in arriving at the conclusion that a doctor who, without authority of his patient, reveals to the public through a newspaper the nature of the patient's disease or falsely states that he has cured him of an ailment, in order to increase his practice and professional fees, is not a proper person to practice the healing art.

Doran v. State Bd. of Med. Exam'rs, 78 Colo. 153, 240 P. 335 (1925).

The phrase "manifestly incurable disease" appearing in former statute was held not to refer to condition of a patient and was void for insufficiency. Graeb v. State Bd. of Med. Exam'rs, 55 Colo. 523, 139 P. 1099 (1913).

The expression "moral turpitude" in this section is not so indefinite as to render the section void. White v. Andrew, 70 Colo. 50, 197 P. 564 (1921).

The medical board properly revoked the license of a physician who was convicted of a crime involving moral turpitude, which consisted of the sale of morphine by the physician for other than medicinal purposes, and to an habitual user thereof who was not his patient. State Bd. of Med. Exam'rs v. Spears, 79 Colo. 588, 247 P. 563 (1926), appeal dismissed, 275 U.S. 508, 48 S. Ct. 158, 72 E. Ed. 398 (1928).

Moral turpitude is excluded except in case of conviction in a court of justice, and is in this way eliminated as a basis for revocation under this section. Graeb v. State Bd. of Med. Exam'rs, 55 Colo. 523, 139 P. 1099 (1913).

A licentiate is not acting in the course of practicing his profession, whether it be medicine or chiropractic, when he sells narcotic drugs to an habitual user for the latter's fancied solace or enjoyment and not as an aid to a cure. State Bd. of Med. Exam'rs v. Spears, 79 Colo. 588, 247 P. 563 (1926).

The commission of a crime is not sufficient basis for revocation; there must first be a conviction. Graeb v. State Bd. of Med. Exam'rs, 55 Colo. 523, 139 P. 1099 (1913).

Violations of the federal narcotic laws may be considered by the board in proceeding for the revocation of a physician's license to practice. McKay v. State Bd. of Med. Exam'rs, 103 Colo. 305, 86 P.2d 232 (1938).

The state board of medical examiners is not vested with jurisdiction to try alleged offenders against federal narcotic laws, and it may not make findings of such violations by a physician and predicate either malpractice, or immoral, unprofessional, or dishonorable conduct thereon. McKay v. State Bd. of Med. Exam'rs, 103 Colo. 305, 86 P.2d 232 (1938).

Unlawful acts must be established by competent evidence and must be such as to constitute malpractice, or immoral, unprofessional or dishonorable conduct without regard to any law which makes the doing of them an offense, in order to afford grounds for revocation. McKay v. State Bd. of Med. Exam'rs, 103 Colo. 305, 86 P.2d 232 (1938).

The revocation of a license of a physician to practice on the ground of alleged unwarranted prescription of narcotics, in the absence of a conviction thereof in a court of competent jurisdiction, must be based upon evidence of malpractice in connection with the prescrip-

tion or administering of the drug, and no such evidence appearing in the record, action of the board of medical examiners in revoking the license will be reversed by the reviewing court. *McKay v. State Bd. of Med. Exam'rs*, 103 Colo. 305, 86 P.2d 232 (1938).

Immoral, unprofessional or dishonorable conduct was the most common statutory ground for revocation or suspension. *Sapero v. State Bd. of Med. Exam'rs*, 90 Colo. 568, 11 P.2d 555 (1932).

It was essential that a licensed physician be possessed of professional honor, and the general assembly had the power to provide for the revocation of a license to practice medicine for unprofessional or dishonorable conduct, though the physician was not shown to be immoral. *Dilliard v. State Bd. of Med. Exam'rs*, 69 Colo. 575, 196 P. 866 (1921).

Manifestly, it was impossible as well as unnecessary for the general assembly to anticipate all evil deeds that the words "immoral, unprofessional, or dishonorable" were intended to cover, hence the wisdom of looking to the usual definition of such words, or "the common judgment of mankind", for a standard of construction. *Sapero v. State Bd. of Med. Exam'rs*, 90 Colo. 568, 11 P.2d 555 (1932).

It would be hardly consistent or reasonable for the court to say that the terms "unpro-

fessional or dishonorable" were too indefinite to justify the revocation of the license of a physician while we disbar attorneys for "malconduct in office". *Dilliard v. State Bd. of Med. Exam'rs*, 69 Colo. 575, 196 P. 866 (1921).

Malpractice consists of a failure to exercise that degree of care and skill in diagnosis or treatment that may reasonably be expected from one licensed and holding himself out as a physician, under the circumstances of the particular case. *McKay v. State Bd. of Med. Exam'rs*, 103 Colo. 305, 86 P.2d 232 (1938).

Treatment which is proper, judged by correct medical standards, does not constitute malpractice even though it amounts to a violation of law. *McKay v. State Bd. of Med. Exam'rs*, 103 Colo. 305, 86 P.2d 232 (1938).

The Americans with Disabilities Act does not preclude the board from revoking a physician's license where the physician suffers from a chronic sleep condition that may endanger the safety of patients. The board determined that, because of the physician's condition, no reasonable accommodation was available that would ensure patient safety. The court upheld the finding of the board because it had a reasonable basis in the law. *Colo. State Bd. of Med. Exam'rs v. Ogin*, 56 P.3d 1233 (Colo. App. 2002).

12-36-118.5. Confidential agreements to limit practice - violation grounds for discipline. (1) If a physician, physician assistant, or anesthesiologist assistant suffers from a physical or mental illness or condition that renders the licensee unable to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant with reasonable skill and with safety to patients, the physician, physician assistant, or anesthesiologist assistant shall notify the board of the illness or condition in a manner and within a period determined by the board. The board may require the licensee to submit to an examination or refer the licensee to a peer health assistance program pursuant to section 12-36-123.5 to evaluate the extent of the illness or condition and its impact on the licensee's ability to practice with reasonable skill and with safety to patients.

(2) (a) Upon determining that a physician, physician assistant, or anesthesiologist assistant with a physical or mental illness or condition is able to render limited medical services with reasonable skill and with safety to patients, the board may enter into a confidential agreement with the physician, physician assistant, or anesthesiologist assistant in which the physician, physician assistant, or anesthesiologist assistant agrees to limit his or her practice based on the restrictions imposed by the illness or condition, as determined by the board.

(b) As part of the agreement, the licensee shall be subject to periodic reevaluations or monitoring as determined appropriate by the board. The board may refer the licensee to the peer assistance health program for reevaluation or monitoring.

(c) The parties may modify or dissolve the agreement as necessary based on the results of a reevaluation or of monitoring.

(3) By entering into an agreement with the board pursuant to this section to limit his or her practice, the licensee shall not be deemed to be engaging in unprofessional conduct, and the agreement shall be considered an administrative action and shall not constitute a restriction or discipline by the board. However, if the licensee fails to comply with the terms of an agreement entered into pursuant to this section, such failure constitutes unprofessional conduct pursuant to section 12-36-117 (1) (o), and the licensee shall be subject to discipline in accordance with section 12-36-118.

(4) This section shall not apply to a licensee subject to discipline for unprofessional conduct as described in section 12-36-117 (1) (i).

Source: L. 2010: Entire section added, (HB 10-1260), ch. 403, p. 1961, § 30, effective July 1. L. 2012: (1) and (2)(a) amended, (HB 12-1332), ch. 238, p. 1056, § 10, effective August 8.

12-36-119. Appeal of final board actions. When the board refuses to grant a license, imposes disciplinary action pursuant to section 12-36-118, or places a licensee on probation, such action may be reviewed by the court of appeals pursuant to section 24-4-106 (11), C.R.S., unless the licensee has accepted a license subject to terms of probation as set forth in section 12-36-116 (3).

Source: L. 51: p. 574, § 19. CSA: C. 109, § 33(19). CRS 53: § 91-1-19. C.R.S. 1963: § 91-1-19. L. 75: (2) amended, p. 555, § 1, effective April 9. L. 76: (1) amended, p. 414, § 8, effective July 1. L. 77: (1) and (2) amended, p. 683, § 3, effective July 1. L. 79: Entire section amended, p. 518, § 15, effective July 1. L. 81: (2) amended, p. 1144, § 5, effective July 1. L. 85: (1)(b) and (2) amended, pp. 504, 522, §§ 15, 10, effective July 1. L. 95: Entire section amended, p. 1066, § 14, effective July 1. L. 2001: Entire section amended, p. 182, § 8, effective August 8.

ANNOTATION

Annotator's note. Since § 12-36-119 is similar to repealed CSA, C. 109, § 13, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

This statute specifically provides for the reconsideration by the board of any orders issued by it, and court review of any action taken in revoking a physician's license. Colo. State Bd. of Med. Exam'rs v. District Court, 138 Colo. 227, 331 P.2d 502 (1958).

Where the state board of medical examiners is proceeding pursuant to its statutory authority, a trial court has no authority to issue an absolute writ, prohibiting the board from performing the duties imposed upon it by law, where a statute provides for reconsideration by the board of any orders issued by it and court review of any action taken in revoking a physician's license. Colo. State Bd. of Med. Exam'rs v. District Court, 138 Colo. 227, 331 P.2d 502 (1958).

The board does not have jurisdiction equal to, or coordinate with, that of the courts, because if any of the orders of the board are defied, it is helpless without judicial process. Sapero v. State Bd. of Med. Exam'rs, 90 Colo. 568, 11 P.2d 555 (1932).

This disparity in powers and duties is not of judicial origin because it cannot be supposed that the express provision reserving the remedy to review the acts of the medical board in either "refusing to grant or in revoking a license to practice medicine", was the product of judicial legislation. Sapero v. State Bd. of Med. Exam'rs, 90 Colo. 568, 11 P.2d 555 (1932).

The district court has no power on certiorari to review the action of the board of

medical examiners except for excess of jurisdiction, or abuse of discretion. Dilliard v. State Bd. of Med. Exam'rs, 69 Colo. 575, 196 P. 866 (1921); White v. Andrew, 70 Colo. 50, 197 P. 564 (1921).

The board has power in the first instance to decide what constitutes unprofessional conduct, but if it abuses that power, the court will reverse its judgment. Sapero v. State Bd. of Med. Exam'rs, 90 Colo. 568, 11 P.2d 555 (1932), citing Dilliard v. State Bd. of Med. Exam'rs, 69 Colo. 575, 196 P. 866 (1921).

The reviewing court cannot decide the case upon the merits. State Bd. of Med. Exam'rs v. Spears, 79 Colo. 588, 247 P. 563 (1926), appeal dismissed, 275 U.S. 508, 48 S. Ct. 158, 72 L. Ed. 398 (1928).

The reviewing court has no power to correct a mistake of fact or erroneous conclusion from the facts, made by the inferior tribunal. State Bd. of Med. Exam'rs, v. Spears, 79 Colo. 588, 247 P. 563 (1926), appeal dismissed, 275 U.S. 508, 48 S. Ct. 158, 72 L. Ed. 398 (1928).

It is proper for the court to say whether the evidence shows the defendants guilty of moral turpitude. Sapero v. State Bd. of Med. Exam'rs, 90 Colo. 568, 11 P.2d 555 (1932); State Bd. of Dental Exam'rs v. Savelle, 90 Colo. 177, 8 P.2d 693, appeal dismissed, 287 U.S. 562, 53 S. Ct. 5, 77 L. Ed. 496 (1932); State Bd. of Dental Exam'rs v. Miller, 90 Colo. 193, 8 P.2d 699, appeal dismissed, 287 U.S. 563, 53 S. Ct. 6, 77 L. Ed. 496 (1932).

Barring doctor whose license is revoked from applying for relicensure for a period of two years is contrary to the plain meaning of subsection (1) (a). Puls v. People ex rel. Woodard, 722 P.2d 424 (Colo. App. 1986).

Section does not restrict board's authority to increase previously imposed sanctions, because it applies only where applicant has demonstrated by his compliance that a lessening of sanctions is warranted. Bd. of Med. Exam'rs v. Robertson, 751 P.2d 648 (Colo. App. 1987).

"Letter of concern" issued to physician after disciplinary proceedings against him were dismissed did not constitute "disciplinary action" taken by the medical board, and therefore not

subject to judicial review in the Court of Appeals. Bd. of Med. Exam'rs v. B.L.L., 820 P.2d 1190 (Colo. App. 1991).

Initial decision by ALJ on disciplinary action complaint referred to ALJ pursuant to § 12-36-118 (5)(g)(II) is not final and is properly reviewable by board under this section. State Bd. of Med. Exam'rs v. Slonim, 844 P.2d 1207 (Colo. App. 1992).

12-36-120. Other licensees of board - disciplinary action. (Repealed)

Source: L. 51: p. 574, § 20. CSA: C. 109, § 33(20). CRS 53: § 91-1-20. C.R.S. 1963: § 91-1-20. L. 76: (4) repealed, p. 424, § 7, effective July 1. L. 79: (2) amended, p. 519, § 16, effective July 1. L. 85: Entire section repealed, p. 506, § 24, effective July 1.

12-36-121. Duplicates of license. (Repealed)

Source: L. 51: p. 575, § 21. CSA: C. 109, § 33(21). CRS 53: § 91-1-21. C.R.S. 1963: § 91-1-21. L. 76: Entire section amended, 423, § 1, effective July 1. L. 79: Entire section amended, p. 519, § 17, effective July 1. L. 85: Entire section amended, p. 504, § 16, effective July 1. L. 2001: Entire section amended, p. 183, § 9, effective August 8. L. 2010: Entire section repealed, (HB 10-1260), ch. 403, p. 1975, § 47, effective July 1.

12-36-122. Physician training licenses. (1) Any person serving an approved internship, residency, or fellowship, as defined by this article, in a hospital in this state may do so for an aggregate period of up to six years under the authority of a physician training license issued pursuant to this subsection and without a license to practice medicine issued pursuant to section 12-36-107 or 12-36-107.6.

(2) No person shall be granted a physician training license unless such person meets the following criteria:

(a) The person has been accepted into and demonstrates the intention to participate in an approved internship, residency, or fellowship, as defined by this article; and

(b) The person is not otherwise licensed to practice medicine in this state.

(3) The board may refrain from issuing a physician training license, or may grant a physician training license subject to terms or probation, for any of the reasons listed in section 12-36-116 (1) (a), (1) (b), or (1) (c). An applicant whose physician training license is denied or is granted subject to terms of probation may seek review pursuant to section 24-4-104 (9), C.R.S.; except that, if an applicant accepts a physician training license that is subject to terms of probation, such acceptance shall be in lieu of and not in addition to the remedies set forth in section 24-4-104 (9), C.R.S.

(4) Except as provided in subsection (3) of this section, the board shall issue a physician training license upon receipt of a statement from the approved internship, residency, or fellowship program stating that the applicant meets the criteria set forth in subsection (2) of this section and that the approved internship, residency, or fellowship accepts responsibility for the applicant's training while in the program. The statement shall be signed by the program director, clinical director, or other physician responsible for the training of the applicant. The statement shall be submitted to the board no later than thirty days prior to the date on which the applicant begins the approved internship, residency, or fellowship in this state.

(5) Where feasible, the applicant shall submit a completed application, on a form approved by the board, on or before the date on which the applicant begins the approved internship, residency, or fellowship in this state. Any physician training license granted pursuant to this section shall expire if a completed application is not received by the board

sixty days after the applicant begins the approved internship, residency, or fellowship in this state. The board may establish and charge an application and renewal fee not to exceed fifty dollars for such physician training licenses pursuant to section 24-34-105, C.R.S. Such applicants and renewal applicants shall not be required to pay any fee pursuant to section 12-36-123.5.

(6) Except as otherwise provided in this section, such physician training license shall be subject to renewal as set forth in section 12-36-123 (1) (a) and (1) (b). In no event shall any person hold a Colorado physician training license for more than an aggregate period of six years.

(7) A physician training licensee may practice medicine as defined by this article with the following restrictions:

(a) A physician training licensee shall be authorized to practice medicine only under the supervision of a physician licensed to practice medicine pursuant to section 12-36-107 or 12-36-107.6 and only as necessary for the physician training licensee's participation in the approved internship, residency, or fellowship designated on the licensee's application for a physician training license.

(b) (I) A physician training license shall expire:

(A) Within sixty days under the circumstances described in subsection (5) of this section;

(B) At the time the physician training licensee ceases to participate in the approved internship, residency, or fellowship program identified on the licensee's application form; or

(C) At the time the physician training licensee obtains any other license to practice medicine issued by the board.

(II) If a physician training licensee entered an approved internship, residency, or fellowship other than the approved internship, residency, or fellowship indicated on the licensee's application, the licensee shall file a new application with the board pursuant to subsections (4) and (5) of this section.

(c) A physician training licensee shall not have the authority to delegate the rendering of medical services to a person who is not licensed to practice medicine pursuant to section 12-36-106 (3) (I) and shall not have the authority to supervise physician assistants as provided by section 12-36-106 (5).

(d) The issuance of a physician training license shall not be construed to require the board to issue the physician training licensee a license to practice medicine pursuant to section 12-36-107 or 12-36-107.6.

(8) A physician training licensee may be disciplined for unprofessional conduct as defined in section 12-36-117, pursuant to the procedures outlined in section 12-36-118.

(9) Repealed.

(10) Licensed physicians responsible for the supervision of interns, residents, or fellows in graduate training programs shall report to the board no later than thirty days after a physician training licensee has been terminated or has resigned from the approved internship, residency, or fellowship.

Source: L. 51: p. 575, § 22. **CSA:** C. 109, § 33(22). **CRS 53:** § 91-1-22. **C.R.S. 1963:** § 91-1-22. **L. 67:** p. 813, § 5. **L. 88:** Entire section amended, p. 524, § 8, effective July 1. **L. 95:** Entire section amended, p. 1066, § 15, effective July 1. **L. 2002:** Entire section amended, p. 546, § 3, effective August 7. **L. 2010:** (9) repealed, (HB 10-1260), ch. 403, p. 1974, § 44, effective July 1.

Editor's note: Subsection (9) was relocated to § 12-36-122.5 (3) in 2010.

12-36-122.5. Intern, resident, or fellow reporting. (1) Notwithstanding any provision of 12-36-118 (10) to the contrary, the board shall inform the licensed physicians responsible for the supervision of an intern, resident, or fellow of any complaint received in writing relating to the intern, resident, or fellow. The board shall also inform the program sponsoring such intern, resident, or fellow of actions of the board regarding such complaint.

(2) The board in its discretion may release records that are not otherwise privileged or confidential by law to the licensed physicians responsible for the supervision of an intern, resident, or fellow, but only if such physician agrees in writing not to redisclose such records or the information contained therein for use outside of any proceeding within the program or practice site.

(3) Licensed physicians responsible for the supervision of interns, residents, or fellows in graduate training programs shall promptly report to the board anything concerning a licensee in the graduate training program that would constitute a violation of this article. The physicians shall also report to the board any licensee who has not progressed satisfactorily in the program because the licensee has been dismissed, suspended, or placed on probation for reasons that constitute unprofessional conduct as defined in section 12-36-117, unless the conduct has been reported to the peer health assistance program pursuant to section 12-36-123.5.

Source: **L. 2002:** Entire section added, p. 545, § 2, effective August 7. **L. 2010:** (3) added with relocations, (HB 10-1260), ch. 403, p. 1974, § 43, effective July 1.

Editor's note: Subsection (3) is similar to former § 12-36-122 (9) as it existed prior to 2010.

12-36-123. Procedure - registration - fees. (1) (a) All licenses shall be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S., and shall increase renewal fees consistent with section 24-34-109 (4), C.R.S., to fund the division's costs in administering and staffing the nurse-physician advisory task force for Colorado health care created in section 24-34-109 (1), C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. A person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(b) The board shall design a questionnaire to accompany the renewal form for the purpose of determining whether a licensee has acted in violation of this article or been disciplined for any action that might be considered a violation of this article or might make the licensee unfit to practice medicine with reasonable care and safety. If an applicant fails to answer the questionnaire accurately, such failure shall constitute unprofessional conduct under section 12-36-117 (1) (aa).

(c) Applicants for relicensure shall not be required to attend and complete continuing medical education programs, except as directed by the board to correct deficiencies of training or education as directed under section 12-36-118 (5) (g) (III) (B).

(2) (Deleted by amendment, L. 2004, p. 1829, § 70, effective August 4, 2004.)

(3) (Deleted by amendment, L. 95, p. 1067, § 16, effective July 1, 1995.)

Source: **L. 51:** p. 575, § 23. **CSA:** C. 109, § 33(23). **CRS 53:** § 91-1-23. **C.R.S. 1963:** § 91-1-23. **L. 67:** p. 813, § 6. **L. 73:** p. 1027, § 5. **L. 76:** (1) amended, p. 420, § 5, effective July 1; (1) amended, p. 423, § 2, effective July 1. **L. 79:** (1)(a) and (2) amended, p. 438, § 16, effective July 1; entire section amended, p. 519, § 18, effective July 1. **L. 83:** (1)(b) amended and (1)(c) repealed, p. 542, §§ 1, 2, effective May 20. **L. 85:** (1)(a) R&RE and (2) and (3) amended, p. 523, §§ 11, 12, effective July 1. **L. 88:** (2) and (3) amended, p. 524, § 9, effective July 1. **L. 95:** (1)(a), (1)(b), (2)(a), (2)(b), and (3) amended, p. 1067, § 16, effective July 1. **L. 2001:** (1)(a) and (2) amended, p. 183, § 10, effective August 8. **L. 2004:** (1)(a) and (2) amended, p. 1829, § 70, effective August 4. **L. 2009:** (1)(a) amended, (SB 09-239), ch. 401, p. 2182, § 27, effective July 1.

Editor's note: Amendments to this section and subsections (1)(a) and (2) by Senate Bill 79-293 and Senate Bill 79-296 were harmonized.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8).

ANNOTATION

Annotator's note. Since § 12-36-123 is similar to repealed CSA, C. 109, § 11, a relevant case construing that provision has been included in the annotations to this section.

The failure of the doctor to pay a small annual registration fee has a very remote and disconnected relation to the promotion of morals, safety, general welfare or the public health. *Lipset v. Davis*, 119 Colo. 335, 203 P.2d 730 (1949).

When a complete forfeiture of a physician's license is predicated on nonpayment of the annual registration fee, and new condi-

tions of eligibility for reinstatement, far beyond the payment of the delinquent fees, are attempted to be imposed, such regulation is harsh, unwarranted and unreasonable, and therefore invalid, for if good and sufficient cause exists to deprive a doctor of the right to practice his profession, and that cause or disqualification bears a fair relation to the public health, safety, morals or welfare, there is ample authority under section 12-36-118 to accomplish a revocation of his license. *Lipset v. Davis*, 119 Colo. 335, 203 P.2d 730 (1949).

12-36-123.5. Physicians', physician assistants', and anesthesiologist assistants' peer health assistance program.

(1) to (3) Repealed.

(3.5) (a) (Deleted by amendment, L. 95, p. 1068, § 17, effective July 1, 1995.)

(b) (I) As a condition of physician, physician assistant, and anesthesiologist assistant licensure and renewal in this state, every applicant shall pay, pursuant to paragraph (e) of this subsection (3.5), an amount set by the board, not to exceed sixty-one dollars per year, which maximum amount may be adjusted on January 1, 2011, and annually thereafter by the board to reflect:

(A) Changes in the United States bureau of labor statistics consumer price index for the Denver-Boulder consolidated metropolitan statistical area for all urban consumers, all goods, or its successor index;

(B) Overall utilization of the program; and

(C) Differences in program utilization by physicians, physician assistants, and anesthesiologist assistants.

(II) Based on differences in utilization rates between physicians, physician assistants, and anesthesiologist assistants, the board may establish different fee amounts for physicians, physician assistants, and anesthesiologist assistants.

(III) The fee imposed pursuant to this paragraph (b) is to support designated providers that have been selected by the board to provide assistance to physicians, physician assistants, and anesthesiologist assistants needing help in dealing with physical, emotional, or psychological problems that may be detrimental to their ability to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant, as applicable.

(c) The board shall select one or more peer health assistance programs as designated providers. To be eligible for designation by the board, a peer health assistance program must:

(I) Provide for the education of physicians, physician assistants, and anesthesiologist assistants with respect to the recognition and prevention of physical, emotional, and psychological problems and provide for intervention when necessary or under circumstances that may be established by rules promulgated by the board;

(II) Offer assistance to a physician, physician assistant, or anesthesiologist assistant in identifying physical, emotional, or psychological problems;

(III) Evaluate the extent of physical, emotional, or psychological problems and refer the physician, physician assistant, or anesthesiologist assistant for appropriate treatment;

(IV) Monitor the status of a physician, physician assistant, or anesthesiologist assistant who has been referred for treatment;

(V) Provide counseling and support for the physician, physician assistant, or anesthesiologist assistant and for the family of any physician, physician assistant, or anesthesiologist assistant referred for treatment;

(VI) Agree to receive referrals from the board;

(VII) Agree to make their services available to all licensed Colorado physicians, licensed Colorado physician assistants, and licensed Colorado anesthesiologist assistants.

(d) The administering entity shall be a qualified, nonprofit private foundation that is qualified under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, and shall be dedicated to providing support for charitable, benevolent, educational, and scientific purposes that are related to medicine, medical education, medical research and science, and other medical charitable purposes.

(e) The responsibilities of the administering entity are:

(I) To collect the required annual payments, either directly or through the board pursuant to paragraph (e.5) of this subsection (3.5);

(II) To verify to the board, in a manner acceptable to the board, the names of all physician, physician assistant, and anesthesiologist assistant applicants who have paid the fee set by the board;

(III) To distribute the moneys collected, less expenses, to the approved designated provider, as directed by the board;

(IV) To provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(V) To post a surety performance bond in an amount specified by the board to secure performance under the requirements of this section. The administering entity may recover the actual administrative costs incurred in performing its duties under this section in an amount not to exceed ten percent of the total amount collected.

(e.5) The board may collect the required annual payments payable to the administering entity for the benefit of the administering entity and shall transfer all such payments to the administering entity. All required annual payments collected by or due to the board for each fiscal year are custodial funds that are not subject to appropriation by the general assembly, and the distribution of the payments to the administering entity or expenditure of the payments by the administering entity does not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

(f) No later than June 30, 1994, the board shall transfer the balance in the fund, if any, to the administering entity chosen by the board pursuant to paragraphs (d) and (e) of this subsection (3.5).

(4) (Deleted by amendment, L. 95, p. 1068, § 17, effective July 1, 1995.)

(5) Nothing in this section creates any liability on the board or the state of Colorado for the actions of the board in making grants to peer assistance programs, and no civil action may be brought or maintained against the board or the state for an injury alleged to have been the result of the activities of any state-funded peer assistance program or the result of an act or omission of a physician, physician assistant, or anesthesiologist assistant participating in or referred by a state-funded peer assistance program.

(6) Repealed.

Source: **L. 87:** Entire section added, p. 512, § 1, effective May 1. **L. 93:** (1) amended and (3.5) and (6) added, p. 1697, § 12, effective July 1. **L. 95:** (3.5), (4), and (5) amended, p. 1068, § 17, effective July 1. **L. 98:** (3.5)(b) amended, p. 94, § 1, effective March 23. **L. 2001:** (3.5)(c)(VII) amended, p. 183, § 11, effective August 8. **L. 2010:** (3.5)(e)(I) amended and (3.5)(e.5) added, (HB 10-1128), ch. 172, p. 616, § 13, effective April 29; (3.5)(b), (3.5)(e)(I), and (3.5)(e.5) amended, (HB 10-1260), ch. 403, p. 1956, §§ 23, 24, effective July 1. **L. 2012:** IP(3.5)(b)(I), (3.5)(b)(I)(C), (3.5)(b)(II), (3.5)(b)(III), (3.5)(c), IP(3.5)(e), (3.5)(e)(II), and (5) amended, (HB 12-1332), ch. 238, p. 1057, § 11, effective August 8.

Editor's note: (1) Subsection (6) provided for the repeal of subsections (1), (2), (3), and (6), effective June 30, 1994. (See L. 93, p. 1697.)

(2) Amendments to subsection (3.5)(e)(I) by House Bill 10-1128 and House Bill 10-1260 were harmonized.

12-36-124. Certification of licensing. (Repealed)

Source: L. 51: p. 576, § 24. CSA: C. 109, § 33(24). CRS 53: § 91-1-24. C.R.S. 1963: § 91-1-24. L. 76: Entire section amended, p. 424, § 3, effective July 1. L. 79: Entire section amended, p. 521, § 19, effective July 1. L. 85: Entire section amended, p. 504, § 17, effective July 1; entire section amended, p. 523, § 13, effective July 1. L. 2001: Entire section amended, p. 184, § 12, effective August 8. L. 2010: Entire section repealed, (HB 10-1260), ch. 403, p. 1980, § 59, effective July 1.

12-36-125. Division of fees - independent advertising or marketing agent.

(1) (a) If any person holding a license issued by the board or by the state board of medical examiners as constituted under any prior law of this state divides any fee or compensation received or charged for services rendered by him or her as such licensee or agrees to divide any such fee or compensation with any person, firm, association, or corporation as pay or compensation to such other person for sending or bringing any patient or other person to such licensee, or for recommending such licensee to any person, or for being instrumental in any manner in causing any person to engage such licensee in his or her professional capacity; or if any such licensee shall either directly or indirectly pay or compensate or agree to pay or compensate any person, firm, association, or corporation for sending or bringing any patient or other person to such licensee for examination or treatment, or for recommending such licensee to any person, or for being instrumental in causing any person to engage such licensee in his or her professional capacity; or if any such licensee, in his or her professional capacity and in his or her own name or behalf, shall make or present a bill or request a payment for services rendered by any person other than the licensee, such licensee commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(b) Notwithstanding the provisions of paragraph (a) of subsection (1) of this section, a licensee may pay an independent advertising or marketing agent compensation for the advertising or marketing services rendered on the licensee's behalf by such agent, including compensation which is paid for the results or performance of such services on a per patient basis.

(c) As used in this subsection (1), "independent advertising or marketing agent" means a person, firm, association, or corporation which performs advertising or other marketing services on behalf of licensees, including referrals of patients to licensees resulting from patient-initiated responses to such advertising or marketing services.

(2) Violation of the provisions of this section shall constitute grounds for the suspension or revocation of a license or the placing of the holder thereof on probation.

(3) Repealed.

Source: L. 51: p. 576, § 25. CSA: C. 109, § 33(25). CRS 53: § 91-1-25. C.R.S. 1963: § 91-1-25. L. 76: (2) amended, p. 424, § 4, effective July 1. L. 79: (1) amended, p. 521, § 20, effective July 1. L. 85: (1) amended and (3) added, p. 515, § 4, effective May 3; (1) amended, p. 408, § 10, effective July 1; (2) amended, p. 504, § 18, effective July 1. L. 91: (3) amended, p. 889, § 13, effective July 1. L. 95: (3) repealed, p. 1070, § 18, effective July 1. L. 2001: (2) amended, p. 184, § 13, effective August 8. L. 2002: (1)(a) amended, p. 1478, § 74, effective October 1.

Editor's note: Amendments to subsection (1) by House Bill 85-1098 and House Bill 85-1172 were harmonized.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1)(a), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

No evidence that this section was violated. Bolles v. Kinton, 83 Colo. 147, 263 P. 26 (1928) (decided under repealed laws antecedent to

CSA, C. 109, § 46); Prof'l Health Care, Inc. v. Bigsby, 709 P.2d 86 (Colo. App. 1985).

12-36-126. Recovery of fees illegally paid. If any licensee, in violation of section 12-36-125, divides or agrees to divide any fee or compensation received by him for services rendered in his professional capacity with any person whomsoever, the person who has paid such fee or compensation to such licensee may recover the amount unlawfully paid or agreed to be paid from either the licensee or from the person to whom such fee or compensation has been paid, by an action to be instituted within two years from the date on which such fee or compensation was so divided or agreed to be divided.

Source: L. 51: p. 577, § 26. **CSA:** C. 109, § 33(26). **CRS 53:** § 91-1-26. **C.R.S. 1963:** § 91-1-26. **L. 79:** Entire section amended, p. 521, § 21, effective July 1.

12-36-127. Liability of persons other than licensee. If any person, firm, association, or corporation receives, either directly or indirectly, any pay or compensation given or paid in violation of section 12-36-125, such person, firm, association, or corporation, and the officers and directors thereof, commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 51: p. 577, § 27. **CSA:** C. 109, § 33(27). **CRS 53:** § 91-1-27. **C.R.S. 1963:** § 91-1-27. **L. 85:** Entire section amended, p. 408, § 11, effective July 1. **L. 2002:** Entire section amended, p. 1478, § 75, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-36-128. Advertising. (Repealed)

Source: L. 51: p. 578, § 28. **CSA:** C. 109, § 33(28). **CRS 53:** § 91-1-28. **C.R.S. 1963:** § 91-1-28. **L. 79:** Entire section R&RE, p. 521, § 22, effective July 1. **L. 85:** Entire section repealed, p. 516, § 5, effective May 3.

12-36-128.5. Public communications and advertisements. (Repealed)

Source: L. 91: Entire section added, p. 886, § 12, effective July 1. **L. 95:** Entire section repealed, p. 1072, § 25, effective July 1.

12-36-129. Unauthorized practice - penalties. (1) Any person who practices or offers or attempts to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant within this state without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and any person committing a second or subsequent offense commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Any person who engages in any of the following activities commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.:

- (a) Presents as his or her own the diploma, license, certificate, or credentials of another;
- (b) Gives either false or forged evidence of any kind to the board or any board member in connection with an application for a license to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant;
- (c) Practices medicine, practices as a physician assistant, or practices as an anesthesiologist assistant under a false or assumed name; or
- (d) Falsely impersonates another licensee of a like or different name.

(2.5) Any person who violates section 12-36-117 (1) (w) commits a class 5 felony, and any person committing a second or subsequent violation commits a class 3 felony; and such persons shall be punished as provided in section 18-1.3-401, C.R.S.

(3) No action may be maintained against an individual who has been the recipient of services constituting the unlawful practice of medicine, unlawful practice as a physician assistant, or unlawful practice as an anesthesiologist assistant, for the breach of a contract involving the unlawful practice of medicine, unlawful practice as a physician assistant, or unlawful practice as an anesthesiologist assistant or the recovery of compensation for services rendered under such a contract.

(4) When an individual has been the recipient of services constituting the unlawful practice of medicine, unlawful practice as a physician assistant, or unlawful practice as an anesthesiologist assistant, whether or not the individual knew that the rendition of the services was unlawful:

(a) The individual or the individual's personal representative is entitled to recover the amount of any fee paid for the services; and

(b) The individual or the individual's personal representative may also recover a reasonable attorney fee as fixed by the court, to be assessed as part of the costs of the action.

(5) (a) No specialty society, association of physicians, or licensed physician may discriminate against any person licensed to practice medicine if such physician is qualified for membership in the specialty society or association. If board certification or eligibility in a specialty is a membership requirement, certification or eligibility by either the American board of medical specialties or the American osteopathic association based upon the applicant's training as a doctor of medicine or doctor of osteopathy, is sufficient. Notwithstanding any other remedies provided under this article, a licensed physician who is discriminated against in violation of this section shall have a private right of action against the licensed physician or specialty society or association that so discriminates.

(b) Any licensed physician, specialty society, or association of physicians held liable for a violation of this subsection (5) shall pay the costs and reasonable attorney fees incurred by the aggrieved physician associated with his pursuit of any claim for relief authorized by this subsection (5).

(6) (a) The board may, in the name of the people of the state of Colorado and through the attorney general of the state of Colorado, apply for an injunction in any court of competent jurisdiction to enjoin any person from committing any act prohibited by this article.

(b) If the board establishes that the defendant has been or is committing an act prohibited by this article, the court shall enter a decree perpetually enjoining the defendant from further committing the act.

(c) An injunctive proceeding may be brought pursuant to this section in addition to, and not in lieu of, all penalties and other remedies provided in this article.

Source: L. 51: p. 578, § 29. CSA: C. 109, § 33(29). CRS 53: § 91-1-29. L. 63: p. 338, § 48. C.R.S. 1963: § 91-1-29. L. 73: pp. 1027, 1410, §§ 6, 68. L. 77: (2) amended, p. 876, § 39, effective July 1, 1979. L. 79: (2) amended, p. 522, § 23, effective July 1. L. 85: (1) amended, p. 408, § 12, effective July 1; (1) amended, p. 523, § 14, effective July 1; (2) amended, p. 504, § 19, effective July 1. L. 87: (1) amended and (2.5) added, p. 502, § 4, effective May 20. L. 89: (1), (2), and (2.5) amended, p. 825, § 24, effective July 1. L. 90: (5) added, p. 819, § 1, effective May 14. L. 95: (5)(a) amended, p. 1070, § 19, effective July 1. L. 2002: (1), (2), and (2.5) amended, p. 1478, § 76, effective October 1. L. 2006: (1) amended, p. 87, § 27, effective August 7. L. 2010: (1), (2), (3), and (4) amended and (6) added, (HB 10-1260), ch. 403, p. 1969, §§ 38, 39, effective July 1. L. 2012: (1), (2)(b), (2)(c), (3), IP(4) amended, (HB 12-1332), ch. 238, p. 1058, § 12, effective August 8.

Editor's note: (1) Amendments to subsection (1) by House Bill 85-1172 and Senate Bill 85-11 were harmonized.

(2) The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was

subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See *People v. McKenna*, 199 Colo. 452, 611 P.2d 54 (1980).

(3) Subsection (6) is similar to former § 12-36-132 as it existed prior to 2010.

Cross references: (1) For unlawful acts relating to the treatment of cancer, see § 12-30-107.

(2) For the legislative declaration contained in the 2002 act amending subsections (1), (2), and (2.5), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Annotator's note. Since § 12-36-129 is similar to repealed laws antecedent to CSA, C. 109, §§ 14 and 15, relevant cases construing those provisions have been included in the annotations to this section.

If a physician has applied for and received from the board of medical examiners the necessary statutory certificate, he would thereby relieve himself from the prohibition and penalty of this section. *Riley v. Collins*, 16 Colo. App. 280, 64 P. 1052 (1901).

A commissioned surgeon of the United States Army is not required to have a license to practice medicine in this state. *Patton v. People*, 74 Colo. 322, 221 P. 1086 (1923).

Where defendant, without any license from the state board of medical examiners, maintained an office for receiving, treating, and healing the sick, assumed the title of healer, and claimed that by virtue of power from the Al-

mighty he was able to cure any disease that was amenable to the treatment of medical men, and many that were not, also he made a charge against some of his patients, others he treated without charge, and held that though he belonged to the divine scientific healing mission, an incorporated society, the objects of which were "healing suffering humanity by the laying on of hands", though he was a preacher in that society, and held services on Sunday, where he preached and healed the sick, inasmuch as he healed the sick or complaining, for hire, he had incurred the penalties of this section. *Smith v. People*, 51 Colo. 270, 117 P. 612 (1911).

Under the former section, one who practiced osteopathy, not prescribing medicine or administering drugs, was not guilty of any offense, though he assumed the title of doctor. *Jones v. People*, 52 Colo. 130, 120 P. 125 (1911).

12-36-130. Moneys collected. (Repealed)

Source: L. 51: p. 578, § 30. CSA: C. 109, § 33(30). CRS 53: § 91-1-30. C.R.S. 1963: § 91-1-30. L. 73: p. 1373, § 30. L. 79: Entire section repealed, p. 525, § 31, effective July 1.

12-36-131. Existing licenses. (1) Nothing in this article shall be construed to invalidate or affect the license of any person holding a valid, unrevoked, and unsuspended license to practice medicine in this state on July 1, 1951, except as otherwise provided by this article.

(2) Nothing in this article shall be construed to invalidate the license of any person holding a valid, unrevoked, and unsuspended license on June 30, 1979, to practice medicine in this state or to affect any disciplinary proceeding or appeal pending on June 30, 1979, or any appointment to the board, the inquiry panel, or the hearings panel made on or before June 30, 1979.

Source: L. 51: p. 571, § 32. CSA: C. 109, § 33(32). CRS 53: § 91-1-32. C.R.S. 1963: § 91-1-32. L. 79: Entire section amended, p. 522, § 24, effective July 1.

12-36-132. Injunctive proceedings. (Repealed)

Source: L. 67: p. 813, § 7. C.R.S. 1963: § 91-1-36. L. 76: (1) amended, p. 424, § 5, and (1) amended, p. 414, § 9, effective July 1. L. 85: (1) amended, p. 505, § 20, effective July 1. L. 91: (1) amended, p. 1910, § 16, effective June 1. L. 2010: Entire section repealed, (HB 10-1260), ch. 403, p. 1974, § 44, effective July 1.

Editor's note: This section was relocated to § 12-36-129 (6) in 2010.

12-36-133. Postmortem examinations by licensee - definition - application of this section. (1) As used in this section, "person or persons" shall include any individual, partnership, corporation, body politic, or association.

(2) Consent for a licensee to conduct a postmortem examination of the body of a deceased person shall be deemed sufficient when given by whichever one of the following assumes custody of the body for purposes of burial: Father, mother, husband, wife, child, guardian, next of kin, or, in the absence of any of the foregoing, a friend or a person charged by law with the responsibility for burial. If two or more such persons assume custody of the body, the consent of one of them shall be deemed sufficient.

(3) Nothing in this section shall be construed as a repeal of any provision of part 6 of article 10 of title 30, C.R.S.

Source: L. 59: p. 586, §§ 1, 2, 3. **CRS 53:** §§ 91-1-33, 91-1-34, 91-1-35. **C.R.S. 1963:** §§ 91-1-33, 91-1-34, 91-1-35. **L. 2001:** (2) amended, p. 184, § 14, effective August 8.

ANNOTATION

Law reviews. For article, "The Private Autopsy: Problems of Consent", see 41 Den. L. Ctr. J. 239 (1964).

12-36-134. Professional service corporations, limited liability companies, and registered limited liability partnerships for the practice of medicine - definitions. (1) Persons licensed to practice medicine by the board may form professional service corporations for such persons' practice of medicine under the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., if such corporations are organized and operated in accordance with the provisions of this section. The articles of incorporation of such corporations shall contain provisions complying with the following requirements:

(a) The name of the corporation shall contain the words "professional company" or "professional corporation" or abbreviations thereof.

(b) The corporation is organized solely for the purpose of permitting individuals to conduct the practice of medicine through a corporate entity, so long as all the individuals are actively licensed physicians or physician assistants in the state of Colorado.

(c) The corporation may exercise the powers and privileges conferred upon corporations by the laws of Colorado only in furtherance of and subject to its corporate purpose.

(d) (I) Except as specified in subparagraph (II) of this paragraph (d), all shareholders of the corporation are persons licensed by the board to practice medicine in the state of Colorado who at all times own their shares in their own right; except that one or more persons licensed by the board as a physician assistant may be a shareholder of the corporation as long as the physician shareholders maintain majority ownership of the corporation. The shareholders shall be individuals who, except for illness, accident, time spent in the armed services, on vacations, and on leaves of absence not to exceed one year, are actively engaged in the practice of medicine or as a physician assistant in the offices of the corporation.

(II) If a person licensed to practice medicine who was a shareholder of the corporation dies, an heir to the deceased shareholder may become a shareholder of the corporation for up to two years, regardless of whether the heir is licensed to practice medicine. Unless the deceased shareholder was the only shareholder of the corporation, the heir who becomes a shareholder shall be a nonvoting shareholder in all matters concerning the corporation. If the heir of the deceased shareholder ceases to be a shareholder, the shares shall be disposed of pursuant to paragraph (e) of this subsection (1).

(e) Provisions shall be made requiring any shareholder who ceases to be or for any reason is ineligible to be a shareholder to dispose of all his shares forthwith, either to the corporation or to any person having the qualifications described in paragraph (d) of this subsection (1).

(f) The president shall be a shareholder and a director and, to the extent possible, all other directors and officers shall be persons having the qualifications described in paragraph (d) of this subsection (1). Lay directors, officers, and heirs of deceased shareholders shall not exercise any authority whatsoever over the independent medical judgment of persons licensed by the board to practice medicine in this state. Notwithstanding sections 7-108-103 to 7-108-106, C.R.S., relating to the terms of office and classification of directors, a professional service corporation for the practice of medicine may provide in the articles of incorporation or the bylaws that the directors may have terms of office of up to six years and that the directors may be divided into classes, with the terms of each class staggered to provide for the periodic election of less than all the directors. Nothing in this article shall be construed to cause a professional service corporation to be vicariously liable to a patient or third person for the professional negligence or other tortious conduct of a physician who is a shareholder or employee of a professional service corporation.

(f.5) An heir to a deceased shareholder who becomes a shareholder shall be liable only to the same extent as the deceased shareholder would have been in his or her capacity as a shareholder, had he or she lived and remained a shareholder, for all acts, errors, and omissions of the employees of the corporation.

(g) The articles of incorporation provide and all shareholders of the corporation agree that all shareholders of the corporation are jointly and severally liable for all acts, errors, and omissions of the employees of the corporation or that all shareholders of the corporation are jointly and severally liable for all acts, errors, and omissions of the employees of the corporation, except during periods of time when each licensee who is a shareholder or any employee of the corporation has a professional liability policy insuring himself or herself and all employees who are not licensed pursuant to this article who act at his or her direction, in the amount of fifty thousand dollars for each claim and an aggregate top limit of liability per year for all claims of one hundred fifty thousand dollars, or the corporation maintains in good standing professional liability insurance that meets the following minimum standards:

(I) The insurance insures the corporation against liability imposed upon the corporation by law for damages resulting from any claim made against the corporation arising out of the performance of professional services for others by those officers and employees of the corporation who are licensees.

(II) The policies insure the corporation against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all nonprofessional employees.

(III) The insurance is in an amount for each claim of at least fifty thousand dollars multiplied by the number of licensees employed by the corporation. The policy may provide for an aggregate top limit of liability per year for all claims of one hundred fifty thousand dollars also multiplied by the number of licensees employed by the corporation, but no firm shall be required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate top limit of liability for all claims during the year of nine hundred thousand dollars.

(IV) The policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured corporation or any stockholder or employee thereof; the conduct of any business enterprise, as distinguished from the practice of medicine, in which the insured corporation under this section is not permitted to engage but which nevertheless may be owned by the insured corporation or in which the insured corporation may be a partner or which may be controlled, operated, or managed by the insured corporation in its own or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith; when not resulting from breach of professional duty, bodily injury to, or sickness, disease, or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof; and such policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(2) Repealed.

(3) The corporation shall do nothing that, if done by a licensee employed by the corporation, would violate the standards of professional conduct as provided for in section

12-36-117. Any violation of this section by the corporation is grounds for the board to revoke or suspend the license of the person or persons responsible for the violation.

(4) Nothing in this section diminishes or changes the obligation of each licensee employed by the corporation to conduct his or her practice in accordance with the standards of professional conduct provided for in section 12-36-117. Any licensee who, by act or omission, causes the corporation to act or fail to act in a way that violates the standards of professional conduct, including any provision of this section, is personally responsible for such act or omission and is subject to discipline for the act or omission.

(5) Nothing in this section modifies the physician-patient privilege specified in section 13-90-107 (1) (d), C.R.S.

(6) A professional service corporation may adopt a pension, profit-sharing (whether cash or deferred), health and accident, insurance, or welfare plan for all or part of its employees including lay employees if such plan does not require or result in the sharing of specific or identifiable fees with lay employees, and if any payments made to lay employees, or into any such plan in behalf of lay employees, are based upon their compensation or length of service, or both, rather than the amount of fees or income received.

(7) (a) Corporations shall not practice medicine. Nothing in this section shall be construed to abrogate a cause of action against a professional corporation for its independent acts of negligence.

(b) Employment of a physician in accordance with section 25-3-103.7, C.R.S., shall not be considered the corporate practice of medicine.

(8) As used in this section, unless the context otherwise requires:

(a) "Articles of incorporation" includes operating agreements of limited liability companies and partnership agreements of registered limited liability partnerships.

(b) "Corporation" includes a limited liability company organized under the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S., and a limited liability partnership registered under section 7-60-144 or 7-64-1002, C.R.S.; except that the name of an entity other than a corporation shall contain the word "professional" or the abbreviation "prof." in addition to any other words required by the statute under which such entity is organized.

(c) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(d) "Employees" includes employees, members, and managers of a limited liability company and employees and partners of a registered limited liability partnership.

(e) "President" includes all managers, if any, of a limited liability company and all partners in a registered limited liability partnership.

(f) "Share" includes a member's rights in a limited liability company and a partner's rights in a registered limited liability partnership.

(g) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

Source: L. 69: p. 825, § 2. C.R.S. 1963: § 91-1-37. L. 75: IP(1)(g) amended, p. 463, § 1, effective July 1. L. 83: (1)(f) amended, p. 544, § 1, effective May 16. L. 85: (2) repealed, p. 524, § 17, effective July 1. L. 93: (7) amended, p. 721, § 1, effective May 6; (1)(f) amended, p. 863, § 34, effective July 1, 1994. L. 95: (8) added, p. 813, § 33, effective May 24. L. 97: (8)(b) amended, p. 918, § 13, effective January 1, 1998. L. 2003: IP(1), (1)(b), (1)(f), IP(1)(g), (3), and (7) amended, p. 1598, § 2, effective July 1. L. 2010: (1)(b), (1)(d), (1)(f), IP(1)(g), (1)(g)(I), (1)(g)(II), (1)(g)(III), (3), (4), and (5) amended, (HB 10-1260), ch. 403, p. 1975, § 48, effective July 1; (1)(d) and (1)(f) amended and (1)(f.5) added, (HB 10-1244), ch. 221, p. 963, § 2, effective August 11.

Editor's note: Amendments to subsections (1)(d) and (1)(f) by House Bill 10-1244 and House Bill 10-1260 were harmonized.

Cross references: For the legislative declaration contained in the 2003 act amending the introductory portions to subsections (1) and (1)(g) and subsections (1)(b), (1)(f), (3), and (7), see section 1 of chapter 240, Session Laws of Colorado 2003.

ANNOTATION

Law reviews. For article, "Operating a Personal Service Corporation", see 17 Colo. Law. 2011 (1988). For article, "Choice of Entity for Healthcare Professionals", see 29 Colo. Law. 81 (September 2000). For article, "Health Care Litigation in Colorado: A Survey of Recent Decisions", see 30 Colo. Law. 91 (August 2001). For article, "Of (Allegedly) Bad Docs and (Definitely) Good Dogs: Update on Choice of Entity for Healthcare Professionals", see 31 Colo. Law. 109 (October 2002).

Records of corporation not protectable private property of physician. Records of a professional corporation organized as an independent institutional entity for the continuing conduct of the medical practice of the clinic, which were not treated as being held by the doctors individually but were held in a representative capacity for the clinic, were not possessed by defendant physician as private property which the fifth amendment protects. *United States v. Radetsky*, 535 F.2d 556 (10th Cir.), cert. denied, 429 U.S. 820, 97 S. Ct. 68, 50 L. Ed. 2d 81 (1976).

This section permits respondeat superior claims against medical professional service corporations arising from negligence of the corporation's physician employees. *Russell v. Pediatric Neurosurgery, P.C.*, 15 P.3d 288 (Colo. App. 2000), aff'd, 44 P.3d 1063 (Colo. 2002) (decided under law in effect prior to 2003 amendment). But see *Estate of Harper ex rel. Al-Hamim v. Denver Health & Hosp. Auth.*, 140 P.3d 273 (Colo. App. 2006).

12-36-135. Injuries to be reported - penalty for failure to report - immunity from liability. (1) (a) It shall be the duty of every licensee who attends or treats a bullet wound, a gunshot wound, a powder burn, or any other injury arising from the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument that the licensee believes to have been intentionally inflicted upon a person, or an injury arising from a dog bite that the licensee believes was inflicted upon a person by a dangerous dog, as defined in section 18-9-204.5 (2) (b), C.R.S., or any other injury that the licensee has reason to believe involves a criminal act, including injuries resulting from domestic violence, to report the injury at once to the police of the city, town, or city and county or the sheriff of the county in which the licensee is located. Any licensee who fails to make a report as required by this section commits a class 2 petty offense, as defined by section 18-1.3-503, C.R.S., and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

(b) When a licensee performs a forensic medical examination that includes the collection of evidence at the request of a victim of sexual assault, not in connection with a referring or requesting law enforcement agency, and the licensee's employing medical facility knows where the crime occurred, the facility shall contact the law enforcement agency in whose jurisdiction the crime occurred regarding preservation of the evidence. If the medical facility does not know where the crime occurred, the facility shall contact its local law enforcement agency regarding preservation of the evidence.

(1.5) As used in subsection (1) of this section, unless the context otherwise requires:

(a) "Domestic violence" means an act of violence upon a person with whom the actor is or has been involved in an intimate relationship. Domestic violence also includes any

This section provides an exception to the corporate practice of medicine doctrine by permitting professional corporations to practice medicine and be liable for the negligence of physician employees. Subsection (1)(g) only addresses the manner by which shareholders may limit personal liability for the torts of the corporate employees. Subsection (1)(g) does not preclude the corporation from being held vicariously liable under the doctrine of respondeat superior. *Pediatric Neurosurgery, P.C. v. Russell*, 44 P.3d 1063 (Colo. 2002) (decided under law in effect prior to 2003 amendment). But see *Estate of Harper ex rel. Al-Hamim v. Denver Health & Hosp. Auth.*, 140 P.3d 273 (Colo. App. 2006).

Corporate practice of medicine doctrine is statutorily altered, but not abolished, in Colorado. *Daly v. Aspen Ctr. for Women's Health, Inc.*, 134 P.3d 450 (Colo. App. 2005).

This section does not create a statutory exception to the common law corporate practice of medicine doctrine. Therefore, health care providers organized under this section are not exposed to vicarious liability. *Estate of Harper ex rel. Al-Hamim v. Denver Health & Hosp. Auth.*, 140 P.3d 273 (Colo. App. 2006).

The general assembly legislatively overruled the decision in *Pediatric Neurosurgery, P.C. v. Russell*, 44 P.3d 1063 (Colo. 2002), annotated above, by removing from this section the exception to the common law practice of medicine doctrine. *Estate of Harper ex rel. Al-Hamim v. Denver Health & Hosp. Auth.*, 140 P.3d 273 (Colo. App. 2006).

other crime against a person or any municipal ordinance violation against a person when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.

(b) "Intimate relationship" means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time.

(2) Any licensee who, in good faith, makes a report pursuant to subsection (1) of this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making of such report, and shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

(3) Any licensee who makes a report pursuant to subsection (1) of this section shall not be subject to the physician-patient relationship described in section 13-90-107 (1) (d), C.R.S., as to the medical examination and diagnosis. Such licensee may be examined as a witness, but not as to any statements made by the patient that are the subject matter of section 13-90-107 (1) (d), C.R.S.

Source: **L. 79:** Entire section added, p. 526, § 1, effective July 1. **L. 95:** (1) amended and (1.5) added, p. 1219, § 1, effective July 1; (3) added, p. 1249, § 1, effective July 1. **L. 2001:** (1), (2), and (3) amended, p. 184, § 15, effective August 8. **L. 2002:** (1) amended, p. 1479, § 77, effective October 1. **L. 2006:** (1) amended, p. 1252, § 1, effective July 1. **L. 2008:** (1) amended, p. 264, § 2, effective March 31.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

The plain, clarifying language of subsection (3) states that in cases where a physician has a duty to report an injury to the police, the physician-patient privilege is abrogated only with regard to testimony about the information received from the physician's observations of the patient, not regarding any statements the patient may have made to the physician. *People v. Covington*, 19 P.3d 15 (Colo. 2001).

Physician duty to report abrogates the physician-patient privilege established in § 13-

90-107, and 1995 amendments to subsection (1) merely clarified that inherent within the reporting statute was an abrogation of the physician-patient privilege as it relates to the bare medical information the physician observed during the examination; otherwise, duty to report would have been rendered meaningless. *People v. Covington*, 19 P.3d 15 (Colo. 2001).

12-36-136. Determination of death. (1) An individual is dead if:

(a) He has sustained irreversible cessation of circulatory and respiratory functions; or
(b) He has sustained irreversible cessation of all functions of the entire brain, including the brain stem.

(2) A determination of death under this section shall be in accordance with accepted medical standards.

Source: **L. 81:** Entire section added, p. 778, § 1, effective May 21.

Editor's note: Prior to the enactment of this section, the Colorado Supreme Court had adopted the concept of "Brain death" as set forth in the "Uniform Brain Death Act". See *Lovato v. District Court*, 198 Colo. 419, 601 P.2d 1072 (1979).

ANNOTATION

Law reviews. For article, "Probate and Non-probate Distribution Issues in the Case of A

Murder/Suicide", see 17 Colorado Law 1061 (1988).

12-36-137. Inactive license. (1) Any licensee pursuant to section 12-36-114 may apply to the board to be transferred to an inactive status. Such application shall be in the form and manner designated by the board. The board may grant such status by issuing an inactive license or it may deny the application as set forth in section 12-36-116.

(2) Any person applying for a license under this section shall:

(a) Provide an affidavit to the board that the applicant, after a date certain, will not practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant in this state unless the applicant is issued a license to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant pursuant to subsection (5) of this section;

(b) Pay the license fee as authorized pursuant to section 12-36-123; and

(c) Comply with any financial responsibility standards promulgated by the board pursuant to section 13-64-301 (1), C.R.S.

(3) Such inactive status shall be plainly indicated on the face of any inactive license issued under this section.

(4) The board is authorized to undertake disciplinary proceedings as set forth in sections 12-36-117 and 12-36-118 against any person licensed under this section for any act committed while the person was licensed pursuant to this article.

(5) Any person licensed under this section who wishes to resume the practice of medicine or to resume practice as a physician assistant shall file an application in the form and manner the board shall designate, pay the license fee promulgated by the board pursuant to section 12-36-123, and meet the financial responsibility requirements promulgated by the board pursuant to section 13-64-301 (1), C.R.S. The board may approve such application and issue a license or may deny the application as set forth in section 12-36-116.

Source: L. 90: Entire section added, p. 815, § 4, effective May 8. L. 2001: (1), (2)(a), and (5) amended, p. 185, § 16, effective August 8. L. 2012: (2)(a) amended, (HB 12-1332), ch. 238, p. 1059, § 13, effective August 8.

12-36-138. Rules and regulations - compliance with reporting requirements of federal act. (Repealed)

Source: L. 88: Entire section added, p. 525, § 10, effective July 1. L. 89: Entire section repealed, p. 689, § 6, effective July 1.

12-36-139. Limitations on liability relating to professional review actions. (Repealed)

Source: L. 88: Entire section added, p. 525, § 10, effective July 1. L. 89: Entire section repealed, p. 689, § 6, effective July 1.

12-36-140. Protection of medical records - licensee's obligations - verification of compliance - noncompliance grounds for discipline - rules. (1) Each licensed physician and physician assistant shall develop a written plan to ensure the security of patient medical records. The plan shall address at least the following:

(a) The storage and proper disposal, if appropriate, of patient medical records;

(b) The disposition of patient medical records in the event the licensee dies, retires, or otherwise ceases to practice or provide medical care to patients; and

(c) The method by which patients may access or obtain their medical records promptly if any of the events described in paragraph (b) of this subsection (1) occurs.

(2) Upon initial licensure under this article and upon renewal of a license, the applicant or licensee, as applicable, shall attest to the board that he or she has developed a plan in compliance with this section.

(3) A licensee shall inform each patient, in writing, of the method by which the patient may access or obtain his or her medical records if an event described in paragraph (b) of subsection (1) of this section occurs.

- (4) A licensee who fails to comply with this section shall be subject to discipline in accordance with section 12-36-118.
- (5) The board may adopt rules as necessary to implement this section.

Source: L. 2010: Entire section added, (HB 10-1260), ch. 403, p. 1965, § 34, effective July 1.

PART 2

SAFETY TRAINING FOR UNLICENSED X-RAY TECHNICIANS

12-36-201 and 12-36-202. (Repealed)

Source: L. 2010: Entire part repealed, (HB 10-1128), ch. 172, p. 614, § 12, effective April 29.

Editor’s note: This part 2 was added in 1991. For amendments to this part 2 prior to its repeal in 2010, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 36.5

Professional Review of Health Care Providers

PART 1

PROFESSIONAL REVIEW
PROCEEDINGS - PHYSICIANS

- 12-36.5-101. Legislative declaration.
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PART 2

CONFORMANCE WITH FEDERAL LAW
AND REGULATION

- 12-36.5-201. Legislative declaration.
- 12-36.5-202. Rules - compliance with reporting requirements of federal act.
- 12-36.5-203. Limitations on liability relating to professional review actions.

PART 1

PROFESSIONAL REVIEW PROCEEDINGS - PHYSICIANS

Law reviews: For article, “The Colorado Peer Review Act: The Fog Lifts”, see 30 Colo. Law. 57 (January 2001).

- 12-36.5-101. Legislative declaration.** (1) The general assembly hereby finds, determines, and declares that the Colorado medical board created in article 36 of this title and the state board of nursing created in article 38 of this title act for the state in its sovereign capacity to govern licensure, discipline, and professional review of persons licensed to practice medicine, licensed as physician assistants, and licensed to practice nursing and granted authority as advanced practice nurses, respectively, in this state. The general assembly further finds, determines, and declares that:

(a) The authority to provide health care in this state is a privilege granted by the legislative authority of the state; and

(b) It is necessary for the health, safety, and welfare of the people of this state that the appropriate regulatory boards exercise their authority to protect the people of this state from unauthorized practice and unprofessional conduct by persons licensed to provide health care under articles 36 and 38 of this title.

(2) The general assembly recognizes that:

(a) Many patients of persons licensed to provide health care in this state have restricted choices of health care providers under a variety of circumstances and conditions;

(b) Many patients lack the knowledge, experience, or education to properly evaluate the quality of medical or nursing practice or the professional conduct of those licensed to practice medicine, licensed to act as physician assistants, and licensed to practice nursing and granted authority as advanced practice nurses; and

(c) It is necessary and proper that the respective regulatory boards exercise their regulatory authority to protect the health, safety, and welfare of the people of this state.

(3) The general assembly recognizes that, in the proper exercise of their authority and responsibilities under this article, the Colorado medical board and the state board of nursing must, to some extent, replace competition with regulation, and that the replacement of competition by regulation, particularly with regard to persons licensed under article 36 of this title or licensed under article 38 of this title and granted authority as advanced practice nurses, is related to a legitimate state interest in the protection of the health, safety, and welfare of the people of this state.

Source: L. 89: Entire article added, p. 678, § 1, effective July 1. L. 2010: Entire section amended, (HB 10-1260), ch. 403, p. 1981, § 62, effective July 1. L. 2012: Entire section amended, (HB 12-1300), ch. 245, p. 1161, § 3, effective July 1.

ANNOTATION

The Colorado professional review act should not be interpreted to include the federal counterpart statute's presumption that professional review activities are undertaken for the purpose of assuring quality care and patient safety. *Northern Colo. Med. Center v. Committee on Anticomp.*, 914 P.2d 902 (Colo. 1996).

A member of a professional review committee and a governing body that makes the final decision may participate in both the investigation and decision making process. *North Colo. Med. Ctr., Inc. v. Nicholas*, 27 P.3d 828 (Colo. 2001).

12-36.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Authorized entity" means a corporation, organization, or entity that is authorized to establish a professional review committee under section 12-36.5-104 (4) or (5) or under rules of the medical board or nursing board adopted pursuant to section 12-36.5-104 (5).

(2) "CMS" means the federal centers for medicare and medicaid services.

(2.5) "Division" means the division of professions and occupations in the department of regulatory agencies.

(3) "Governing board" means a board, board of trustees, governing board, or other body, or duly authorized subcommittee thereof, of an authorized entity, which board or body has final authority pursuant to the entity's written bylaws, policies, or procedures to take final action regarding the recommendations of a professional review committee.

(4) "Joint commission" means the joint commission or its successor entity.

(5) "Medical board" means the Colorado medical board created in section 12-36-103 (1).

(6) "Professional review committee" means any committee authorized under this article to review and evaluate the competence, professional conduct of, or the quality and appropriateness of patient care provided by, any person licensed under article 36 of this title or licensed under article 38 of this title and granted authority as an advanced practice nurse. "Professional review committee" includes a governing board, a hearing panel appointed by a governing board to conduct a hearing under section 12-36.5-104 (7) (a), and an independent third party designated by a governing board under section 12-36.5-104 (8) (b).

(7) (a) "Records" means any and all written, electronic, or oral communications by any person arising from any activities of a professional review committee, including a

governing board, established by an authorized entity under this article or by the agent or staff thereof, including any:

- (I) Letters of reference;
- (II) Complaint, response, or correspondence related to the complaint or response;
- (III) Interviews or statements, reports, memoranda, assessments, and progress reports developed to assist in professional review activities;
- (IV) Assessments and progress reports to assist in professional review activities, including reports and assessments developed by independent consultants in connection with professional review activities; and
- (V) Recordings or transcripts of proceedings, minutes, formal recommendations, decisions, exhibits, and other similar items or documents related to professional review activities or the committee on anticompetitive conduct and typically constituting the records of administrative proceedings.

(b) "Records" does not include any written, electronic, or oral communications by any person that are otherwise available from a source outside the scope of professional review activities, including medical records and other health information.

(8) "State board of nursing" or "nursing board" means the state board of nursing created in section 12-38-104.

Source: L. 89: Entire section added, p. 679, § 1, effective July 1. L. 2010: (1) amended, (HB 10-1260), ch. 403, p. 1982, § 63, effective July 1. L. 2012: Entire section amended, (HB 12-1300), ch. 245, p. 1161, § 4, effective July 1.

12-36.5-103. Use of professional review committees. (1) (a) The general assembly recognizes that:

(I) The medical board and the nursing board, while assuming and retaining ultimate authority for licensure and discipline in accordance with articles 36 and 38 of this title, respectively, and in accordance with this article, cannot practically and economically assume responsibility over every single allegation or instance of purported deviation from the standards of quality for the practice of medicine or nursing, from the standards of professional conduct, or from the standards of appropriate care; and

(II) An attempt to exercise such oversight would result in extraordinary delays in the determination of the legitimacy of the allegations and would result in the inappropriate and unequal exercise of their authority to license and discipline persons licensed under article 36 of this title or licensed under article 38 of this title and granted authority as advanced practice nurses.

(b) It is therefore the intent of the general assembly that the medical board and the nursing board utilize and allow professional review committees and governing boards to assist them in meeting their responsibilities under articles 36 and 38 of this title, respectively, and under this article.

(2) All persons licensed under article 36 of this title or licensed under article 38 of this title and granted authority as advanced practice nurses are encouraged to serve upon professional review committees when called to do so and to study and review in an objectively reasonable manner the professional conduct of persons licensed under article 36 of this title or licensed under article 38 of this title and granted authority as advanced practice nurses, including the competence, professional conduct of, or the quality and appropriateness of patient care provided by, those persons.

(3) (a) The use of professional review committees is an extension of the authority of the medical board and nursing board. However, except as otherwise provided in this article, nothing in this article limits the authority of professional review committees properly constituted under this article.

(b) Professional review committees, the members who constitute the committees, governing boards, authorized entities, and persons who participate directly or indirectly in professional review activities are granted certain immunities from liability arising from actions that are within the scope of their activities as provided in section 12-36.5-105. These grants of immunity from liability are necessary to ensure that professional review committees and governing boards can exercise their professional knowledge and judgment.

Source: L. 89: Entire section added, p. 679, § 1, effective July 1. L. 2010: (1) and (3)(a) amended, (HB 10-1260), ch. 403, p. 1982, § 64, effective July 1. L. 2012: Entire section amended, (HB 12-1300), ch. 245, p. 1163, § 5, effective July 1.

ANNOTATION

While this section clearly expresses the need for peer review and its importance to the regulation of the practice of medicine, it is insufficient to provide absolute immunity in a 42 U.S.C. § 1983 action. *Moore v. Gunnison Valley Hosp.*, 310 F.3d 1315 (10th Cir. 2002).

A mere statement by the Colorado legislature that peer-review committees are extensions of the state medical board's authority is insufficient to clothe those committees in the same immunity as the board itself. In order for these committees to be viewed as extensions of the medical board and worthy of similar immunity, the state board must exercise adequate

oversight and authority over the peer-review committees. *Moore v. Gunnison Valley Hosp.*, 310 F.3d 1315 (10th Cir. 2002).

Professional peer review conduct in a private medical facility does not constitute state action for the purposes of 42 U.S.C. § 1983. A private entity's conduct is fairly attributable to the state only if it meets two criteria: The deprivation is caused by the exercise of some right or privilege created by the state and the entity charged with the deprivation is fairly said to be a state actor. *North Colo. Med. Ctr., Inc. v. Nicholas*, 27 P.3d 828 (Colo. 2001).

12-36.5-104. Establishment of professional review committees - function - rules - repeal. (1) A professional review committee may be established pursuant to this section to review and evaluate the competence of, the quality and appropriateness of patient care provided by, or the professional conduct of, any person licensed under article 36 of this title or licensed under article 38 of this title and granted authority as an advanced practice nurse.

(2) Licensed physicians who are actively engaged in the practice of medicine in this state must constitute a majority of the voting members of any professional review committee established pursuant to this section for physicians and physician assistants; except that physicians need not constitute the majority of the voting members of a governing board authorized by paragraph (g) of subsection (4) of this section or an independent third party designated by a governing board under paragraph (b) of subsection (8) of this section.

(2.5) A professional review committee that is reviewing the competence of, the quality and appropriateness of patient care provided by, or the professional conduct of, a person licensed under article 38 of this title and granted authority as an advanced practice nurse must either:

(a) Have, as a voting member, at least one person licensed under article 38 of this title and granted authority as an advanced practice nurse with a scope of practice similar to that of the person who is the subject of the review; or

(b) Engage, to perform an independent review as appropriate, an independent person licensed under article 38 of this title and granted authority as an advanced practice nurse with a scope of practice similar to that of the person who is the subject of the review. The person conducting the independent review must be a person who was not previously involved in the review.

(3) A utilization and quality control peer review organization, as defined pursuant to 42 U.S.C. sec. 1320c-1, or any other organization performing similar review services under federal or state law is an approved professional review committee under this article.

(4) A professional review committee established by any of the following authorized entities is an approved professional review committee under this article if it operates in compliance with written bylaws, policies, or procedures that are in compliance with this article and that have been approved by the authorized entity's governing board and if it is registered with the division in accordance with section 12-36.5-104.6:

(a) The medical staff of a hospital licensed pursuant to part 1 of article 3 of title 25, C.R.S., or certified pursuant to section 25-1.5-103 (1) (a) (II), C.R.S.;

(b) The medical staff of a hospital-related corporation. For the purposes of this paragraph (b), an entity is a "hospital-related corporation" if the licensed or certified hospital or holding company of the licensed or certified hospital has ownership or control of the entity;

(c) A society or association of physicians whose membership includes not less than one-third of the doctors of medicine or doctors of osteopathy licensed to practice and residing in this state, if the physician whose services are the subject of the review is a member of the society or association;

(c.5) A society or association of advanced practice nurses licensed and registered pursuant to article 38 of this title and residing in this state, if the advanced practice nurse whose services are the subject of the review is a member of the society or association;

(d) A society or association of physicians licensed to practice and residing in this state and specializing in a specific discipline of medicine, whose society or association has been designated by the medical board as a specialty society or association representative of physicians practicing the specific discipline of medicine, if the physician whose services are the subject of the review is a member of the specialty society or association;

(d.5) A society or association of advanced practice nurses licensed and registered pursuant to article 38 of this title and practicing in a specified nursing role and population focus, as defined by the nursing board, which society or association has been designated by the nursing board as the specific nursing society or association representative of those advanced practice nurses practicing in that nursing role and population focus, if the advanced practice nurse whose services are the subject of the review is a member of the designated nursing society or association.

(e) An individual practice association or a preferred provider organization consisting of persons licensed under article 36 of this title, or licensed under article 38 of this title and granted authority as advanced practice nurses, or a medical group that predominantly serves members of a health maintenance organization licensed pursuant to parts 1 and 4 of article 16 of title 10, C.R.S. A professional review committee established pursuant to this paragraph (e) has jurisdiction to review only persons licensed under article 36 of this title, or licensed under article 38 of this title and granted authority as advanced practice nurses, who are members of the association or organization creating and authorizing that committee; except that the professional review committee may review the care provided to a particular patient referred by a member of the association or organization to another person licensed under article 36 of this title, or licensed under article 38 of this title and granted authority as an advanced practice nurse, who is not a member of the association or organization.

(f) A corporation authorized to insure persons licensed under article 36 of this title or licensed under article 38 of this title and granted authority as advanced practice nurses pursuant to article 3 of title 10, C.R.S., or any other organization authorized to insure such persons in this state when designated by the medical board or nursing board under subsection (5) of this section;

(g) The governing board of any authorized entity that has a professional review committee established pursuant to article 36 or article 38 of this title;

(h) Any professional review committee established or created by a combination or pooling of any authorized entities;

(i) (I) A nonprofit corporation or association consisting of representatives from a statewide professional society and a statewide hospital association. The association must consist of persons licensed under article 36 of this title or licensed under article 38 of this title and granted authority as advanced practice nurses, hospital administrators, and hospital trustees, with a majority of the representatives being persons licensed under article 36 of this title when the subject of the investigation is a person licensed under article 36 of this title, and at least one of the representatives being a person licensed under article 38 of this title and granted authority as an advanced practice nurse when the subject of the investigation is a person licensed under article 38 of this title and granted authority as an advanced practice nurse. The association may establish, or contract for, one or more professional review committees to review the care by hospital staff personnel who are licensed under article 36 of this title or licensed under article 38 of this title and granted authority as advanced practice nurses, with priority given to small rural hospital staffs. These professional review services must be available statewide on a fee-for-service basis to licensed or certified hospitals at the joint request of the governing board and the medical or nursing staff of the hospital or at the sole request of the governing board of the hospital. If a member

being reviewed specializes in a generally recognized specialty of medicine or nursing, at least one of the health care providers on the professional review committee must be a person licensed under article 36 of this title, or licensed under article 38 of this title and granted authority as an advanced practice nurse, who practices such specialty.

(II) For purposes of the introductory portion to this subsection (4) and this paragraph (i), the bylaws, policies, or procedures must be in compliance with this article and approved by the nonprofit corporation or association.

(j) The medical or nursing staff of an ambulatory surgical center licensed pursuant to part 1 of article 3 of title 25, C.R.S.;

(k) A professional services entity organized pursuant to section 12-36-134;

(l) A provider network that includes persons licensed under article 36 of this title, or licensed under article 38 of this title and granted authority as advanced practice nurses, and is organized pursuant to part 3 of article 18 of title 6, C.R.S.;

(m) A health system that includes two or more authorized entities with a common governing board;

(n) A trust organization established under article 70 of title 11, C.R.S.;

(o) An entity licensed pursuant to parts 1 and 4 of article 16 of title 10, C.R.S.;

(p) An accountable care organization established under the federal "Patient Protection and Affordable Care Act", Pub.L. 111-148, or other organization with a similar function;

(q) A hospital licensed pursuant to part 1 of article 3 of title 25, C.R.S., or certified pursuant to section 25-1.5-103 (1) (a) (II), C.R.S.; and

(r) An ambulatory surgical center licensed pursuant to part 1 of article 3 of title 25, C.R.S.

(5) The medical board and the nursing board, with respect to the licensees subject to their jurisdiction, may establish by rule procedures necessary to authorize other health care or physician organizations or professional societies as authorized entities that may establish professional review committees.

(6) (a) A professional review committee acting pursuant to this part 1 may investigate or cause to be investigated:

(I) The qualifications and competence of any person licensed under article 36 of this title or licensed under article 38 of this title and granted authority as an advanced practice nurse who seeks to subject himself or herself to the authority of any authorized entity; or

(II) The quality or appropriateness of patient care rendered by, or the professional conduct of, any person licensed under article 36 of this title or licensed under article 38 of this title and granted authority as an advanced practice nurse who is subject to the authority of the authorized entity.

(b) The professional review committee shall conduct the investigation in conformity with written bylaws, policies, or procedures adopted by the authorized entity's governing board.

(7) The written bylaws, policies, or procedures of any professional review committee for persons licensed under article 36 of this title or licensed under article 38 of this title and granted authority as advanced practice nurses must provide for at least the following:

(a) (I) Except as provided in subparagraph (II) of this paragraph (a), if the findings of any investigation indicate that a person licensed under article 36 of this title or licensed under article 38 of this title and granted authority as an advanced practice nurse, and who is the subject of the investigation, is lacking in qualifications or competency, has provided substandard or inappropriate patient care, or has exhibited inappropriate professional conduct and the professional review committee takes or recommends an action to adversely affect the person's membership, affiliation, or privileges with the authorized entity, the professional review committee shall hold a hearing to consider the findings and recommendations unless the person waives, in writing, the right to a hearing or is given notice of a hearing and fails to appear.

(II) If the professional review committee is submitting its findings and recommendations to another professional review committee for review, only one hearing is necessary prior to any appeal before the governing board.

(b) A person who has participated in the course of an investigation is disqualified as a member of the professional review committee that conducts a hearing pursuant to paragraph (a) of this subsection (7), but the person may participate as a witness in the hearing.

(c) The authorized entity shall give to the subject of any investigation under this subsection (7) reasonable notice of the hearing, and of any finding or recommendation that would adversely affect the person's membership, affiliation, or privileges with the authorized entity, and the subject of the investigation has a right to be present, to be represented by legal counsel at the hearing, and to offer evidence in his or her own behalf.

(d) After the hearing, the professional review committee that conducted the hearing shall make any recommendations it deems necessary to the governing board, unless otherwise provided by federal law or regulation.

(e) The professional review committee shall give a copy of the recommendations to the subject of the investigation, who then has the right to appeal to the governing board to which the recommendations are made with regard to any finding or recommendation that would adversely affect his or her membership, affiliation, or privileges with the authorized entity.

(f) The professional review committee shall forward a copy of any recommendations made pursuant to paragraph (d) of this subsection (7) promptly to the medical board if the subject of the investigation is licensed under article 36 of this title, or to the nursing board if the subject of the investigation is licensed under article 38 of this title and granted authority as an advanced practice nurse.

(8) (a) All governing boards shall adopt written bylaws, policies, or procedures under which a person licensed under article 36 of this title or licensed under article 38 of this title and granted authority as an advanced practice nurse who is the subject of an adverse recommendation by a professional review committee may appeal to the governing board following a hearing in accordance with subsection (7) of this section. The bylaws, policies, or procedures must provide that the person be given reasonable notice of his or her right to appeal and, unless waived by the person, has the right to appear before the governing board, to be represented by legal counsel, and to offer the argument on the record as he or she deems appropriate.

(b) The bylaws may provide that a committee of not fewer than three members of the governing board may hear the appeal. Also, the bylaws may allow for an appeal to be heard by an independent third party designated by a governing board under this paragraph (b).

(9) All governing boards that are required to report their final actions to the medical board or the nursing board, as appropriate, are not otherwise relieved of their obligations by virtue of this article.

(10) (a) Except as specified in paragraph (b) of this subsection (10), the records of an authorized entity and its professional review committee, its governing board, or the committee on anticompetitive conduct are not subject to subpoena or discovery and are not admissible in any civil suit.

Editor's note: This version of paragraph (a) is effective until September 1, 2013.

(10) (a) Except as specified in paragraph (b) of this subsection (10), the records of an authorized entity, its professional review committee, and its governing board are not subject to subpoena or discovery and are not admissible in any civil suit.

Editor's note: This version of paragraph (a) is effective September 1, 2013.

(b) Subject to subsection (13) of this section, the records are subject to subpoena and available for use:

(I) (A) By the committee on anticompetitive conduct.

(B) This subparagraph (I) is repealed, effective September 1, 2013.

(II) By either party in an appeal or de novo proceeding brought pursuant to this part 1;

(III) By a person licensed under article 36 of this title, or licensed under article 38 of this title and granted authority as an advanced practice nurse, in a suit seeking judicial review of an action by the governing board;

(IV) By the Colorado department of public health and environment in accordance with its authority to issue or continue a health facility license or certification for an authorized entity;

(V) By CMS in accordance with its authority over federal health care program participation by an authorized entity;

(VI) By an authorized entity or governing board seeking judicial review;

(VII) By the medical board within the scope of its authority over licensed physicians and physician assistants; and

(VIII) By the nursing board within the scope of its authority over advanced practice nurses.

(11) (a) Except as provided in paragraph (b) of this subsection (11), the records of an authorized entity or its professional review committee may be disclosed to:

(I) The medical board, as requested by the medical board acting within the scope of its authority or as required or appropriate under this article or article 36 of this title;

(II) The nursing board, as requested by the nursing board acting within the scope of its authority or as required or appropriate under this article or article 38 of this title;

(III) The Colorado department of public health and environment acting within the scope of its health facility licensing authority or as the agent of CMS;

(IV) CMS, in connection with the survey and certification processes for federal health care program participation by an authorized entity; and

(V) The joint commission or other entity granted deeming authority by CMS, in connection with a survey or review for accreditation.

(b) The medical board, nursing board, and Colorado department of public health and environment shall not make further disclosures of any records disclosed by an authorized entity or its professional review committee under this section.

(12) The records of an authorized entity or its professional review committee or governing board may be shared by and among authorized entities and their professional review committees and governing boards concerning the competence, professional conduct of, or the quality and appropriateness of patient care provided by, a health care provider who seeks to subject himself or herself to, or is currently subject to, the authority of the authorized entity.

(13) Responding to a subpoena or disclosing or sharing of otherwise privileged records and information pursuant to subsection (10), (11), or (12) of this section does not constitute a waiver of the privilege specified in paragraph (a) of subsection (10) of this section or a violation of the confidentiality requirements of subsection (15) of this section. Records provided to any governmental agency, including the department of public health and environment, the committee on anticompetitive conduct, the medical board, and the nursing board pursuant to subsection (10) or (11) of this section are not public records subject to the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S. A person providing the records to an authorized entity or its professional review committee or governing board, the department of public health and environment, the committee on anticompetitive conduct, the medical board, the nursing board, CMS, the joint commission, or other governmental agency is entitled to the same immunity from liability as provided under section 12-36.5-105 for the disclosure of the records.

(14) Investigations, examinations, hearings, meetings, and other proceedings of a professional review committee or governing board conducted pursuant to this part 1 are exempt from any law requiring that proceedings be conducted publicly or that the records, including any minutes, be open to public inspection.

(15) Except as otherwise provided in subsection (10), (11), or (12) of this section, all proceedings, recommendations, records, and reports involving professional review committees or governing boards are confidential.

(16) A professional review committee or governing board that is constituted and conducts its reviews and activities in accordance with this part 1 is not an unlawful conspiracy in violation of section 6-4-104 or 6-4-105, C.R.S.

Source: L. 89: p. 680, § 1. L. 92: (6) amended, p. 2015, § 1, effective April 2; (4)(e) and (14) amended, pp. 1726, 244, §§ 13, 2, effective July 1. L. 95: (4)(f) amended and

(7)(f) added, p. 1071, §§ 20, 21, effective July 1. **L. 2003:** (4)(a) amended, p. 702, § 13, effective July 1. **L. 2008:** (4)(j) added, p. 277, § 1, effective August 5. **L. 2010:** IP(4), (4)(d), (4)(f), (5), (6)(a)(I), (7)(f), (9), and (11) amended, (HB 10-1260), ch. 403, p. 1982, § 65, effective July 1. **L. 2012:** Entire section amended, (HB 12-1300), ch. 245, p. 1164, § 6, effective July 1; (10)(a) and IP(10)(b) amended, (HB 12-1297), ch. 139, p. 505, § 2, effective September 1, 2013; (10)(b)(I)(B) added by revision, (HB 12-1297), ch. 139, pp. 505, 506, §§ 2, 6.

Editor's note: Amendments to subsection (10)(a), the introductory portion to (10)(b), and subsection (10)(b)(I) by House Bill 12-1297 and House Bill 12-1300 were harmonized.

ANNOTATION

Law reviews. For article, "Representing Physicians in Hospital-Based Professional Review Actions", see 25 Colo. Law. 57 (March 1996).

A member of a professional review committee and a governing body that makes the final decision may participate in both the investigation and decision making process. North Colo. Med. Ctr., Inc. v. Nicholas, 27 P.3d 828 (Colo. 2001).

The federal Protection and Advocacy for Mentally Ill Individuals Act (PAMII) requires disclosure of peer review and quality assurance records.

To the extent Colorado's laws conflict with PAMII and the access to peer review and medical assurance records that PAMII provides, they are preempted. Ctr. for Legal Advocacy v. Hammons, 323 F.3d 1262 (10th Cir. 2003).

Subsection (10) does not apply to an investigation by the state board of medical examiners because the board is not a peer review committee. DeSantis v. Simon, 209 P.3d 1069 (Colo. 2009).

12-36.5-104.4. Hospital professional review committees. (1) The quality and appropriateness of patient care rendered by persons licensed under article 36 of this title, licensed under article 38 of this title and granted authority as advanced practice nurses, and other licensed health care professionals so influence the total quality of patient care that a review of care provided in a hospital is ineffective without concomitantly reviewing the overall competence, professional conduct of, or the quality and appropriateness of care rendered by, such persons.

(2) (a) (I) Whenever a professional review committee created pursuant to section 12-36.5-104 reasonably believes that the quality or appropriateness of care provided by other licensed health care professionals may have adversely affected the outcome of patient care, the professional review committee shall:

(A) Refer the matter to a hospital committee created pursuant to section 25-3-109, C.R.S.; or

(B) Consult with a representative of the other licensed health care professional's profession.

(II) A professional review committee established pursuant to this article may meet and act in collaboration with a committee established pursuant to section 25-3-109, C.R.S.

(b) All matters considered in collaboration with or referred to a committee pursuant to this subsection (2) and all records and proceedings related thereto shall remain confidential and the committee members, governing board, witnesses, and complainants shall be subject to the immunities and privileges as set forth in this article.

(3) Nothing in this section shall be deemed to extend the authority or jurisdiction of the medical board to any individual not otherwise subject to the jurisdiction of the board.

Source: **L. 94:** Entire section added, p. 1740, § 1, effective May 31. **L. 2010:** (3) amended, (HB 10-1260), ch. 403, p. 1983, § 66, effective July 1. **L. 2012:** (1) amended, (HB 12-1300), ch. 245, p. 1171, § 7, effective July 1.

12-36.5-104.6. Governing boards to register with division - annual reports - aggregation and publication of data - definition - rules. (1) As used in this section, "adversely affecting" has the same meaning as set forth in 45 CFR 60.3; except that it does

not include a precautionary suspension or any professional review action affecting a person licensed under article 36 of this title, or licensed under article 38 of this title and granted authority as an advanced practice nurse, for a period of thirty days or less.

(2) Each governing board that establishes or uses one or more professional review committees to review the practice of persons licensed under article 36 of this title or licensed under article 38 of this title and granted authority as advanced practice nurses shall:

(a) Register with the division in a form satisfactory to the division on or before July 1, 2013, if the governing board has one or more existing professional review committees, or, if the governing board first establishes a professional review committee on or after July 1, 2013, within thirty days after approving the written bylaws, policies, or procedures for the professional review committee;

(b) In addition to any other state or federal reporting requirements:

(I) Report annually to the medical board, in a form satisfactory to the medical board, the number of final professional review actions in each of the following categories relating to individuals licensed under article 36 of this title:

(A) Adversely affecting the individual;

(B) In which an authorized entity accepted the individual's surrender of clinical privileges, membership, or affiliation while the individual was under investigation;

(C) In which an authorized entity accepted the individual's surrender of clinical privileges, membership, or affiliation in return for not conducting an investigation; and

(D) In which the professional review committee made recommendations regarding the individual following a hearing pursuant to section 12-36.5-104 (7) (d).

(II) Report annually to the nursing board, in a form satisfactory to the nursing board, the number of final professional review actions in each of the following categories relating to individuals licensed under article 38 of this title and granted authority as advanced practice nurses:

(A) Adversely affecting the individual;

(B) In which an authorized entity accepted the individual's surrender of clinical privileges, membership, or affiliation while the individual was under investigation;

(C) In which an authorized entity accepted the individual's surrender of clinical privileges, membership, or affiliation in return for not conducting an investigation; and

(D) In which the professional review committee made recommendations regarding the individual following a hearing pursuant to section 12-36.5-104 (7) (d).

(c) (I) Report to the division, in a de-identified manner, on its professional review activities during the immediately preceding calendar year in a form satisfactory to the division. These reports must include aggregate data, which is limited to the following:

(A) The number of investigations completed during the year;

(B) The number of investigations that resulted in no action;

(C) The number of investigations that resulted in written involuntary requirements for improvement sent to the subject of the investigation by the authorized entity; and

(D) The number of investigations that resulted in written agreements for improvement between the subject of the investigation and the authorized entity.

(II) (A) The medical board and the nursing board shall forward the reports received pursuant to sub-subparagraphs (I) and (II), respectively, of paragraph (b) of this subsection (2) to the division in a de-identified manner.

(B) The division shall not publish any information identifying the governing board or authorized entity making a report under paragraph (b) of this subsection (2) or this paragraph (c), and such reports and information are not public records under the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S.

(III) Reports submitted pursuant to this paragraph (c) must include only investigations in which no final action adversely affecting the subject of the investigation was taken or recommended.

(3) (a) The division shall publish the data provided pursuant to paragraphs (b) and (c) of subsection (2) of this section in aggregate form and without individually identifiable information concerning the governing board, the authorized entity, or any person licensed under article 36 of this title, or licensed under article 38 of this title and granted authority as an advanced practice nurse, who was subject to review.

(b) The division shall maintain and shall publish on-line, through its web site, a current list of all governing boards that are registered in accordance with this section and that otherwise are in compliance with this article.

(4) The division shall adopt rules to implement this section and may collect a reasonable registration fee to recover its direct and indirect costs of administering the registration and publication systems required by this section.

(5) For purposes of this section, an investigation occurs when the authorized entity or its professional review committee notifies the subject of the investigation in writing that an investigation has commenced.

(6) The medical board and the nursing board shall not initiate an investigation or issue a subpoena based solely on the data reported pursuant to paragraph (c) of subsection (2) of this section.

(7) (a) A governing board that fails to register with the division pursuant to paragraph (a) of subsection (2) of this section is not entitled to any immunity afforded under this article until the date that the governing board so registers. A governing board's failure to register does not affect any immunity, confidentiality, or privilege afforded to an individual participating in professional review activities.

(b) A governing board's failure to report as required by this section does not affect any immunity, confidentiality, or privilege afforded to the governing board under this article.

Source: L. 2012: Entire section added, (HB 12-1300), ch. 245, p. 1172, § 8, effective July 1.

12-36.5-105. Immunity from liability. (1) A member of a professional review committee, a governing board or any committee or third party designated by the governing board under section 12-36.5-104 (8) (b) and any person serving on the staff of that committee, board, panel, or third party, a witness or consultant before a professional review committee, and any person who files a complaint or otherwise participates in the professional review process is immune from suit and liability for damages in any civil or criminal action, including antitrust actions, brought by a person licensed under article 36 of this title or licensed under article 38 of this title who is the subject of the review by such professional review committee unless, in connection with the professional review process, the person provided false information and knew that the information was false.

(2) The governing board and the authorized entity that has established a professional review committee pursuant to section 12-36.5-104 is immune from suit and liability for damages in any civil or criminal action, including antitrust actions, brought by a person licensed under article 36 of this title or licensed under article 38 of this title who is the subject of the review by such professional review committee if the professional review action was taken within the scope of the professional review process and was taken:

(a) In the objectively reasonable belief that the action was in the furtherance of quality health care;

(b) After an objectively reasonable effort to obtain the facts of the matter;

(c) In the objectively reasonable belief that the action taken was warranted by the facts; and

(d) In accordance with procedures that, under the circumstances, were fair to the person licensed under article 36 of this title or licensed under article 38 of this title and granted authority as an advanced practice nurse.

Source: L. 89: Entire article added, p. 683, § 1, effective July 1. **L. 2004:** (2) amended, p. 1830, § 71, effective August 4. **L. 2012:** Entire section amended, (HB 12-1300), ch. 245, p. 1174, § 9, effective July 1.

ANNOTATION

Law reviews. For article, "Health Care Litigation in Colorado: A Survey of Recent Decisions", see 30 Colo. Law. 91 (August 2001).

Hospital review committees, their members, and other participants in the review process are immune from liability for dam-

ages when a physician loses hospital privileges, there is no evidence of false information, and the committee acted in compliance with this part and part 2 of article 36.5 of this title. North Colo. Med. Ctr., Inc. v. Nicholas, 27 P.3d 828 (Colo. 2001).

A member of a professional review committee and a governing body that makes the final decision may participate in both the

investigation and decision making process. North Colo. Med. Ctr., Inc. v. Nicholas, 27 P.3d 828 (Colo. 2001).

The committee on anticompetitive conduct has no authority to determine whether participants in a professional peer review are entitled to qualified immunity under this section. Pfenninger v. Exempla, Inc., 116 F. Supp. 2d 1184 (D. Colo. 2000).

12-36.5-106. Committee on anticompetitive conduct - repeal - legislative declaration - rules. (1) There is hereby established a permanent, independent committee of the medical board, to be known as the committee on anticompetitive conduct, also referred to in this section as “the committee”.

(2) The committee consists of five persons, none of whom is a member of the medical board, appointed as follows:

(a) The medical board shall appoint four members of the committee, who must be licensed under article 36 of this title, or licensed under article 38 of this title and granted authority as advanced practice nurses, and actively practicing in this state. A member appointed pursuant to this paragraph (a) shall not practice in the same medical subspecialty as any other member and shall not conduct his or her primary practice in the same county as any other member.

(b) The governor shall appoint one member who is an attorney licensed to practice in this state and who has particular expertise and experience in the area of antitrust law.

(3) Each member of the committee shall serve for a term of three years and may be reappointed for one additional term. The initial committee shall be appointed as follows: Two members, including the attorney member, for terms of three years; two members for terms of two years; and one member for a term of one year. All subsequent appointments shall be for terms of three years.

(4) Any member of the committee may be removed by his appointing authority for neglect of duty, incapacity, or misconduct. Any vacancy shall be filled by the appointing authority for the remainder of the vacated term.

(5) The committee shall annually elect a chair from among its members. Any three members of the committee constitute a quorum. Any action of a majority of those present comprising the quorum is the action of the committee. Committee members are compensated as provided in section 24-34-102 (13), C.R.S. The committee may utilize the expertise of consultants, including legal, medical, and business specialists. The committee shall assess and collect costs of the consultants as provided in subsection (11) of this section.

(6) The committee shall adopt procedural rules, including emergency rules, pursuant to the rule-making provisions of the “State Administrative Procedure Act”, article 4 of title 24, C.R.S., including rules related to the disqualification of a committee member, which rules shall be guided by section 24-4-105 (1), C.R.S.

(7) A person licensed under article 36 of this title, or licensed under article 38 of this title and granted authority as an advanced practice nurse, and who is the subject of a final action by a governing board, which action results in the denial, termination, or restriction of privileges at or membership or participation in an organization, and who believes that the action resulted from unreasonable anticompetitive conduct may seek direct review of the record by the committee. The review, which is the person’s exclusive remedy, is limited to the sole issue of whether the final board action resulted from unreasonable anticompetitive conduct. Failure to exhaust this administrative remedy before the committee precludes the right of de novo review on the merits of the issue of unreasonable anticompetitive conduct.

(8) Nothing in this article precludes a person otherwise aggrieved by the final action of a governing board from seeking other remedies available to them by law, except as provided in subsection (7) of this section.

(9) The committee shall conduct the review in accordance with the following procedures and, to the extent practicable, in accordance with the procedures used in the district courts of this state:

(a) The aggrieved person must initiate the review by filing a verified complaint with the committee, no later than thirty days after receipt of a notice of final action by the governing board, alleging, with specificity, all facts disclosed in the record and all additional facts known to the complainant that would support his or her allegation that the final action taken by the governing board resulted from unreasonable anticompetitive conduct.

(b) The committee shall mail a copy of the complaint to the governing board and the professional review committee by certified mail, return receipt requested, within five days after the receipt of the complaint by the committee, advising them of their right to file a verified answer to the allegations stated in the complaint. The recipients of the complaint become a party to these proceedings upon receipt of the complaint.

(c) The governing board and professional review committee shall have thirty days after receipt of the complaint to file their verified answer.

(d) Within thirty days of receipt of the complaint, unless the committee, for good cause shown, extends the time period not to exceed an additional thirty days, the committee shall determine whether the complaint alleges sufficient facts which, if true, would substantiate a finding of probable cause that the final action taken by the governing board resulted from unreasonable anticompetitive conduct.

(e) If the committee finds that no probable cause exists, it shall dismiss the complaint, which dismissal constitutes final administrative action.

(f) If the committee finds that probable cause exists, it shall schedule a hearing. At the hearing, the committee shall review the record below on the sole issue of whether the final action of the governing board resulted from unreasonable anticompetitive conduct and shall take evidence only with regard to the additional facts specifically alleged in the complaint or answer regarding unreasonable anticompetitive conduct, except when, in the discretion of the committee, the interests of a fair hearing demand otherwise.

(g) The attendance of witnesses and the production of books, patient records, papers, and other pertinent documents at the hearing may be summoned by subpoenas issued by the chairman of the committee or his designee, which shall be served in the manner provided by the Colorado rules of civil procedure for service of subpoenas. Any subpoena issued pursuant to this paragraph (g) shall be enforceable in the district court.

(h) No evidentiary hearing shall last more than eight hours, unless the committee, in its discretion, determines that additional time is necessary in the interests of a fair hearing. Except as provided otherwise in this section, any evidentiary hearing shall be conducted in accordance with section 24-4-105 (4) and (7), C.R.S.

(i) An evidentiary hearing shall be scheduled within a reasonable time after a finding that probable cause exists.

(j) Within a reasonable time after the completion of its hearing, the committee shall issue its written findings and final order.

(k) If the committee finds by a preponderance of evidence that the final action of the governing board resulted from unreasonable anticompetitive conduct, it shall issue its final order disapproving and setting aside the action or modifying the action taken by the governing board in whole or in part, which final order is binding on the parties. The committee shall mail a copy of the order by certified mail, return receipt requested, to the parties.

(l) If the committee fails to find that the final action of the governing board resulted from unreasonable anticompetitive conduct as provided in paragraph (k) of this subsection (9), it shall issue its order dismissing the complaint, and the final action of the governing board shall stand.

(m) If the committee finds that the record of the governing board is insufficient to permit the committee to reach appropriate findings with regard to unreasonable anticompetitive conduct, it may remand the case for further review by the governing board.

(n) In any case presented to the committee where the practice of the complainant constitutes a clear and present danger to patients, the committee shall refer the case to the medical board or nursing board, as applicable, for action as the board deems appropriate.

(10) (a) Following final administrative action by the committee, only the court of appeals may review the action of the committee through appropriate proceedings brought pursuant to section 24-4-106 (11), C.R.S.

(b) Following final administrative action by the committee, a party aggrieved by the final action of a governing board who wishes to challenge the action of the governing board, rather than the committee's review of the action, has the right to seek de novo review on the merits in a district court in Colorado. In no event shall the medical board, nursing board, or the committee be made parties to the district court action.

(c) As a condition of filing a complaint under paragraph (a) of subsection (9) of this section, the complainant shall post a cash bond or equivalent liquid security of three thousand dollars to cover anticipated costs that may be assessed against him or her. Within thirty days after receipt of service of a complaint on a governing board, or concurrently with the filing of an answer, whichever is earlier, the governing board shall post a cash bond or equivalent liquid security of three thousand dollars to cover anticipated costs that may be assessed against it as a party. The committee may enforce this latter requirement through the district court.

(11) The committee shall assess and collect all costs associated with its activities, including attorney fees incurred by the committee, the per diem and reasonable expenses of each committee member, and other reasonable expenses, from the losing party or as the committee deems appropriate.

(12) The committee shall promulgate rules as necessary for the implementation of this section, including mechanisms to secure the payment of costs as provided in paragraph (c) of subsection (10) and subsection (11) of this section.

(13) (a) A member of the committee, a member of the committee's staff, a person acting as a witness or consultant to the committee, a witness testifying in a proceeding authorized under this article, and a person who lodges a complaint pursuant to this article is immune from suit in any civil or criminal action, including antitrust actions, and is immune from liability for damages unless, in connection with the professional review process, the person provided false information and knew that the information was false.

(b) The committee is immune from suit in any civil or criminal action, including antitrust actions, and is immune from liability for damages if the professional review action was taken within the scope of the professional review process and was taken:

(I) In the objectively reasonable belief that the action was in the furtherance of quality health care;

(II) After an objectively reasonable effort to obtain the facts of the matter;

(III) In the objectively reasonable belief that the action taken was warranted by the facts; and

(IV) In accordance with procedures that, under the circumstances, were fair to the person licensed under article 36 of this title or licensed under article 38 of this title and granted authority as an advanced practice nurse.

(14) This section is repealed, effective September 1, 2013. Prior to such repeal, the general assembly anticipates that there will be, and declares its support for, constructive discussion among licensed professionals and other interested parties to consider the proper role, structure, and functions of the committee on anticompetitive conduct and to recommend legislation on this subject for consideration during the 2013 regular session.

Source: L. 89: Entire article added, p. 684, § 1, effective July 1. L. 2004: (13) amended, p. 1830, § 72, effective August 4. L. 2010: (1), (2), (9)(n), and (10)(b) amended, (HB 10-1260), ch. 403, p. 1983, § 67, effective July 1. L. 2012: (14) added, (HB 12-1297), ch. 139, p. 505, § 1, effective April 26. L. 2012: (14) added, (HB 12-1297), ch. 139, p. 505, § 1, effective April 26; (2), (5), (7), (8), IP(9), (9)(a), (9)(b), (9)(c), (9)(f), (9)(k), (9)(n), (10), (12), and (13) amended, (HB 12-1300), ch. 245, p. 1175, § 10, effective July 1.

ANNOTATION

Law reviews. For article, "The Committee on Anticompetitive Conduct: New Agency on the Block", see 21 Colo. Law. 31 (1992).

"Resulting from" language in this section requires a proximate cause standard of analysis.

Nicholas v. North Colo. Medical Center, Inc., 902 P.2d 462 (Colo. App. 1995), aff'd, 914 P.2d 902 (Colo. 1996).

The term "unreasonable anticompetitive conduct" needs not be interpreted in accor-

dance with strict federal case law. *Northern Colo. Med. Center v. Committee on Anticompet.,* 914 P.2d 902 (Colo. 1996).

This section provides the exclusive remedy regarding the issue of anticompetitive conduct. *Pfenninger v. Exempla, Inc.,* 12 P.3d 830 (Colo. App. 2000), 17 P.3d 841 (Colo. App. 2000).

And limits the jurisdiction of the committee on anticompetitive conduct to the sole issue of anticompetitive conduct. *Pfenninger v. Exempla, Inc.,* 12 P.3d 830 (Colo. App. 2000), 17 P.3d 841 (Colo. App. 2000).

Thus, where a physician is aggrieved in ways other than as a result of anticompetitive conduct, such physician may pursue such claims in district court without exhausting administrative remedies before the committee on anti-competitive conduct. *Pfenninger v. Exempla, Inc.,* 12 P.3d 830 (Colo. App. 2000), 17 P.3d 841 (Colo. App. 2000).

After a final hospital decision, remedies from the committee on anticompetitive conduct need not be exhausted to bring common law damages claims based on theories other than unreasonable anticompetitive conduct. *Peper v. St. Mary's Hosp. & Med. Ctr.,* 207 P.3d 881 (Colo. App. 2008).

The committee on anticompetitive conduct has no authority to determine whether participants in a professional peer review are entitled to qualified immunity under § 13-

36.5-105. *Pfenninger v. Exempla, Inc.,* 116 F. Supp. 2d 1184 (D. Colo. 2000).

The committee on anticompetitive conduct is to assess issues related to competency and only addresses anticompetitive behavior that relates to physician qualification, professional conduct, and quality of patient care, arising out of qualified review committee activities. *Ryals v. St. Mary-Corwin Reg. Med. Ctr.,* 10 P.3d 654 (Colo. 2000).

The committee does not have jurisdiction to address claims that do not arise out of professional review committee activities. It may not award economic remedies and has limited rules concerning evidence and hearings. *Ryals v. St. Mary-Corwin Reg. Med. Ctr.,* 10 P.3d 654 (Colo. 2000).

Physician must exhaust all peer review committee administrative remedies before seeking relief in court, even if physician is seeking monetary damages for common law claims arising out of the process, rather than challenging the final decision of the hospital's governing board. *Crow v. Penrose-St. Francis Healthcare Sys.,* 169 P.3d 158 (Colo. 2007).

Physician's case seeking monetary damages for common law claims is not ripe for judicial review. Because the hospital's governing board has not rendered a final decision, physician has not exhausted available administrative remedies. *Crow v. Penrose-St. Francis Healthcare Sys.,* 169 P.3d 158 (Colo. 2007).

12-36.5-107. Repeal of article. This article is repealed, effective September 1, 2019. Prior to such repeal, the department of regulatory agencies shall review the functions of professional review committees and the committee on anticompetitive conduct in accordance with section 24-34-104, C.R.S.

Source: L. 2010: Entire section added, (HB 10-1260), ch. 403, p. 1944, § 4, effective July 1. **L. 2012:** Entire section amended, (HB 12-1300), ch. 245, p. 1160, § 1, effective July 1.

PART 2

CONFORMANCE WITH FEDERAL LAW AND REGULATION

12-36.5-201. Legislative declaration. The general assembly hereby finds, determines, and declares that the enactment of this part 2 is necessary in order for the state to comply with the provisions of the federal "Health Care Quality Improvement Act of 1986", as amended. It is the intent of the general assembly that the provisions of this part 2 are to be interpreted as being complementary to the provisions of part 1 of this article. The provisions of this part 2 are intended to be responsive to specific requirements of the federal "Health Care Quality Improvement Act of 1986", as amended. If the provisions of this part 2 conflict with the provisions of part 1 of this article, other than with respect to the specific requirements of the federal "Health Care Quality Improvement Act of 1986", as amended, the provisions of part 1 of this article shall prevail.

Source: L. 89: Entire article added, p. 687, § 1, effective July 1.

ANNOTATION

Applied in *Pfenninger v. Exempla, Inc.*, 116 F. Supp. 2d 1184 (D. Colo. 2000); *North Colo.*

Med. Ctr., Inc. v. Nicholas, 27 P.3d 828 (Colo. 2001).

12-36.5-202. Rules - compliance with reporting requirements of federal act. The medical board and nursing board may promulgate rules to comply with the reporting requirements of the federal “Health Care Quality Improvement Act of 1986”, as amended, 42 U.S.C. secs. 11101 through 11152, and may participate in the federal data bank.

Source: **L. 89:** Entire article added, p. 687, § 1, effective July 1. **L. 2010:** Entire section amended, (HB 10-1260), ch. 403, p. 1984, § 68, effective July 1. **L. 2012:** Entire section amended, (HB 12-1300), ch. 245, p. 1178, § 11, effective July 1.

12-36.5-203. Limitations on liability relating to professional review actions. (1) The following persons are immune from suit and not liable for damages in any civil action with respect to their participation in, assistance to, or reporting of information to a professional review committee in connection with a professional review action in this state, and such persons are not liable for damages in a civil action with respect to their participation in, assistance to, or reporting of information to a professional review committee that meets the standards of and is in conformity with the federal “Health Care Quality Improvement Act of 1986”, as amended, 42 U.S.C. secs. 11101 through 11152:

- (a) An authorized entity, professional review committee, or governing board;
- (b) Any person acting as a member of or staff to the authorized entity, professional review committee, or governing board;
- (c) A witness, consultant, or other person who provided information to the authorized entity, professional review committee, or governing board; and
- (d) Any person who participates with or assists the professional review committee or governing board with respect to the professional review activities.

(2) (a) Notwithstanding subsection (1) of this section, nothing in this article relieves an authorized entity that is a health care facility licensed or certified pursuant to part 1 of article 3 of title 25, C.R.S., or certified pursuant to section 25-1.5-103, C.R.S., of liability to an injured person or wrongful death claimant for the facility’s independent negligence in the credentialing or privileging process for a person licensed under article 36 of this title or licensed under article 38 of this title and granted authority as an advanced practice nurse who provided health care services for the injured or deceased person at the facility. For purposes of this section, the facility’s participation in the credentialing process or the privileging process does not constitute the corporate practice of medicine.

(b) Nothing in this section affects the confidentiality or privilege of any records subject to section 12-36.5-104 (10) or of information obtained and maintained in accordance with a quality management program as described in section 25-3-109, C.R.S. The exceptions to confidentiality or privilege as set forth in sections 25-3-109 (4), C.R.S., and 12-36.5-104 (10) apply.

(c) This subsection (2), as amended, applies to actions filed on or after July 1, 2012.

(3) For the purposes of this section, unless the context otherwise requires:

(a) “Professional review action” means an action or recommendation of a professional review committee that is taken or made in the conduct of professional review activity and that is based on the quality and appropriateness of patient care provided by, or the competence or professional conduct of, an individual person licensed under article 36 of this title or licensed under article 38 of this title and granted authority as an advanced practice nurse, which action affects or may affect adversely the person’s clinical privileges of or membership in an authorized entity. “Professional review action” includes a formal decision by the professional review committee not to take an action or make a recommendation as provided in this paragraph (a) and also includes professional review activities relating to a professional review action. An action is not based upon the competence or professional conduct of a person if the action is primarily based on:

- (I) The person’s association or lack of association with a professional society or association;
- (II) The person’s fees or his or her advertising or engaging in other competitive acts intended to solicit or retain business;
- (III) The person’s association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with a member or members of a particular class of health care practitioners or professionals;
- (IV) The person’s participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for-service basis or other basis;
- (V) Any other matter that does not relate to the quality and appropriateness of patient care provided by, or the competence or professional conduct of, a person licensed under article 36 of this title or licensed under article 38 of this title and granted authority as an advanced practice nurse.
- (b) (Deleted by amendment, L. 2012.)

Source: L. 89: Entire article added, p. 687, § 1, effective July 1. **L. 2012:** Entire section amended, (HB 12-1300), ch. 245, p. 1179, § 12, effective July 1.

ANNOTATION

The statutory language clearly and unambiguously provides immunity from damages for professional review bodies “in any civil action” wherein a professional peer review has been conducted concerning the credentialing decision for a particular physician. “Any” means “all”. *Kauntz v. HCA-HEALTHONE, LLC*, 174 P.3d 813 (Colo. App. 2007).

The statute is not ambiguous because it is not silent on its applicable scope: It states that damage immunity applies “in any civil action”. *Kauntz v. HCA-HEALTHONE, LLC*, 174 P.3d 813 (Colo. App. 2007).

The general assembly either has expressly stated its intent to abrogate common law negligent credentialing claims brought by patients against hospitals or, at a minimum, has done so by clear implication. While the statute does not state that it governs hospital-patient relations, the use of the words “any civil action” in describing the applicability of damages immunity makes it difficult, if not impossible, to discern a lack of clarity or of expression. *Kauntz v. HCA-HEALTHONE, LLC*, 174 P.3d 813 (Colo. App. 2007).

ARTICLE 37

Direct-entry Midwives

Editor’s note: This article was numbered as article 4 of chapter 91, C.R.S. 1963. This article was repealed in 1976 and was subsequently recreated and reenacted in 1993, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1976, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

12-37-101.	Scope of article - exemptions - legislative declaration.	12-37-105.5.	Limited use of certain medications - limited use of sutures - limited administration of intravenous fluids - emergency medical procedures - legislative declaration - rules - repeal.
12-37-102.	Definitions.	12-37-106.	Director - powers and duties.
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12-37-104.	Mandatory disclosure of information to clients.	12-37-108.	Unauthorized practice - penalties.
12-37-105.	Prohibited acts - practice standards - informed consent - emergency plan - risk assessment - referral - rules.		

12-37-109.	Assumption of risk - no vicarious liability - legislative declaration.	12-37-109.5.	Immunity.
		12-37-109.7.	Confidential files.
		12-37-110.	Repeal of article.

12-37-101. Scope of article - exemptions - legislative declaration. (1) (a) This article applies only to direct-entry midwives and does not apply to those persons who are otherwise licensed by the state of Colorado under this title if the practice of midwifery is within the scope of such licensure.

(b) (I) A person who is a certified nurse-midwife authorized pursuant to section 12-38-111.5 or a physician as provided in article 36 of this title shall not simultaneously be so licensed and also be registered under this article. A physician or certified nurse-midwife who holds a license in good standing may relinquish the license and subsequently be registered under this article.

(II) A direct-entry midwife shall not represent himself or herself as a nurse-midwife or certified nurse-midwife.

(III) The fact that a direct-entry midwife may hold a practical or professional nursing license does not expand the scope of practice of the direct-entry midwife.

(IV) The fact that a practical or professional nurse may be registered as a direct-entry midwife does not expand the scope of practice of the nurse.

(c) It is the intent of the general assembly that health care be provided pursuant to this article as an alternative to traditional licensed health care and not for the purpose of enabling providers of traditional licensed health care to circumvent the regulatory oversight to which they are otherwise subject under any other article of this title.

(2) Nothing in this article shall be construed to prohibit, or to require registration under this article, with regard to:

(a) The gratuitous rendering of services in an emergency;

(b) The rendering of services by a physician licensed pursuant to article 36 of this title or otherwise legally authorized to practice in this state;

(c) The rendering of services by certified nurse-midwives properly licensed and practicing in accordance with the provisions of article 38 of this title; or

(d) The practice by persons licensed or registered under any law of this state, in accordance with such law, to practice a limited field of the healing arts not specifically designated in this section.

Source: **L. 93:** Entire article RC&RE, p. 1911, § 2, effective July 1. **L. 96:** (1) amended, p. 395, § 1, effective April 17. **L. 2000:** (2)(c) amended, p. 31, § 2, effective March 10. **L. 2001:** (1) amended, p. 1258, § 2, effective June 5. **L. 2011:** (1) amended, (SB 11-088), ch. 283, p. 1259, § 4, effective July 1.

12-37-102. Definitions. As used in this article, unless the context otherwise requires:

(1) “Client” means a pregnant woman for whom a direct-entry midwife performs services. For purposes of perinatal or postpartum care, “client” includes the woman’s newborn.

(2) “Direct-entry midwife” means a person who practices direct-entry midwifery.

(3) “Direct-entry midwifery” or “practice of direct-entry midwifery” means the advising, attending, or assisting of a woman during pregnancy, labor and natural childbirth at home, and during the postpartum period in accordance with this article.

(4) “Director” means the director of the division.

(5) “Division” means the division of professions and occupations in the department of regulatory agencies.

(6) “Natural childbirth” means the birth of a child without the use of instruments, surgical procedures, or prescription drugs other than those for which the direct-entry midwife has specific authority under this article to obtain and administer.

(7) “Postpartum period” means the period of six weeks after birth.

(8) “Registrant” means a direct-entry midwife registered pursuant to section 12-37-103.

Source: L. 93: Entire article RC&RE, p. 1912, § 2, effective July 1. L. 2001: (1) amended, p. 1259, § 3, effective June 5. L. 2011: Entire section amended, (SB 11-088), ch. 283, p. 1259, § 5, effective July 1.

12-37-103. Requirement for registration with the division of professions and occupations - annual fee - grounds for revocation. (1) Every direct-entry midwife shall register with the division of professions and occupations by applying to the director in the form and manner the director requires. Said application shall include the information specified in section 12-37-104.

(2) Any changes in the information required by subsection (1) of this section shall be reported within thirty days after the change to the division in the form and manner required by the director.

(3) Every applicant for registration shall pay a registration fee to be established by the director in the manner authorized by section 24-34-105, C.R.S. Registrations shall be renewed or reinstated pursuant to a schedule established by the director and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her registration pursuant to the schedule established by the director, such registration shall expire. Any person whose registration has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(4) (Deleted by amendment, L. 96, p. 395, § 2, effective April 17, 1996.)

(4.5) A person who has had his or her registration revoked shall not apply for a new registration until at least two years have elapsed since the date of the revocation.

(5) To qualify to register, a direct-entry midwife must have successfully completed an examination evaluated and approved by the director as an appropriate test to measure competency in the practice of direct-entry midwifery, which examination must have been developed by a person or entity other than the director or the division and the acquisition of which shall require no expenditure of state funds. The national registry examination administered by the midwives' alliance of North America, incorporated, or its successor, must be among those evaluated by the director. The director is authorized to approve any existing test meeting all the criteria set forth in this subsection (5). In addition to successfully completing such examination, a direct-entry midwife is qualified to register if such person has:

- (a) Attained the age of nineteen years;
- (b) Earned at least a high school diploma or the equivalent;
- (c) Successfully completed training approved by the director in:
 - (I) The provision of care during labor and delivery and during the antepartum and postpartum periods;
 - (II) Parenting education for prepared childbirth;
 - (III) Aseptic techniques and universal precautions;
 - (IV) Management of birth and immediate care of the mother and the newborn;
 - (V) Recognition of early signs of possible abnormalities;
 - (VI) Recognition and management of emergency situations;
 - (VII) Special requirements for home birth;
 - (VIII) Recognition of communicable diseases affecting the pregnancy, birth, newborn, and postpartum periods; and
 - (IX) Recognition of the signs and symptoms of increased risk of medical, obstetric, or neonatal complications or problems as set forth in section 12-37-105 (3);
- (d) Acquired practical experience including, at a minimum, experience with the conduct of at least one hundred prenatal examinations on no fewer than thirty different women and observation of at least thirty births;
- (e) Participated as a birth attendant, including rendering care from the prenatal period through the postpartum period, in connection with at least thirty births; and
- (f) Filed documentation with the director that the direct-entry midwife is currently certified by the American heart association or the American red cross to perform adult and infant cardiopulmonary resuscitation ("CPR").

(6) Effective July 1, 2003, in order to be deemed qualified to register, a direct-entry midwife must have graduated from an accredited midwifery educational program or obtained a substantially equivalent education approved by the director. Such educational requirement does not apply to direct-entry midwives who have registered with the division before July 1, 2003.

(7) For purposes of registration under this article, no credential, licensure, or certification issued by any other state meets the requirements of this article, and therefore there is no reciprocity with other states.

Source: **L. 93:** Entire article RC&RE, p. 1913, § 2, effective July 1. **L. 96:** (4) and (5)(a) amended and (4.5) added, p. 395, § 2, effective April 17. **L. 2001:** (5)(d) and (5)(e) amended and (6) added, p. 1259, § 4, effective June 5. **L. 2004:** (3) amended, p. 1831, § 73, effective August 4. **L. 2011:** (1), (2), (3), (4.5), IP(5), (5)(d), (5)(e), and (6) amended and (7) added, (SB 11-088), ch. 283, p. 1260, § 6, effective July 1.

12-37-104. Mandatory disclosure of information to clients. (1) Every direct-entry midwife shall provide the following information in writing to each client during the initial client contact:

(a) The name, business address, and business phone number of the direct-entry midwife;

(b) A listing of the direct-entry midwife's education, experience, degrees, membership in any professional organization whose membership includes not less than one-third of all registrants, certificates or credentials related to direct-entry midwifery awarded by any such organization, and the length of time and number of contact hours required to obtain said degrees, certificates, or credentials;

(c) A statement indicating whether or not the direct-entry midwife is covered under a policy of liability insurance for the practice of direct-entry midwifery;

(d) A listing of any license, certificate, or registration in the health care field previously or currently held by the direct-entry midwife and suspended or revoked by any local, state, or national health care agency;

(e) A statement that the practice of direct-entry midwifery is regulated by the department of regulatory agencies. The statement must provide the address and telephone number of the office of midwifery registration in the division and shall state that violation of this article may result in revocation of registration and of the authority to practice direct-entry midwifery in Colorado.

(f) A copy of the emergency plan as provided in section 12-37-105 (6);

(g) A statement indicating whether or not the direct-entry midwife will administer vitamin K to the client's newborn infant and, if not, a list of qualified health care practitioners who can provide that service; and

(h) A statement indicating whether or not the direct-entry midwife will administer Rho(D) immune globulin to the client if she is determined to be Rh-negative and, if not, a list of qualified health care practitioners who can provide that service.

(2) Any changes in the information required by subsection (1) of this section shall be reflected in the mandatory disclosure within five days of the said change.

(3) (Deleted by amendment, L. 2011, (SB 11-088), ch. 283, p. 1261, § 7, effective July 1, 2011.)

Source: **L. 93:** Entire article RC&RE, p. 1915, § 2, effective July 1. **L. 2011:** IP(1), (1)(d), (1)(e), and (3) amended and (1)(g) and (1)(h) added, (SB 11-088), ch. 283, p. 1261, § 7, effective July 1.

12-37-105. Prohibited acts - practice standards - informed consent - emergency plan - risk assessment - referral - rules. (1) A direct-entry midwife shall not dispense or administer any medication or drugs except in accordance with section 12-37-105.5.

(2) A direct-entry midwife shall not perform any operative or surgical procedure.

(3) A direct-entry midwife shall not provide care to a pregnant woman who, according to generally accepted medical standards, exhibits signs or symptoms of increased risk of medical or obstetric or neonatal complications or problems during the completion of her pregnancy, labor, delivery, or the postpartum period. Such conditions include but are not limited to signs or symptoms of diabetes, multiple gestation, hypertensive disorder, or abnormal presentation of the fetus.

(4) A direct-entry midwife shall not provide care to a pregnant woman who, according to generally accepted medical standards, exhibits signs or symptoms of increased risk that her child may develop complications or problems during the first six weeks of life.

(5) (a) A direct-entry midwife shall keep appropriate records of midwifery-related activity, including but not limited to the following:

(I) The direct-entry midwife shall complete and file a birth certificate for every delivery in accordance with section 25-2-112, C.R.S.

(II) The direct-entry midwife shall complete and maintain appropriate client records for every client.

(III) Before accepting a client for care, the direct-entry midwife shall obtain the client's informed consent, which shall be evidenced by a written statement in a form prescribed by the director and signed by both the direct-entry midwife and the client. The form shall certify that full disclosure has been made and acknowledged by the client as to each of the following items, with the client's acknowledgment evidenced by a separate signature or initials adjacent to each item in addition to the client's signature at the end of the form:

(A) The direct-entry midwife's educational background and training;

(B) The nature and scope of the care to be given, including the possibility of and procedure for transport of the client to a hospital and transferral of care prenatally;

(C) A description of the available alternatives to direct-entry midwifery care, including a statement that the client understands she is not retaining a certified nurse midwife or a nurse midwife;

(D) A description of the risks of birth, including those that are different from those of hospital birth and those conditions that may arise during delivery;

(E) A statement indicating whether or not the direct-entry midwife is covered under a policy of liability insurance for the practice of direct-entry midwifery; and

(F) A statement informing the client that, if subsequent care is required resulting from the acts or omissions of the direct-entry midwife, any physician, nurse, prehospital emergency personnel, and health care institution rendering such care shall be held only to a standard of gross negligence or willful and wanton conduct.

(IV) Until the liability insurance required pursuant to section 12-37-109 (3) is available, each direct-entry midwife shall, before accepting a client for care, provide such client with a disclosure statement indicating that the midwife does not have liability insurance. Such statement, to comply with this section, must be printed in at least twelve-point bold-faced type and shall be read to the client in a language she understands. Each client shall sign the disclosure statement acknowledging that she understands the effect of its provisions. A copy of the signed disclosure statement shall be given to the client.

(b) As used in this subsection (5), "full disclosure" includes reading the informed consent form to the client, in a language understood by the client, and answering any relevant questions.

(6) A direct-entry midwife shall prepare a plan, in the form and manner required by the director, for emergency situations. The plan must include procedures to be followed in situations in which the time required for transportation to the nearest facility capable of providing appropriate treatment exceeds limits established by the director by rule. A copy of such plan shall be given to each client as part of the informed consent required by subsection (5) of this section.

(7) A direct-entry midwife shall prepare and transmit appropriate specimens for newborn screening in accordance with section 25-4-1004, C.R.S., and shall refer every newborn child for evaluation, within seven days after birth, to a licensed health care provider with expertise in pediatric care.

(8) A direct-entry midwife shall ensure that appropriate laboratory testing, as determined by the director, is completed for each client.

(9) A direct-entry midwife shall provide eye prophylactic therapy to all newborn children in such direct-entry midwife's care in accordance with section 25-4-301, C.R.S.

(10) A direct-entry midwife shall be knowledgeable and skilled in aseptic procedures and the use of universal precautions and shall use them with every client.

(11) To assure that proper risk assessment is completed and that clients who are inappropriate for direct-entry midwifery are referred to other health care providers, the director shall establish, by rule, a risk assessment procedure to be followed by a direct-entry midwife for each client and standards for appropriate referral. Such assessment shall be a part of each client's record as required in section 12-37-105 (5) (a) (II).

(12) At the time of renewal of a registration, each registrant shall submit the following data in the form and manner required by the director:

- (a) The number of women to whom care was provided since the previous registration;
- (b) The number of deliveries performed;
- (c) The Apgar scores of delivered infants, in groupings established by the director;
- (d) The number of prenatal transfers;
- (e) The number of transfers during labor, delivery, and immediately following birth;
- (f) Any perinatal deaths, including the cause of death and a description of the circumstances; and

(g) Other morbidity statistics as required by the director.

(13) A registered direct-entry midwife may purchase, possess, carry, and administer oxygen. The department of regulatory agencies shall promulgate rules concerning minimum training requirements for direct-entry midwives with respect to the safe administration of oxygen. Each registrant shall complete the minimum training requirements and submit proof of having completed such requirements to the director before administering oxygen to any client.

(14) A registrant shall not practice beyond the scope of his or her education and training or with a mental or physical impairment sufficient to render the registrant unable to perform midwifery services with reasonable skill and with safety to the client.

Source: **L. 93:** Entire article RC&RE, p. 1915, § 2, effective July 1. **L. 96:** (5)(a)(IV) and (13) added, pp. 396, 397, §§ 3, 4, effective April 17. **L. 2001:** (14) added, p. 1259, § 5, effective June 5. **L. 2011:** (1), IP(5)(a)(III), (5)(a)(III)(C), (5)(a)(III)(D), (5)(a)(III)(F), (5)(a)(IV), (6), (7), (8), IP(12), (12)(f), (13), and (14) amended, (SB 11-088), ch. 283, p. 1262, § 8, effective July 1. **L. 2012:** (9) amended, (HB 12-1058), ch. 71, p. 246, § 6, effective March 24.

12-37-105.5. Limited use of certain medications - limited use of sutures - limited administration of intravenous fluids - emergency medical procedures - legislative declaration - rules - repeal. (1) A registrant may obtain prescription medications to treat conditions specified in this section from a registered prescription drug outlet, registered manufacturer, or registered wholesaler. An entity that provides a prescription medication to a registrant in accordance with this section, and who relies in good faith upon the registration information provided by the registrant, is not subject to liability for providing the medication.

(2) Except as otherwise provided in subsection (3) of this section, a registrant may obtain and administer:

- (a) Vitamin K to newborns by intramuscular injection;
- (b) Rho(D) immune globulin to Rh-negative mothers by intramuscular injection;
- (c) Postpartum antihemorrhagic drugs to mothers; and
- (d) Eye prophylaxis.

(3) (a) If a client refuses a medication listed in paragraph (a) or (b) of subsection (2) of this section, the registrant shall provide the client with an informed consent form containing a detailed statement of the benefits of the medication and the risks of refusal, and shall retain a copy of the form acknowledged and signed by the client.

(b) If a client experiences uncontrollable postpartum hemorrhage and refuses treatment with antihemorrhagic drugs, the registrant shall immediately initiate the transportation of the client in accordance with the emergency plan.

(4) A registrant shall, as part of the emergency medical plan required by section 12-37-105 (6), inform the client that:

(a) If she experiences uncontrollable postpartum hemorrhage, the registrant is required by Colorado law to initiate emergency medical treatment, which may include the administration of an antihemorrhagic drug by the registrant to mitigate the postpartum hemorrhaging while initiating the immediate transportation of the client in accordance with the emergency plan.

(b) If she experiences postpartum hemorrhage, the registrant is prepared and equipped to administer intravenous fluids to restore volume lost due to excessive bleeding.

(5) The director shall promulgate rules to implement this section. In promulgating such rules, the director shall seek the advice of knowledgeable medical professionals to set standards for education, training, and administration that reflect current generally accepted professional standards for the safe and effective use of the medications, methods of administration, and procedures described in this section, including a requirement that, to administer intravenous fluids, the registrant complete an intravenous therapy course or program approved by the director. The director shall establish a preferred drug list that displays the medications that a registrant can obtain.

(6) (a) The general assembly finds, determines, and declares that the issue of whether registrants should be authorized to perform suturing of perineal tears and, if so, what standards for education, training, and practice should be established for the exercise of that authority, is an issue requiring thorough study and consideration. Therefore, as soon as is practicable, representatives of the medical community, the midwife community, the department of regulatory agencies, and other interested parties shall meet and discuss the issue in an effort to reach an accord on what legislative and regulatory changes are appropriate to ensure greater client choice without unduly compromising client safety. The parties to these meetings and discussions shall make the results publicly available through posting on the division's web site or by other appropriate means.

(b) This subsection (6) is repealed, effective July 1, 2013.

Source: **L. 2011:** Entire section added, (SB 11-088), ch. 283, p. 1263, § 9, effective July 1. **L. 2012:** (2)(d) amended, (HB 12-1058), ch. 71, p. 246, § 7, effective March 24.

12-37-106. Director - powers and duties. (1) In addition to any other powers and duties conferred on the director by law, the director has the following powers and duties:

(a) To adopt such rules as may be necessary to carry out the provisions of this article;

(b) To establish the fees for registration and renewal of registration in the manner authorized by section 24-34-105, C.R.S.;

(c) To prepare or adopt suitable education standards for applicants and to adopt a registration examination;

(d) To accept applications for registration that meet the requirements set forth in this article, and to collect the annual registration fees authorized by this article;

(e) To seek, through the office of the attorney general, an injunction in a court of competent jurisdiction to enjoin any person from committing an act prohibited by this article. When seeking an injunction under this paragraph (e), the director shall not be required to allege or prove the inadequacy of any remedy at law or that substantial or irreparable damage is likely to result from a continued violation of this article.

(f) To summarily suspend a registration upon the failure of the registrant to comply with any condition of a stipulation or order imposed by the director until the registrant complies with the condition, unless compliance is beyond the control of the registrant.

Source: **L. 93:** Entire article RC&RE, p. 1918, § 2, effective July 1. **L. 96:** (1)(c) amended, p. 397, § 5, effective April 17. **L. 2011:** (1)(a), (1)(d), and (1)(e) amended and (1)(f) added, (SB 11-088), ch. 283, p. 1265, § 10, effective July 1.

12-37-107. Disciplinary action authorized - grounds for discipline - injunctions - rules. (1) If a direct-entry midwife has violated any of the provisions of section 12-37-

103, 12-37-104, 12-37-105, or 12-37-109 (3), the director may deny, revoke, or suspend a registration, issue a letter of admonition to a registrant, place a registrant on probation, or apply for a temporary or permanent injunction against a direct-entry midwife, through the attorney general, in any court of competent jurisdiction, enjoining such direct-entry midwife from practicing midwifery or committing any such violation. Injunctive proceedings under this subsection (1) shall be in addition to, and not in lieu of, any other penalties or remedies provided in this article.

(2) (a) (I) The director may assess a civil penalty in the form of a fine, not to exceed five thousand dollars, for violation of a rule or order of the director or any other act or omission prohibited by this article.

(II) The director shall adopt rules establishing a fine structure and the circumstances under which fines may be imposed.

(b) Any moneys collected pursuant to this subsection (2) shall be transmitted to the state treasurer, who shall credit such moneys to the general fund.

(3) The director may deny, revoke, or suspend a registration or issue a letter of admonition or place a registrant on probation for any of the following acts or omissions:

(a) Any violation of section 12-37-103, 12-37-104, 12-37-105, or 12-37-109 (3);

(b) Failing to provide any information required pursuant to, or to pay any fee assessed in accordance with, section 12-37-103 or providing false, deceptive, or misleading information to the division that the direct-entry midwife knew or should reasonably have known was false, deceptive, or misleading;

(c) Failing to respond in an honest, materially responsive, and timely manner to a letter of complaint from the director;

(d) Failing to comply with an order of the director, including an order placing conditions or restrictions on the registrant's practice;

(e) Engaging in any act or omission that does not meet generally accepted standards of safe care for women and infants, whether or not actual injury to a client is established;

(f) Abuse or habitual or excessive use of a habit-forming drug, a controlled substance as defined in section 18-18-102 (5), C.R.S., or alcohol;

(g) Procuring or attempting to procure a registration in this or any other state or jurisdiction by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(h) Having had a license or registration to practice direct-entry midwifery or any other health care profession or occupation suspended or revoked in any jurisdiction;

(i) Violating any law or regulation governing the practice of direct-entry midwifery in another state or jurisdiction. A plea of nolo contendere or its equivalent accepted by any state agency of another state or jurisdiction may be considered to be the same as a finding of violation for purposes of a proceeding under this article.

(j) Falsifying, failing to make essential entries in, or in a negligent manner making incorrect entries in client records;

(k) Conviction of a felony or acceptance by a court of a plea of guilty or nolo contendere to a felony. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be prima facie evidence of such conviction.

(l) Aiding or knowingly permitting any person to violate any provision of this article; or

(m) Advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, web site, e-mail, text message, or otherwise that the registrant will perform any act prohibited by this article.

(4) Any proceeding to deny, suspend, or revoke a registration or place a registrant on probation shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S. Such proceeding may be conducted by an administrative law judge designated pursuant to part 10 of article 30 of title 24, C.R.S. Any final decision of the director shall be subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

(5) The director may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a registrant by another jurisdiction if the violation that prompted such disciplinary action would be grounds for disciplinary action under this article.

(6) (a) The director or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the director. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the director, including copies of hospital and physician records. The provider of such copies shall prepare the copies from the original record and shall delete the name of the patient or client, to be retained by the custodian of the records from which the copies were made, but shall identify the patient or client by a numbered code. Upon certification by the custodian that the copies are true and complete except for the patient's or client's name, the copies shall be deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. No privilege of confidentiality exists with respect to such copies and no liability lies against the director or the custodian or the director's or custodian's authorized employees for furnishing or using such copies in accordance with this section.

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or registrant resides or conducts business, upon application by the director with notice to the subpoenaed person or registrant, may issue to the person or registrant an order requiring that person or registrant to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(7) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the registrant.

(b) When a letter of admonition is sent by the director, by certified mail, to a registrant, such registrant shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition is vacated and the matter shall be processed by means of formal disciplinary proceedings.

(7.5) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, the complaint should be dismissed, but the director has noticed indications of possible errant conduct by the registrant that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the registrant.

(8) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(9) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a registrant is acting in a manner that is an imminent threat to the health and safety of the public or a person is acting or has acted without the required registration, the director may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (9), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(10) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the director may issue to such person an order to show cause as to why the director should not issue a final

order directing such person to cease and desist from the unlawful act or unregistered practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (10) shall be promptly notified by the director of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (10) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (10). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (10) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (10) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the director reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required registration or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unregistered practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (10), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(11) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged in or is about to engage in any unregistered act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the director may enter into a stipulation with such person.

(12) If any person fails to comply with a final cease-and-desist order or a stipulation, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(13) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order in a court of competent jurisdiction.

Source: **L. 93:** Entire article RC&RE, p. 1918, § 2, effective July 1. **L. 96:** (1) amended and (3) to (6) added, p. 397, § 6, effective April 17. **L. 2001:** (3)(f) and (4) amended, p. 1260, § 6, effective June 5. **L. 2003:** (2) amended, p. 1989, § 26, effective May 22. **L. 2004:** (2) and (6) amended and (7) and (8) added, p. 1831, § 74, effective August 4; (3)(d) amended, p. 1194, § 36, effective August 4. **L. 2006:** (7.5) and (9) to (13) added, p. 797, § 29, effective July 1. **L. 2011:** (1), (2), (3), (6), (7), and (13) amended, (SB 11-088), ch. 283, p. 1265, § 11, effective July 1. **L. 2012:** (3)(f) amended, (HB 12-1311), ch. 281, p. 1612, § 17, effective July 1.

12-37-108. Unauthorized practice - penalties. Any person who practices or offers or attempts to practice direct-entry midwifery without an active registration issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and, for the second or any subsequent offense, such person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 93: Entire article RC&RE, p. 1919, § 2, effective July 1. L. 2002: Entire section amended, p. 1479, § 78, effective October 1. L. 2006: Entire section amended, p. 88, § 28, effective August 7.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-37-109. Assumption of risk - no vicarious liability - legislative declaration.
(1) (a) It is the policy of this state that registrants shall be liable for their acts or omissions in the performance of the services that they provide, and that no licensed physician, nurse, prehospital emergency medical personnel, or health care institution shall be liable for any act or omission resulting from the administration of services by any registrant. This subsection (1) does not relieve any physician, nurse, prehospital emergency personnel, or health care institution from liability for any willful and wanton act or omission or any act or omission constituting gross negligence, or under circumstances where a registrant has a business or supervised relationship with any such physician, nurse, prehospital emergency personnel, or health care institution. A physician, nurse, prehospital emergency personnel, or health care institution may provide consultation or education to the registrant without establishing a business or supervisory relationship, and is encouraged to accept referrals from registrants pursuant to this article.

(b) (Deleted by amendment, L. 2011, (SB 11-088), ch. 283, p. 1268, § 12, effective July 1, 2011.)

(2) (Deleted by amendment, L. 2011, (SB 11-088), ch. 283, p. 1268, § 12, effective July 1, 2011.)

(3) If the director finds that liability insurance is available at an affordable price, registrants shall be required to carry such insurance.

Source: L. 93: Entire article RC&RE, p. 1919, § 2, effective July 1. L. 96: (3) amended, p. 399, § 7, effective April 17. L. 2011: Entire section amended, (SB 11-088), ch. 283, p. 1268, § 12, effective July 1.

12-37-109.5. Immunity. The director, the director's staff, any person acting as a witness or consultant to the director, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 96: Entire section added, p. 399, § 8, effective April 17. L. 2004: Entire section amended, p. 1833, § 75, effective August 4.

12-37-109.7. Confidential files. The director may keep confidential all files and information concerning an investigation authorized under this article until the results of the investigation are provided to the director and either the complaint is dismissed or notice of hearing and charges are served upon the person subject to the investigation.

Source: **L. 96:** Entire section added, p. 399, § 8, effective April 17. **L. 2011:** Entire section amended, (SB 11-088), ch. 283, p. 1269, § 13, effective July 1.

- 12-37-110. Repeal of article.** (1) This article is repealed, effective September 1, 2016.
- (2) Prior to such repeal, the registering of direct-entry midwives by the division of professions and occupations shall be reviewed as provided in section 24-34-104, C.R.S.

Source: **L. 93:** Entire article RC&RE, p. 1920, § 2, effective July 1. **L. 96:** Entire section amended, p. 400, § 9, effective April 17. **L. 2001:** Entire section amended, p. 1260, § 7, effective June 5. **L. 2011:** (1) amended, (SB 11-088), ch. 283, p. 1258, § 3, effective July 1.

ARTICLE 37.5

Colorado Parental Notification Act

Editor’s note: This article was contained in an initiated measure that was adopted by the people in the general election held November 3, 1998. For the text of the initiative and the vote count, see Session Laws of Colorado 1999, p. 2260.

12-37.5-101.	Short title.	12-37.5-105.	No notice required - when.
12-37.5-102.	Legislative declaration.	12-37.5-106.	Penalties - damages - defenses.
12-37.5-103.	Definitions.		
12-37.5-104.	Notification concerning abortion.	12-37.5-107.	Judicial bypass.
		12-37.5-108.	Limitations.

12-37.5-101. Short title. This article shall be known and may be cited as the “Colorado Parental Notification Act”.

Source: Initiated 98: Entire article added, effective upon proclamation of the Governor, December 30, 1998.

ANNOTATION

Colorado Parental Notification Act is unconstitutional. The act violates the rights of minor women protected by the fourteenth amendment to the U.S. Constitution. The U.S. supreme court has required that any abortion regulation except from its reach an abortion medically necessary for the preservation of the mother’s health. The act fails to provide such a health exception, and the delay inherent in the act’s notification requirements will place some women at risk of serious health problems or even death. *Planned Parenthood of Rocky Mountains Servs. Corp. v. Owens*, 107 F. Supp. 2d 1271 (D. Colo. 2000), *aff’d*, 287 F.3d 910 (10th Cir. 2002).

12-37.5-102. Legislative declaration. (1) The people of the state of Colorado, pursuant to the powers reserved to them in Article V of the Constitution of the state of Colorado, declare that family life and the preservation of the traditional family unit are of vital importance to the continuation of an orderly society; that the rights of parents to rear and nurture their children during their formative years and to be involved in all decisions of importance affecting such minor children should be protected and encouraged, especially as such parental involvement relates to the pregnancy of an unemancipated minor, recognizing that the decision by any such minor to submit to an abortion may have adverse long-term consequences for her.

(2) The people of the state of Colorado, being mindful of the limitations imposed upon them at the present time by the federal judiciary in the preservation of the parent-child relationship, hereby enact into law the following provisions.

Source: Initiated 98: Entire article added, effective upon proclamation of the Governor, December 30, 1998.

ANNOTATION

The legislative declaration of the Colorado Parental Notification Act does not provide any positive indication that the act should be interpreted in conjunction with the Colorado Children's Code to protect the health of a

minor. Planned Parenthood of Rocky Mountains Servs. Corp. v. Owens, 107 F. Supp. 2d 1271 (D. Colo. 2000), aff'd on other grounds, 287 F.3d 910 (10th Cir. 2002).

12-37.5-103. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Minor" means a person under eighteen years of age.
- (2) "Parent" means the natural or adoptive mother and father of the minor who is pregnant, if they are both living; one parent of the minor if only one is living, or if the other parent cannot be served with notice, as hereinafter provided; or the court-appointed guardian of such minor if she has one or any foster parent to whom the care and custody of such minor shall have been assigned by any agency of the state or county making such placement.
- (3) "Abortion" for purposes of this article means the use of any means to terminate the pregnancy of a minor with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the minor's unborn offspring.
- (4) "Clergy member" means a priest; a rabbi; a duly ordained, commissioned, or licensed minister of a church; a member of a religious order; or a recognized leader of any religious body.
- (5) "Medical emergency" means a condition that, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a pregnant minor as to necessitate a medical procedure necessary to prevent the pregnant minor's death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function.
- (6) "Relative of the minor" means a minor's grandparent, adult aunt, or adult uncle, if the minor is not residing with a parent and resides with the grandparent, adult aunt, or adult uncle.

Source: Initiated 98: Entire article added, effective upon proclamation of the Governor, December 30, 1998. **L. 2003:** (3) amended and (4) to (6) added, p. 2362, § 2, effective June 3.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (3) and enacting subsections (4) to (6), see section 1 of chapter 355, Session Laws of Colorado 2003.

12-37.5-104. Notification concerning abortion. (1) No abortion shall be performed upon an unemancipated minor until at least 48 hours after written notice of the pending abortion has been delivered in the following manner:

- (a) The notice shall be addressed to the parent at the dwelling house or usual place of abode of the parent. Such notice shall be delivered to the parent by:
 - (I) The attending physician or member of the physician's immediate staff who is over the age of eighteen; or
 - (II) The sheriff of the county where the service of notice is made, or by his deputy; or
 - (III) Any other person over the age of eighteen years who is not related to the minor; or
 - (IV) A clergy member who is over the age of eighteen.
- (b) Notice delivered by any person other than the attending physician shall be furnished to and delivered by such person in a sealed envelope marked "Personal and Confidential" and its content shall not in any manner be revealed to the person making such delivery.
- (c) Whenever the parent of the minor includes two persons to be notified as provided in this article and such persons reside at the same dwelling house or place of abode, delivery

to one such person shall constitute delivery to both, and the 48-hour period shall commence when delivery is made. Should such persons not reside together and delivery of notice can be made to each of them, notice shall be delivered to both parents, unless the minor shall request that only one parent be notified, which request shall be honored and shall be noted by the physician in the minor's medical record. Whenever the parties are separately served with notice, the 48-hour period shall commence upon delivery of the first notice.

(d) The person delivering such notice, if other than the physician, shall provide to the physician a written return of service at the earliest practical time, as follows:

(I) If served by the sheriff or his deputy, by his certificate with a statement as to date, place, and manner of service and the time such delivery was made.

(II) If by any other person, by his affidavit thereof with the same statement.

(III) Return of service shall be maintained by the physician.

(e) (I) In lieu of personal delivery of the notice, the same may be sent by postpaid certified mail, addressed to the parent at the usual place of abode of the parent, with return receipt requested and delivery restricted to the addressee. Delivery shall be conclusively presumed to occur and the 48-hour time period as provided in this article shall commence to run at 12:00 o'clock noon on the next day on which regular mail delivery takes place.

(II) Whenever the parent of the minor includes two persons to be notified as provided in this article and such persons reside at the same dwelling house or place of abode, notice addressed to one parent and mailed as provided in the foregoing subparagraph shall be deemed to be delivery of notice to both such persons. Should such persons not reside together and notice can be mailed to each of them, such notice shall be separately mailed to both parents unless the minor shall request that only one parent shall be notified, which request shall be honored and shall be noted by the physician in the minor's medical record.

(III) Proof of mailing and the delivery or attempted delivery shall be maintained by the physician.

(2) (a) Notwithstanding the provisions of subsection (1) of this section, if the minor is residing with a relative of the minor and not a parent, the written notice of the pending abortion shall be provided to either the relative of the minor or a parent.

(b) If a minor elects to provide notice to a person specified in paragraph (a) of this subsection (2), the notice shall be provided in accordance with the provisions of subsection (1) of this section.

(3) At the time the physician, licensed health care professional, or staff of the physician or licensed health care professional informs the minor that notice must be provided to the minor's parents prior to performing an abortion, the physician, licensed health care professional, or the staff of the physician or licensed health care professional must inform the minor under what circumstances the minor has the right to have only one parent notified.

Source: Initiated 98: Entire article added, effective upon proclamation of the Governor, December 30, 1998. **L. 2003:** (1)(a)(III) amended and (1)(a)(IV), (2), and (3) added, p. 2363, §§ 5, 3, 4, effective June 3.

Cross references: For the legislative declaration contained in the 2003 act amending subsection (1)(a)(III) and enacting subsections (1)(a)(IV), (2), and (3), see section 1 of chapter 355, Session Laws of Colorado 2003.

ANNOTATION

The provisions of the Parental Notification Act supersede § 19-1-104 (3) of the Children's Code with regard to the provision of notice to parents about abortions. Planned Parenthood of Rocky Mountains Servs. Corp. v. Owens, 287 F.3d 910 (10th Cir. 2002).

As a result, the Parental Notification Act must be held unconstitutional because it lacks

a health exception to the parental notification requirement. Planned Parenthood of Rocky Mountains Servs. Corp. v. Owens, 287 F.3d 910 (10th Cir. 2002).

Applied in In re Doe, 166 P.3d 293 (Colo. App. 2007).

12-37.5-105. No notice required - when. (1) No notice shall be required pursuant to this article if:

(a) The person or persons who may receive notice pursuant to section 12-37.5-104 (1) certify in writing that they have been notified; or

(a.5) The person whom the minor elects to notify pursuant to section 12-37.5-104 (2) certifies in writing that he or she has been notified; or

(b) The pregnant minor declares that she is a victim of child abuse or neglect by the acts or omissions of the person who would be entitled to notice, as such acts or omissions are defined in "The Child Protection Act of 1987", as set forth in title 19, article 3, of the Colorado Revised Statutes, and any amendments thereto, and the attending physician has reported such child abuse or neglect as required by the said act. When reporting such child abuse or neglect, the physician shall not reveal that he or she learned of the abuse or neglect as the result of the minor seeking an abortion.

(c) The attending physician certifies in the pregnant minor's medical record that a medical emergency exists and there is insufficient time to provide notice pursuant to section 12-37.5-104; or

(d) A valid court order is issued pursuant to section 12-37.5-107.

Source: Initiated 98: Entire article added, effective upon proclamation of the Governor, December 30, 1998. **L. 2003:** Entire section amended, p. 2364, § 6, effective June 3.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 355, Session Laws of Colorado 2003.

12-37.5-106. Penalties - damages - defenses. (1) Any person who performs or attempts to perform an abortion in willful violation of this article:

(a) (Deleted by amendment, L. 2003, p. 2364, § 7, effective June 3, 2003.)

(b) Shall be liable for damages proximately caused thereby.

(2) It shall be an affirmative defense to any civil proceedings if the person establishes that:

(a) The person relied upon facts or information sufficient to convince a reasonable, careful and prudent person that the representations of the pregnant minor regarding information necessary to comply with this article were bona fide and true; or

(b) The abortion was performed to prevent the imminent death of the minor child and there was insufficient time to provide the required notice.

(3) Any person who counsels, advises, encourages or conspires to induce or persuade any pregnant minor to furnish any physician with false information, whether oral or written, concerning the minor's age, marital status, or any other fact or circumstance to induce or attempt to induce the physician to perform an abortion upon such minor without providing written notice as required by this article commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: Initiated 98: Entire article added, effective upon proclamation of the Governor, December 30, 1998. **L. 2002:** (1)(a) and (3) amended, p. 1479, § 79, effective October 1. **L. 2003:** (1) and IP(2) amended, p. 2364, § 7, effective June 3.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (1)(a) and (3), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration contained in the 2003 act amending subsection (1) and the introductory portion to subsection (2), see section 1 of chapter 355, Session Laws of Colorado 2003.

12-37.5-107. Judicial bypass.

(1) (Deleted by amendment, L. 2003, p. 2364, § 8, effective June 3, 2003.)

(2) (a) If any pregnant minor elects not to allow the notification required pursuant to section 12-37.5-104, any judge of a court of competent jurisdiction shall, upon petition filed by or on behalf of such minor, enter an order dispensing with the notice requirements of this article if the judge determines that the giving of such notice will not be in the best interest

of the minor, or if the court finds, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to have an abortion. Any such order shall include specific factual findings and legal conclusions in support thereof and a certified copy of such order shall be provided to the attending physician of said minor and the provisions of section 12-37.5-104 (1) and section 12-37.5-106 shall not apply to the physician with respect to such minor.

(b) The court, in its discretion, may appoint a guardian ad litem for the minor and also an attorney if said minor is not represented by counsel.

(c) Court proceedings under this subsection (2) shall be confidential and shall be given precedence over other pending matters so that the court may reach a decision promptly without delay in order to serve the best interests of the minor. Court proceedings under this subsection (2) shall be heard and decided as soon as practicable but in no event later than four days after the petition is filed.

(d) Notwithstanding any other provision of law, an expedited confidential appeal to the court of appeals shall be available to a minor for whom the court denies an order dispensing with the notice requirements of this article. Any such appeal shall be heard and decided no later than five days after the appeal is filed. An order dispensing with the notice requirements of this article shall not be subject to appeal.

(e) Notwithstanding any provision of law to the contrary, the minor is not required to pay a filing fee related to an action or appeal filed pursuant to this subsection (2).

(f) If either the district court or the court of appeals fails to act within the time periods required by this subsection (2), the court in which the proceeding is pending shall immediately issue an order dispensing with the notice requirements of this article.

(g) The Colorado supreme court shall issue rules governing the judicial bypass procedure, including rules that ensure that the confidentiality of minors filing bypass petitions will be protected. The Colorado supreme court shall also promulgate a form petition that may be used to initiate a bypass proceeding. The Colorado supreme court shall promulgate the rules and form governing the judicial bypass procedure by August 1, 2003. Physicians shall not be required to comply with this article until forty-five days after the Colorado supreme court publishes final rules and a final form.

Source: Initiated 98: Entire article added, effective upon proclamation of the Governor, December 30, 1998. **L. 2003:** Entire section amended, p. 2364, § 8, effective June 3.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 355, Session Laws of Colorado 2003.

12-37.5-108. Limitations. (1) This article shall in no way be construed so as to:

- (a) Require any minor to submit to an abortion; or
 - (b) Prevent any minor from withdrawing her consent previously given to have an abortion; or
 - (c) Permit anything less than fully informed consent before submitting to an abortion.
- (2) This article shall in no way be construed as either ratifying, granting or otherwise establishing an abortion right for minors independently of any other regulation, statute or court decision which may now or hereafter limit or abridge access to abortion by minors.

Source: Initiated 98: Entire article added, effective upon proclamation of the Governor, December 30, 1998.

ARTICLE 38

Nurses

Editor's note: This article was numbered as article 4 of chapter 97, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1980, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1980, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and

supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

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PART 2

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12-38-201 and	
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PART 3

PILOT PROGRAM IMPLEMENTATION
COMMITTEE

12-38-301.	Pilot program implementation committee for direct-care nurse decision-making - members - funding - definitions - repeal. (Repealed)
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PART 1

GENERAL PROVISIONS

12-38-101. Short title. This article shall be known and may be cited as the "Nurse Practice Act".

Source: L. 80: Entire article R&RE, p. 480, § 1, effective July 1.

Editor's note: This section is similar to former § 12-38-101 as it existed prior to 1980.

12-38-102. Legislative declaration. The general assembly hereby declares it to be the policy of this state that, in order to safeguard the life, health, property, and public welfare of the people of this state and in order to protect the people of this state from the unauthorized, unqualified, and improper application of services by individuals in the practice of nursing, it is necessary that a proper regulatory authority be established. The general assembly further declares it to be the policy of this state to regulate the practice of nursing through a state agency with the power to enforce the provisions of this article.

Source: L. 80: Entire article R&RE, p. 480, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-38-102 and 12-38-201 as they existed prior to 1980.

ANNOTATION

Law reviews. For note, "Acts of Diagnosis by Nurses and the Colorado Professional Nursing Practice Act", see 45 Den. L.J. 467 (1968).

12-38-103. Definitions. As used in this article, unless the context otherwise requires:

- (1) Repealed.
- (2) "Approved education program" means a course of training conducted by an educational or health care institution which implements the basic practical or professional nursing curriculum prescribed and approved by the board.
- (3) "Board" means the state board of nursing.
- (4) "Delegated medical function" means an aspect of care that implements and is consistent with the medical plan as prescribed by a licensed or otherwise legally authorized physician, podiatrist, or dentist and is delegated to a registered professional nurse or a practical nurse by a physician, podiatrist, dentist, or physician assistant. For purposes of this subsection (4), "medical plan" means a written plan, verbal order, standing order, or protocol, whether patient specific or not, that authorizes specific or discretionary medical action, which may include but is not limited to the selection of medication. Nothing in this subsection (4) shall limit the practice of nursing as defined in this article.
- (5) "Diagnosing", within the terms of this article, means the use of professional nursing knowledge and skills in the identification of, and discrimination between, physical and psychological signs or symptoms to arrive at a conclusion that a condition exists for which nursing care is indicated or for which referral to appropriate medical or community resources is required.
- (6) and (7) Repealed.
- (7.4) "Licensee" means a person licensed pursuant to this article.
- (7.8) "Panel" means either panel of the board created in section 12-38-116.5 (1).
- (8) "Practical nurse", "trained practical nurse", "licensed vocational nurse", or "licensed practical nurse" means a person who holds a license to practice pursuant to the provisions of this article as a licensed practical nurse in this state or is licensed in another state and is practicing in this state pursuant to section 24-60-3202, C.R.S., with the right to use the title "licensed practical nurse" and its abbreviation, "L.P.N.".
- (8.5) (a) "Practice of advanced practice nursing" means an expanded scope of professional nursing in a scope, role, and population focus approved by the board, with or without compensation or personal profit, and includes the practice of professional nursing, as defined in subsection (10) of this section.
- (b) "Practice of advanced practice nursing" includes prescribing medications as may be authorized pursuant to section 12-38-111.6.
- (c) Nothing in this subsection (8.5) shall alter the definition of the practice of professional nursing, as defined in subsection (10) of this section.
- (9) (a) "Practice of practical nursing" means the performance, under the supervision of a dentist, physician, podiatrist, or professional nurse authorized to practice in this state, of those services requiring the education, training, and experience, as evidenced by knowl-

edge, abilities, and skills required in this article for licensing as a practical nurse pursuant to section 12-38-112, in:

- (I) Caring for the ill, injured, or infirm;
- (II) Teaching and promoting preventive health measures;
- (III) Acting to safeguard life and health; or
- (IV) Administering treatments and medications prescribed by:
 - (A) A legally authorized dentist, podiatrist, or physician; or
 - (B) Physician assistant implementing a medical plan pursuant to subsection (4) of this section.
- (b) "Practice of practical nursing" includes the performance of delegated medical functions.

(c) Nothing in this article shall limit or deny a practical nurse from supervising other practical nurses or other health care personnel.

(10) (a) "Practice of professional nursing" means the performance of both independent nursing functions and delegated medical functions in accordance with accepted practice standards. Such functions include the initiation and performance of nursing care through health promotion, supportive or restorative care, disease prevention, diagnosis and treatment of human disease, ailment, pain, injury, deformity, and physical or mental condition using specialized knowledge, judgment, and skill involving the application of biological, physical, social, and behavioral science principles required for licensure as a professional nurse pursuant to section 12-38-111.

(b) The "practice of professional nursing" shall include the performance of such services as:

- (I) Evaluating health status through the collection and assessment of health data;
- (II) Health teaching and health counseling;
- (III) Providing therapy and treatment that is supportive and restorative to life and well-being either directly to the patient or indirectly through consultation with, delegation to, supervision of, or teaching of others;
- (IV) Executing delegated medical functions;
- (V) Referring to medical or community agencies those patients who need further evaluation or treatment;
- (VI) Reviewing and monitoring therapy and treatment plans.

(11) "Registered nurse" or "registered professional nurse" means a professional nurse, and only a person who holds a license to practice professional nursing in this state pursuant to the provisions of this article or who holds a license in another state and is practicing in this state pursuant to section 24-60-3202, C.R.S., shall have the right to use the title "registered nurse" and its abbreviation, "R.N.".

(12) "Treating" means the selection, recommendation, execution, and monitoring of those nursing measures essential to the effective determination and management of actual or potential human health problems and to the execution of the delegated medical functions. Such delegated medical functions shall be performed under the responsible direction and supervision of a person licensed under the laws of this state to practice medicine, podiatry, or dentistry.

(13) "Unauthorized practice" means the practice of practical nursing or the practice of professional nursing by any person who has not been issued a license under the provisions of this article, or is not practicing in this state pursuant to section 24-60-3202, C.R.S., or whose license has been suspended or revoked or has expired.

Source: **L. 80:** Entire article R&RE, p. 480, § 1, effective July 1. **L. 85:** (1) repealed, p. 532, § 14, effective July 1. **L. 90:** (4) amended, p. 820, § 3, effective May 14; (4) amended, p. 820, § 4, effective July 1; (4), (9), IP(10), and (12) amended, p. 811, § 12, effective July 1. **L. 92:** (4), (9), IP(10), (10)(d), and (12) amended, p. 2054, § 1, effective April 23; (10)(c) amended, p. 2009, § 1, effective June 2. **L. 95:** (10) amended, p. 1073, § 1, effective July 1. **L. 99:** (7.8) added, p. 235, § 2, effective July 1. **L. 2006:** (8), (11), and (13) amended, p. 1555, § 1, effective June 2. **L. 2007:** (7.4) added, p. 731, § 2, effective January 1, 2008. **L. 2009:** (4) and (9) amended, (6) and (7) repealed, and (8.5) added, (SB 09-239), ch. 401, pp. 2172, 2171, §§ 17, 12, effective July 1.

Editor's note: This section is similar to former §§ 12-38-103 and 12-38-202 as they existed prior to 1980.

Cross references: For the legislative declaration contained in the 1999 act enacting subsection (7.8), see section 1 of chapter 84, Session Laws of Colorado 1999.

ANNOTATION

The definition of the practice of professional nursing in subsection (10) includes the handling of patient records. Thus, petitioner could be disciplined for failing to properly handle patient records. *Weber v. Colo. State Bd. of Nursing*, 830 P.2d 1128 (Colo. App. 1992).

Failure to furnish medical records in a timely fashion to patients violates generally accepted standards of nursing practice, warranting disciplinary action. *Weber v. Colo. State Bd. of Nursing*, 830 P.2d 1125 (Colo. App. 1992).

Subsection (10)(b)(III) appears to contemplate the actual performance of patient services or the supervision of such services. Fur-

ther, respondent's conduct as vice-president of nursing care services did not constitute the practice of professional nursing as the board's own interpretation of the statutory term "supervision" required. *Tryon v. Colo. State Bd. of Nursing*, 989 P.2d 216 (Colo. App. 1998).

In interpreting a statute, a reviewing court must accord deference to the interpretation adopted by the agency charged with enforcement of the statute unless the agency's interpretation is inconsistent with its own rules. *Tryon v. Colo. State Bd. of Nursing*, 989 P.2d 216 (Colo. App. 1998).

12-38-104. State board of nursing created. (1) (a) There is hereby created the state board of nursing in the division of professions and occupations in the department of regulatory agencies, which board shall consist of eleven members who are residents of this state, appointed by the governor as follows:

(I) Two members of the board shall be licensed practical nurses engaged in the practice of practical nursing and licensed in this state;

(II) Seven members of the board shall be licensed professional nurses who are actively employed in their respective nursing professions and licensed in this state. The professional nurse members shall have been employed for at least three years in their respective categories. Members shall be as follows:

(A) One member shall be engaged in professional nursing education;

(B) One member shall be engaged in practical nursing education in a program that prepares an individual for licensure;

(C) One member shall be engaged in home health care;

(D) One member shall be registered as an advanced practice nurse pursuant to section 12-38-111.5;

(E) One member shall be engaged in nursing service administration; and

(F) Two members shall be engaged as staff nurses, including one staff nurse who is employed in a hospital and one employed in a nursing care facility;

(III) Two members of the board shall be persons who are not currently licensed and have not been previously licensed as health care providers, and who are not employed by or in any way connected with, or have any financial interest in, a health care facility, agency, or insurer.

(IV) (Deleted by amendment, L. 2009, (SB 09-239), ch. 401, p. 2165, § 3, effective July 1, 2009.)

(b) Any statutory change in board composition shall be implemented when the terms of current members expire, and no member shall be asked to resign before the end of a term due to such statutory changes.

(b.5) When making appointments to the board, the governor shall strive to achieve geographical, political, urban, and rural balance among the board membership.

(c) (I) Each member of the board shall be appointed for a term of three years; except that members appointed to the board for a first or second term on or after July 1, 2009, shall be appointed for a term of four years.

(II) Any interim appointment necessary to fill a vacancy which has occurred by any reason other than the expiration of a term shall be for the remainder of the term of the individual member whose office has become vacant.

(III) A member may be reappointed for a subsequent term at the pleasure of the governor, but no member shall serve for more than two consecutive terms.

(d) Notwithstanding the provisions of this subsection (1) to the contrary, if, as determined by the governor, an appropriate applicant for membership on the board pursuant to paragraph (a) of this subsection (1) is not available to serve on the board for a particular term, the governor may appoint a nurse whose license is in good standing to fill the vacancy for the length of that term. At the end of such term, if the governor, after a good faith attempt, cannot find an appropriate applicant pursuant to paragraph (a) of this subsection (1), the governor may appoint a nurse whose license is in good standing to fill the vacancy for one term.

(1.5) The board shall elect annually from its members a president.

(2) (a) Repealed.

(b) (Deleted by amendment, L. 2009, (SB 09-239), ch. 401, p. 2165, § 3, effective July 1, 2009.)

(3) Each member of the board shall receive the same per diem compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of professions and occupations pursuant to section 24-34-102 (13), C.R.S.

(4) (Deleted by amendment, L. 95, p. 1074, § 2, effective July 1, 1995.)

Source: L. 80: Entire article R&RE, p. 482, § 1, effective July 1. L. 85: (2) amended, p. 525, § 1, effective July 1. L. 91: (4) amended, p. 682, § 27, effective April 20. L. 95: (1) and (4) amended, p. 1074, § 2, effective July 1. L. 99: (1.5) added, p. 235, § 3, effective July 1. L. 2003: (2)(a) repealed, p. 912, § 13, effective August 6. L. 2006: (1)(d) added, p. 655, § 1, effective April 24. L. 2009: (1) and (2)(b) amended, (SB 09-239), ch. 401, p. 2165, § 3, effective July 1.

Editor's note: This section is similar to former §§ 12-38-104, 12-38-104.5, 12-38-105, 12-38-204, and 12-38-205 as they existed prior to 1980.

Cross references: For the legislative declaration contained in the 1999 act enacting subsection (1.5), see section 1 of chapter 84, Session Laws of Colorado 1999.

12-38-105. Removal of board members. The governor may remove any board member for negligence in the performance of any duty required by law, for incompetency, for unprofessional conduct, for willful misconduct, or for failure to continue to comply with the requirements of section 12-38-104.

Source: L. 80: Entire article R&RE, p. 483, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-38-106 and 12-38-206 as they existed prior to 1980.

12-38-106. Meetings of board. The board shall meet at least quarterly during the fiscal year and at such other times as it may determine.

Source: L. 80: Entire article R&RE, p. 483, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-38-108 and 12-38-207 as they existed prior to 1980.

12-38-107. Employees - executive officer. After consultation with the board, the director of the division of professions and occupations shall appoint an executive administrator for the board and such other personnel as are deemed necessary, pursuant to section 13 of article XII of the state constitution. At least one member of the board shall serve on any panel convened by the department of personnel to interview candidates for the position of executive administrator.

Source: L. 80: Entire article R&RE, p. 483, § 1, effective July 1. L. 2006: Entire section amended, p. 799, § 30, effective July 1.

Editor's note: This section is similar to former § 12-38-208 as it existed prior to 1980.

12-38-108. Powers and duties of the board - rules. (1) The board has the following powers and duties:

(a) To approve, pursuant to rules and regulations adopted by the board, educational programs in this state preparing individuals for licensure, including approving curricula, conducting surveys, and establishing standards for such educational programs; to deny approval of or withdraw approval from such educational programs for failure to meet required standards as established by this article or pursuant to rules and regulations adopted by the board; and to further establish standards in accordance with this article in the form of rules and regulations to determine whether institutions outside this state shall be deemed to have acceptable educational programs and whether graduates of institutions outside this state shall be deemed to be graduates of approved educational programs for the purpose of licensing requirements in this state; and to determine by rule when accreditation by a state or voluntary agency may be accepted in lieu of board approval;

(b) (I) To examine, license, reactivate, and renew licenses of qualified applicants and to grant to such applicants temporary licenses and permits to engage in the practice of practical nursing and professional nursing in this state within the limitations imposed by this article. Licenses shall be renewed, reactivated, or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed, reactivated, or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees, reactivation fees, and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S., and may increase fees to obtain or renew a professional nurse license or advanced practice nurse authority consistent with section 24-34-109 (4), C.R.S., to fund the division's costs in administering and staffing the nurse-physician advisory task force for Colorado health care created in section 24-34-109 (1), C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(II) In order to facilitate the licensure of qualified applicants, the board may, in its discretion, assign licensing functions in accordance with this article to either panel. Any action taken by a quorum of the assigned panel shall constitute action by the board.

(b.5) To revoke, suspend, withhold, limit the scope of, or refuse to renew any license, to place a licensee or temporary licensee on probation, to impose an administrative fine on a licensee, or to issue a letter of admonition to a licensee in accordance with the procedures set forth in section 12-38-116.5 upon proof that such licensee has committed an act that constitutes grounds for discipline under section 12-38-117 or 12-42-113;

(c) To permit the executive officer, during the period between board meetings, to administer examinations, issue licenses by endorsement and examination, renew licenses, and issue temporary licenses and permits to qualified applicants, pursuant to rules and regulations adopted by the board;

(d) To adopt and revise rules and regulations concerning qualifications needed to practice as a practical nurse when such practice requires preparation and skill beyond that of a practical nurse pursuant to section 12-38-112;

(e) Repealed.

(f) To provide by regulation for the legal recognition of nurse licensees from other states;

(g) To charge and collect appropriate fees;

(h) To investigate and conduct hearings upon charges for the discipline of nurses in accordance with the provisions of article 4 of title 24, C.R.S., and to impose disciplinary sanctions as provided in this article;

(i) To cause the prosecution and enjoinder of any person violating the provisions of this article and incur necessary expenses therefor;

(j) To adopt rules and regulations necessary to carry out the purposes of this article, such rules and regulations to be promulgated in accordance with the provisions of article 4 of title 24, C.R.S.;

(k) To administer the licensing and regulation of psychiatric technicians pursuant to article 42 of this title and to adopt and revise rules and regulations consistent with the laws of this state as may be necessary:

(I) To renew, grant, suspend, limit the scope of, and revoke licenses of psychiatric technicians in accordance with article 42 of this title;

(II) To prescribe standards and approve curricula for educational programs preparing persons for licensure as psychiatric technicians;

(III) To provide for surveys of such programs at such times as the board may deem necessary;

(IV) To accredit such programs as meet the requirements of the board and article 42 of this title;

(V) To deny accreditation to or withdraw accreditation from educational programs for failure to meet prescribed standards;

(VI) To conduct hearings pursuant to section 12-42-114;

(VII) To cause the prosecution and enjoinder of any person violating the provisions of article 42 of this title and incur necessary expenses therefor;

(I) (I) (A) Repealed.

(B) To conduct criminal history record checks on any individual under the jurisdiction of the board, against whom a complaint has been filed.

(C) Repealed.

(II) For purposes of this paragraph (I), "criminal history record check" means a written review of an individual's criminal conviction history.

(1.1) (a) The board shall appoint advisory committees pursuant to section 12-38-109 of at least three psychiatric technicians to advise the board on matters pertaining to psychiatric technician testing. The board shall, in its discretion, assign matters referred to the board by the psychiatric technicians advisory committee to a panel for consideration and implementation, if necessary.

(b) (Deleted by amendment, L. 92, p. 954, § 3, effective March 19, 1992.)

(2) When the board determines that rules and regulations are completed and established, the board shall make copies available at a reasonable cost.

(3) The board shall, in its discretion, assign matters referred to the board by the nurse aide advisory committee, created pursuant to section 12-38.1-110, to a panel for consideration and implementation, if necessary.

(4) The board shall administer the provisions of the nurse licensure compact pursuant to section 24-60-3202, C.R.S. Before recognizing a nurse license from another state that is party to the nurse licensure compact, the board shall determine that such state's qualifications for a nursing license are substantially equivalent to or more stringent than the minimum qualifications for issuance of a Colorado license under this article.

Source: L. 80: Entire article R&RE, p. 483, § 1, effective July 1. L. 85: (1)(e) repealed, p. 532, § 14, effective July 1. L. 86: (1.1) amended, p. 409, § 8, effective July 1. L. 92: (1.1) amended, p. 954, § 3, effective March 19. L. 95: (1)(k)(I) amended, p. 291, § 1, effective July 1; (1)(l) added, p. 1027, § 1, effective October 1. L. 97: (1)(l)(I)(C) added, p. 174, § 2, effective March 31. L. 99: (1)(b), (1)(h), and (1.1)(a) amended and (1)(b.5) and (3) added, p. 236, §§ 4, 5, effective July 1. L. 2003: (1)(l)(I) and (1)(l)(II) amended, p. 2631, § 4, effective June 5. L. 2004: (1)(b)(I) amended, p. 1833, § 76, effective August 4. L. 2005: (1)(l)(I)(A) and (1)(l)(I)(C) repealed, p. 1022, § 8, effective August 8. L. 2006: (4) added, p. 1556, § 2, effective June 2. L. 2008: (1)(b)(I) amended, p. 1760, § 4, effective August 5. L. 2009: (1)(b)(I), (1)(b.5), and (1)(l)(I)(B) amended, (SB 09-239), ch. 401, pp. 2179, 2167, 2172, §§ 22, 4, 16, effective July 1.

Editor's note: This section is similar to former §§ 12-38-107 and 12-38-209 as they existed prior to 1980.

Cross references: (1) For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8). For provisions concerning the panel referred to in subsections (1)(b)(II), (1.1)(a), and (3), see § 12-38-116.5.

(2) For the legislative declaration contained in the 1999 act amending subsections (1)(b), (1)(h), and (1.1)(a) and enacting subsections (1)(b.5) and (3), see section 1 of chapter 84, Session Laws of Colorado 1999.

ANNOTATION

Law reviews. For note, "The Right to Cross-Examine Adverse Witnesses as a Part of Due Process in Hearings Before Colorado Agencies", see 31 Dicta 383 (1954). For note, "Acts

of Diagnosis by Nurses and the Colorado Professional Nursing Practice Act", see 45 Den. L.J. 467 (1968).

12-38-108.5. Limitation on authority. The authority granted the board under the provisions of this article shall not be construed to authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

Source: L. 89: Entire section added, p. 673, § 14, effective July 1.

Cross references: For the legislative declaration contained in the 1989 act enacting this section, see section 1 of chapter 111, Session Laws of Colorado 1989.

12-38-109. Advisory committee. The board may appoint advisory committees including professional review committees to assist in the performance of its duties. Each advisory committee shall consist of at least three licensees who have expertise in the area under review. Members of the advisory committees shall receive no compensation for their services but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties.

Source: L. 80: Entire article R&RE, p. 485, § 1, effective July 1.

Editor's note: This section is similar to former § 12-38-210 as it existed prior to 1980.

12-38-110. Examination. (1) All nurse applicants, unless eligible for licensure by endorsement, shall be required to pass a written examination approved or prepared by the board, relating to the knowledge, skills, and judgments as incorporated in their respective approved educational programs.

(2) In accordance with the requirements of this article, the board shall hold at least two examinations annually for practical nurses and for professional nurses at such places and at such times as the board shall determine.

Source: L. 80: Entire article R&RE, p. 485, § 1, effective July 1.

Editor's note: This section is similar to former § 12-38-211 as it existed prior to 1980.

12-38-111. Requirements for professional nurse licensure. (1) The board shall issue a license to engage in the practice of professional nursing to any applicant who:

(a) Submits an application containing such information as the board may prescribe;

(b) Submits proof satisfactory to the board in such manner and upon such forms as the board may require to show that the applicant has completed a professional nursing educational program which meets the standards of the board for approval of educational

programs or which is approved by the board and to show that the applicant holds a certificate of graduation from or a certificate of completion of such approved program;

(c) Repealed.

(d) Passes an examination as provided in section 12-38-110 or is eligible for and is granted licensure by endorsement as provided in subsection (2) of this section;

(e) Pays the required fee.

(2) The board may issue a license by endorsement to engage in the practice of professional nursing in this state to a nurse who is licensed to practice professional nursing in another state or a territory of the United States or in a foreign country if the applicant presents proof satisfactory to the board that, at the time of application for a Colorado license by endorsement, the applicant possesses credentials and qualifications which are substantially equivalent to requirements in Colorado for licensure by examination. The board may specify by rule and regulation what shall constitute substantially equivalent credentials and qualifications.

(3) The board shall design a questionnaire to be sent to all licensees who apply for license renewal. Each applicant for license renewal shall complete the board-designed questionnaire. The purpose of the questionnaire is to determine whether a licensee has acted in violation of this article or been disciplined for any action that might be considered a violation of this article or might make the licensee unfit to practice nursing with reasonable care and safety. If an applicant fails to answer the questionnaire accurately, such failure shall constitute grounds for discipline under section 12-38-117 (1) (v). The board may include the cost of developing and reviewing the questionnaire in the fee paid under paragraph (e) of subsection (1) of this section. The board may refuse an application for license renewal that does not accompany an accurately completed questionnaire.

Source: L. 80: Entire article R&RE, p. 485, § 1, effective July 1. L. 81: (1)(c) amended, p. 736, § 12, effective July 1. L. 82: (2) amended, p. 262, § 1, effective April 2. L. 2003: (3) added, p. 1687, § 1, effective August 6. L. 2009: (1)(c) repealed, (SB 09-239), ch. 401, p. 2168, § 6, effective July 1.

Editor's note: This section is similar to former § 12-38-212 as it existed prior to 1980.

12-38-111.5. Requirements for advanced practice nurse registration - legislative declaration - definition - advanced practice registry. (1) The general assembly hereby recognizes that some individuals practicing pursuant to this article have acquired additional preparation for advanced practice and hereby determines that it is appropriate for the state to maintain a registry of such individuals. Such registry shall be known as the "advanced practice registry".

(2) As used in this section, "advanced practice nurse" means a professional nurse who is licensed to practice pursuant to this article, who obtains specialized education or training as provided in this section, and who applies to and is accepted by the board for inclusion in the advanced practice registry.

(3) The board shall establish the advanced practice registry and shall require that a nurse applying for registration identify his or her role and population focus. The board shall establish reasonable criteria for designation of specific role and population foci based on currently accepted professional standards. A nurse who is included in the advanced practice registry has the right to use the title "advanced practice nurse" or, if authorized by the board, to use the title "certified nurse midwife", "clinical nurse specialist", "certified registered nurse anesthetist", or "nurse practitioner". These titles may be abbreviated as "A.P.N.", "C.N.M.", "C.N.S.", "C.R.N.A.", or "N.P.", respectively. It is unlawful for any person to use any of the titles or abbreviations listed in this subsection (3) unless included in the registry and authorized by the board to do so.

(4) (a) Repealed.

(b) On and after July 1, 1995, until July 1, 2008, the requirements for inclusion in the advanced practice registry shall include the successful completion of a nationally accredited education program for preparation as an advanced practice nurse or a passing score on a

certification examination of a nationally recognized accrediting agency, or both, if applicable, as defined in rules adopted by the board.

(c) On and after July 1, 2008, the requirements for inclusion in the advanced practice registry shall include the successful completion of an appropriate graduate degree as determined by the board; except that individuals who are included in the registry as of June 30, 2008, but have not successfully completed such degree, may thereafter continue to be included in the registry and to use the appropriate title and abbreviation.

(d) On and after July 1, 2010, in addition to the requirements of paragraph (c) of this subsection (4), a professional nurse shall obtain national certification from a nationally recognized accrediting agency, as defined by the board by rule, in the appropriate role and population focus in order to be included in the advanced practice registry; except that professional nurses who are included in the registry as of June 30, 2010, but have not obtained such national certification, may thereafter continue to be included in the registry and to use the appropriate title and abbreviation.

(e) A professional nurse may be included in the advanced practice registry by endorsement if the professional nurse meets one of the following qualifying standards:

(I) The professional nurse is recognized as an advanced practice nurse in another state or jurisdiction and has practiced as an advanced practice nurse for at least two of the last five years immediately preceding the date of application for inclusion in the advanced practice registry; or

(II) The professional nurse holds national certification as provided in paragraph (d) of this subsection (4) and possesses an appropriate graduate degree as determined by the board.

(5) A nurse who meets the definition of advanced practice nurse, as defined in subsection (2) of this section, and the requirements of section 12-38-111.6, may be granted prescriptive authority as a function in addition to those defined in section 12-38-103 (10).

(6) An advanced practice nurse shall practice in accordance with the standards of the appropriate national professional nursing organization and have a safe mechanism for consultation or collaboration with a physician or, when appropriate, referral to a physician. Advanced practice nursing also includes, when appropriate, referral to other health care providers.

(7) (a) In order to enhance the cost efficiency and continuity of care, an advanced practice nurse may, within his or her scope of practice and within the advanced practice nurse-patient relationship, sign an affidavit, certification, or similar document that:

(I) Documents a patient's current health status;

(II) Authorizes continuing treatment, tests, services, or equipment; or

(III) Gives advance directives for end-of-life care.

(b) Such affidavit, certification, or similar document may not:

(I) Be the prescription of medication unless the advanced practice nurse has been granted prescriptive authority pursuant to section 12-38-111.6; or

(II) Be in conflict with other requirements of law.

Source: L. 94: Entire section added, p. 1116, § 1, effective May 19. L. 95: (3) amended and (5) added, p. 1075, § 3, effective July 1. L. 2000: (6) added, p. 31, § 3, effective March 10. L. 2003: (4)(a) repealed, p. 912, § 14, effective August 6. L. 2008: (6) amended and (7) added, p. 124, § 3, effective January 1, 2009. L. 2009: (4)(d) added, (SB 09-239), ch. 401, p. 2174, § 19, effective July 1. L. 2010: (3), (4)(c), and (4)(d) amended and (4)(e) added, (SB 10-176), ch. 187, p. 673, § 1, effective April 29.

12-38-111.6. Prescriptive authority - advanced practice nurses - rules. (1) The board may authorize an advanced practice nurse who is listed on the advanced practice registry, has a license in good standing without disciplinary sanctions issued pursuant to section 12-38-111, and has fulfilled requirements established by the board pursuant to this section to prescribe controlled substances or prescription drugs as defined in part 1 of article 42.5 of this title.

(2) (a) The board shall adopt rules to implement this section.

(b) Rules adopted pursuant to this section shall reflect current, accepted professional standards for the safe and effective use of controlled substances and prescription drugs.

(3) (a) An advanced practice nurse may be granted authority to prescribe prescription drugs and controlled substances to provide treatment to clients.

(b) and (c) (Deleted by amendment, L. 2009, (SB 09-239), ch. 401, p. 2174, § 20, effective July 1, 2009.)

(d) (I) An advanced practice nurse who has been granted authority to prescribe prescription drugs and controlled substances under this article may advise the nurse's patients of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.

(II) A nurse's failure to advise a patient under subparagraph (I) of this paragraph (d) shall not be grounds for any disciplinary action against the nurse's professional license issued under this article. Failure to advise a patient pursuant to subparagraph (I) of this paragraph (d) shall not be grounds for any civil action against a nurse in a negligence or tort action, nor shall such failure be evidence in any civil action against a nurse.

(4) Repealed.

(4.5) (a) On or after July 1, 2010, or, if the director of the division of professions and occupations adopts rules pursuant to subparagraph (II) of paragraph (f) of this subsection (4.5), on or after July 2, 2010, an advanced practice nurse applying for prescriptive authority shall provide evidence to the board of the following:

(I) An appropriate graduate degree as determined by the board pursuant to section 12-38-111.5 (4) (c);

(II) Satisfactory completion of specific educational requirements in the use of controlled substances and prescription drugs, as established by the board, either as part of a degree program or in addition to a degree program;

(III) National certification from a nationally recognized accrediting agency, as defined by the board by rule pursuant to section 12-38-111.5 (4) (d), unless the board grants an exception;

(IV) Professional liability insurance as required by section 12-38-111.8; and

(V) (A) Completion of a mutually structured, post-graduate preceptorship, as defined by the board by rule, consisting of not less than one thousand eight hundred documented hours, to be completed within the immediately preceding five-year period. The preceptorship shall be conducted either with a physician or a physician and an advanced practice nurse who has prescriptive authority and experience in prescribing medications. The physician and, if applicable, advanced practice nurse serving as a preceptor to the applicant shall be actively practicing in this state and shall have education, training, experience, and active practice that corresponds with the role and population focus of the applicant.

(B) The physician and, if applicable, advanced practice nurse serving as a preceptor shall not require payment or employment as a condition of entering into the preceptorship relationship, but a preceptor may request reimbursement of reasonable expenses and time spent as a result of the preceptorship relationship.

(b) Upon satisfaction of the requirements set forth in paragraph (a) of this subsection (4.5), the board may grant provisional prescriptive authority to an advanced practice nurse. The provisional prescriptive authority that is granted shall be limited to those patients and medications appropriate to the advanced practice nurse's role and population focus. In order to retain provisional prescriptive authority and obtain and retain full prescriptive authority pursuant to this subsection (4.5) for patients and medications appropriate for the advanced practice nurse's role and population focus, an advanced practice nurse shall satisfy the following requirements:

(I) (A) Within five years after the provisional prescriptive authority is granted, the advanced practice nurse shall obtain an additional one thousand eight hundred hours of documented experience in a mutually structured mentorship either with a physician or with a physician and advanced practice nurse who has prescriptive authority and experience in prescribing medications. The mentorship need not be with the same persons who provided the preceptorship specified in subparagraph (V) of paragraph (a) of this subsection (4.5), but the mentor shall be practicing in Colorado and have education, training, experience, and

active practice that corresponds with the role and population focus of the advanced practice nurse.

(B) The physician and, if applicable, advanced practice nurse serving as a mentor shall not require payment or employment as a condition of entering into the mentorship relationship, but the mentor may request reimbursement of reasonable expenses and time spent as a result of the mentorship relationship.

(C) Upon successful completion of the mentorship period, the mentor shall provide his or her signature to verify that the advanced practice nurse has successfully completed the mentorship within the required period after the provisional prescriptive authority was granted.

(D) If an advanced practice nurse with provisional prescriptive authority fails to complete the mentorship required by this subparagraph (I) within the specified period, the advanced practice nurse's provisional prescriptive authority expires for failure to comply with the statutory requirements.

(II) Within five years after obtaining provisional prescriptive authority, the advanced practice nurse shall develop an articulated plan for safe prescribing that documents how the advanced practice nurse intends to maintain ongoing collaboration with physicians and other health care professionals in connection with the advanced practice nurse's practice of prescribing medication within his or her role and population focus. The articulated plan shall guide the advanced practice nurse's prescriptive practice. The physician or physician and advanced practice nurse that mentored the advanced practice nurse as described in subparagraph (I) of this paragraph (b) shall provide his or her signature to verify that the advanced practice nurse has developed an articulated plan. The advanced practice nurse shall retain the articulated plan on file, shall review the plan annually, and shall update the plan as necessary. The articulated plan is subject to review by the board, and the advanced practice nurse shall provide the plan to the board upon request. If an advanced practice nurse with provisional prescriptive authority fails to develop the required articulated plan within the specified period, the advanced practice nurse's provisional prescriptive authority expires for failure to comply with the statutory requirements. An articulated plan developed pursuant to this subparagraph (II) shall include at least the following:

(A) A mechanism for consultation and referral for issues regarding prescriptive authority;

(B) A quality assurance plan;

(C) Decision support tools; and

(D) Documentation of ongoing continuing education in pharmacology and safe prescribing.

(III) The advanced practice nurse shall maintain professional liability insurance as required by section 12-38-111.8.

(IV) The advanced practice nurse shall maintain national certification, as specified in subparagraph (III) of paragraph (a) of this subsection (4.5), unless the board grants an exception.

(c) An advanced practice nurse who was granted prescriptive authority prior to July 1, 2010, shall satisfy the following requirements in order to retain prescriptive authority:

(I) (A) Except as provided in sub-subparagraph (B) of this subparagraph (I), no later than July 1, 2011, the advanced practice nurse shall develop an articulated plan as specified in subparagraph (II) of paragraph (b) of this subsection (4.5); except that to verify development of an articulated plan, the advanced practice nurse shall obtain the signature of either a physician or a physician and advanced practice nurse who has prescriptive authority and experience in prescribing medications, is practicing in Colorado, and has education, training, experience, and active practice that corresponds with the role and population focus of the advanced practice nurse developing the plan. If an advanced practice nurse with prescriptive authority granted prior to July 1, 2010, fails to develop the required articulated plan within the specified period, the advanced practice nurse's prescriptive authority expires for failure to comply with the statutory requirements.

(B) The board shall extend the deadline for an advanced practice nurse to develop an articulated plan if the advanced practice nurse satisfies the requirements of this subparagraph (B), but in no event shall the board extend the deadline beyond September 30,

2012. Prior to September 30, 2012, an advanced practice nurse seeking a deadline extension shall submit to the board an application, the required fee, a signed verification that he or she developed an articulated plan by, or had an existing collaborative agreement with a physician on, July 1, 2011, and any other information or documentation required by the board.

(II) The advanced practice nurse shall maintain professional liability insurance as required by section 12-38-111.8.

(III) The advanced practice nurse shall maintain national certification, as specified in subparagraph (III) of paragraph (a) of this subsection (4.5), unless:

(A) The advanced practice nurse was included on the advanced practice registry prior to July 1, 2010, and has not obtained national certification;

(B) The advanced practice nurse was included on the advanced practice registry prior to July 1, 2008, and has not completed a graduate degree as specified in section 12-38-111.5 (4) (c); or

(C) The board grants an exception.

(d) (I) On or after July 1, 2010, or, if the director of the division of professions and occupations adopts rules pursuant to subparagraph (II) of paragraph (f) of this subsection (4.5), on or after July 2, 2010, an advanced practice nurse who has obtained prescriptive authority from another state may obtain provisional prescriptive authority in this state if the advanced practice nurse satisfies the following requirements:

(A) The advanced practice nurse satisfies the requirements of subparagraphs (I), (II), (III), and (IV) of paragraph (a) of this subsection (4.5); and

(B) The advanced practice nurse has three thousand six hundred hours of documented experience prescribing medications without significant adverse prescribing issues, as determined by the board.

(II) Once an advanced practice nurse with prescriptive authority from another state obtains provisional prescriptive authority in this state, the advanced practice nurse shall satisfy the following requirements in order to obtain and maintain full prescriptive authority in this state:

(A) Within one year after obtaining provisional prescriptive authority in this state, the advanced practice nurse shall develop an articulated plan, as described in subparagraph (I) of paragraph (c) of this subsection (4.5); except that, if the advanced practice nurse with prescriptive authority from another state fails to develop the required articulated plan within the specified period, the advanced practice nurse's provisional prescriptive authority expires for failure to comply with the statutory requirements; and

(B) The advanced practice nurse shall maintain national certification, as specified in subparagraph (III) of paragraph (a) of this subsection (4.5), unless the board grants an exception.

(e) During the second year of implementation of this subsection (4.5) and rules adopted pursuant to paragraph (f) of this subsection (4.5), the board shall conduct random audits of articulated plans to ensure the plans satisfy the requirements of this subsection (4.5) and rules adopted pursuant to paragraph (f) of this subsection (4.5).

(f) (I) Except as provided in subparagraph (II) of this paragraph (f), the board shall adopt rules to implement this subsection (4.5), which rules shall take effect on July 1, 2010. The board shall consider the recommendations of the nurse-physician advisory task force for Colorado health care submitted in accordance with section 24-34-109, C.R.S., concerning prescriptive authority of advanced practice nurses. The rules shall be complementary to rules adopted by the Colorado medical board pursuant to section 12-36-106.4.

(II) (A) The director of the division of professions and occupations in the department of regulatory agencies shall review the rules adopted by the board pursuant to this paragraph (f) prior to the effective date of the rules to determine if the rules complement the rules of the Colorado medical board. If the director determines that the rules of the two boards are not complementary, the director shall adopt rules that supersede and replace the rules of the two boards regarding prescriptive authority of advanced practice nurses and collaboration between advanced practice nurses and physicians, and such rules shall take effect on July 2, 2010.

(B) If the director determines that the two boards have adopted complementary rules regarding the prescriptive authority of advanced practice nurses and collaboration between advanced practice nurses and physicians, the director shall not adopt rules that supersede and replace the rules of the two boards, but the director shall review any amendments to those rules by either board to ensure that the rules remain complementary. If the director determines that an amendment to the rules by the state board of nursing or the Colorado medical board results in rules on prescriptive authority and collaboration that are no longer complementary, the amendment shall not take effect.

(5) and (6) Repealed.

(7) An advanced practice nurse who obtains prescriptive authority pursuant to this section shall be assigned a specific identifier by the board. This identifier shall be available to the Colorado medical board and the board of pharmacy. The board shall establish a mechanism to assure that the prescriptive authority of an advanced practice nurse may be readily verified.

(8) (a) The scope of practice for an advanced practice nurse may be determined by the board in accordance with this article.

(b) The board may consider information provided by nursing, medical, or other health professional organizations, associations, or regulatory boards.

(c) (I) Prescriptive authority by an advanced practice nurse shall be limited to those patients appropriate to such nurse's scope of practice. Prescriptive authority may be limited or withdrawn and the advanced practice nurse may be subject to further disciplinary action in accordance with this article if such nurse has prescribed outside such nurse's scope of practice or for other than a therapeutic purpose.

(II) Nothing in this section shall be construed to require a registered nurse to obtain prescriptive authority to deliver anesthesia care.

(9) All prescriptions must comply with applicable federal and state laws, including article 42.5 of this title and part 2 of article 18 of title 18, C.R.S.

(10) Nothing in this section shall be construed to permit dispensing or distribution, as defined in section 12-42.5-102 (11) and (12), by an advanced practice nurse, except for samples, under article 42.5 of this title and the federal "Prescription Drug Marketing Act of 1987".

(11) No advanced practice nurse registered pursuant to section 12-38-111.5 shall be required to apply for or obtain prescriptive authority.

(12) Nothing in this section shall limit the practice of nursing as defined in section 12-38-103 (9) or (10) by any nurse including, but not limited to, advanced practice nurses.

Source: **L. 95:** Entire section added, p. 1076, § 4, effective July 1. **L. 2003:** (3)(d) added, p. 765, § 7, effective March 25. **L. 2009:** (3)(a), (3)(b), (3)(c), IP(4), and (6) amended and (4)(e) and (4.5) added, (SB 09-239), ch. 401, pp. 2174, 2175, §§ 20, 21, effective July 1. **L. 2010:** (4.5)(a)(I) and (4.5)(a)(III) amended, (SB 10-176), ch. 187, p. 674, § 2, effective April 29; (4)(d)(III), (4.5)(f), and (7) amended, (HB 10-1260), ch. 403, pp. 1984, 1953, §§ 69, 19, effective July 1. **L. 2012:** (4.5)(c)(I) amended, (HB 12-1065), ch. 73, p. 249, § 1, effective April 2; (1), (9), and (10) amended, (HB 12-1311), ch. 281, p. 1612, § 18, effective July 1.

Editor's note: (1) Subsection (5)(d) provided for the repeal of subsection (5), effective July 1, 2000. (See L. 95, p. 1076.)

(2) (a) Subsection (4)(d)(III) was amended by House Bill 10-1260, effective July 1, 2010, but those amendments did not take effect due to the repeal of subsection (4), effective July 1, 2010.

(b) Subsection (4)(e) provided for the repeal of subsection (4), effective July 1, 2010. (See L. 2009, p. 2174.)

(3) Subsection (6)(b) provided for the repeal of subsection (6), effective July 1, 2010. (See L. 2009, p. 2174.)

Cross references: For the federal "Prescription Drug Marketing Act of 1987", see Pub.L. 100-293, 102 Stat. 95 (1988).

12-38-111.8. Professional liability insurance required - advanced practice nurses in independent practice - rules. (1) It is unlawful for any advanced practice nurse engaged in an independent practice of professional nursing to practice within the state of Colorado unless the advanced practice nurse purchases and maintains or is covered by professional liability insurance in an amount not less than five hundred thousand dollars per claim with an aggregate liability for all claims during the year of one million five hundred thousand dollars.

(2) Professional liability insurance required by this section shall cover all acts within the scope of practice of an advanced practice nurse as defined in this part 1.

(3) Notwithstanding the requirements of subsection (1) of this section, the board, by rule, may exempt or establish lesser liability insurance requirements for advanced practice nurses.

(4) Nothing in this section shall be construed to confer liability on an employer for the acts of an advanced practice nurse that are outside the scope of employment or to negate the applicability of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

Source: L. 2009: Entire section added, (SB 09-239), ch. 401, p. 2185, § 31, effective July 1.

12-38-112. Requirements for practical nurse licensure. (1) The board shall issue a license to engage in the practice of practical nursing to any applicant who:

(a) Submits an application containing such information as the board may prescribe;

(b) Submits proof satisfactory to the board in such manner and upon such forms as the board may require to show that the applicant has completed a practical nursing educational program which meets the standards of the board for approval of educational programs or which is approved by the board and to show that the applicant holds a certificate of graduation from or a certificate of completion of such approved program;

(c) Repealed.

(d) Passes an examination as provided in section 12-38-110 or is eligible for and is granted licensure by endorsement as provided in subsection (2) of this section;

(e) Pays the required fee.

(2) The board may issue a license by endorsement to engage in the practice of practical nursing in this state to any applicant who has been duly licensed or registered as a practical nurse or who is entitled to perform similar services under laws of another state or a territory of the United States or a foreign country if the applicant presents proof satisfactory to the board that, at the time of application for a Colorado license by endorsement, the applicant possesses credentials and qualifications which are substantially equivalent to requirements in Colorado for licensure by examination. The board may specify by rule and regulation what shall constitute substantially equivalent credentials and qualifications.

(3) The board shall design a questionnaire to be sent to all licensed practical nurses who apply for license renewal. Each applicant for license renewal shall complete the board-designed questionnaire. The purpose of the questionnaire is to determine whether a licensee has acted in violation of this article or been disciplined for any action that might be considered a violation of this article or might make the licensee unfit to practice nursing with reasonable care and safety. If an applicant fails to answer the questionnaire accurately, such failure shall constitute grounds for discipline under section 12-38-117 (1) (v). The board may include the cost of developing and reviewing the questionnaire in the fee paid under paragraph (e) of subsection (1) of this section. The board may refuse an application for license renewal that does not accompany an accurately completed questionnaire.

Source: L. 80: Entire article R&RE, p. 486, § 1, effective July 1. **L. 81:** (1)(c) amended, p. 736, § 13, effective July 1. **L. 82:** (2) amended, p. 262, § 2, effective April 2. **L. 2003:** (3) added, p. 1687, § 2, effective August 6. **L. 2009:** (1)(c) repealed, (SB 09-239), ch. 401, p. 2168, § 7, effective July 1.

Editor's note: This section is similar to former §§ 12-38-113 and 12-38-114 as they existed prior to 1980.

12-38-112.5. Retired volunteer nurse licensure. (1) The board may issue a license to a retired volunteer nurse who meets the requirements set forth in this section.

(2) A retired volunteer nursing license shall only be issued to an applicant who is at least fifty-five years of age and:

(a) Currently holds a license to practice nursing, either as a practical nurse or as a professional nurse and such license is due to expire unless renewed; or

(b) Has retired from the practice of nursing and is not currently engaged in the practice of nursing either full-time or part-time and has, prior to retirement, maintained full licensure in good standing in any state or territory of the United States.

(3) A nurse who holds a retired volunteer nursing license shall not accept compensation for nursing tasks that are performed while in possession of the license. A retired volunteer nursing license shall permit the retired nurse to engage in volunteer nursing tasks within the scope of the nurse's license.

(4) An applicant for a retired volunteer nursing license shall submit to the board an application containing such information as the board may prescribe, a copy of the applicant's most recent nursing license, and a statement signed under penalty of perjury in which the applicant agrees not to receive compensation for any nursing tasks that are performed while in possession of the license.

(5) (Deleted by amendment, L. 2011, (SB 11-242), ch. 244, p. 1068, § 1, effective May 27, 2011.)

(6) A person who possesses a retired volunteer nursing license shall be immune from civil liability for actions performed within the scope of the nursing license unless it is established that injury or death was caused by gross negligence or the willful and wanton misconduct of the licensee. The immunity provided in this subsection (6) shall apply only to the licensee and shall not affect the liability of any other individual or entity. Nothing in this subsection (6) shall be construed to limit the ability of the board to take disciplinary action against a licensee.

(7) The fee for a retired volunteer nursing license, including assessments for legal defense, peer assistance, and other programs for which licenses are assessed, shall be no more than fifty percent of the license renewal fee, including all such assessments, established by the board for an active nursing license.

(8) The board shall design a questionnaire to be sent to all retired volunteer nurses who apply for license renewal. Each applicant for license renewal shall complete the board-designed questionnaire. The purpose of the questionnaire is to determine whether a licensee has acted in violation of this article or been disciplined for any action that might be considered a violation of this article or might make the licensee unfit to practice nursing with reasonable care and safety. If an applicant fails to answer the questionnaire accurately, such failure shall constitute grounds for discipline under section 12-38-117 (1) (v). The board may include the cost of developing and reviewing the questionnaire in the fee paid under subsection (7) of this section. The board may refuse an application for license renewal that does not accompany an accurately completed questionnaire.

(9) The board shall deny an application for the reactivation of a practical or professional nurse license for a retired volunteer nurse if the board determines that the nurse requesting reactivation has not actively volunteered as a nurse for the two-year period immediately preceding the filing of the application for license reactivation or has not otherwise demonstrated continued competency to return to the active practice of nursing in a manner approved by the board.

Source: L. 2001: Entire section added, p. 198, § 1, effective August 8. L. 2002: (2)(b) amended, p. 17, § 1, effective August 7. L. 2003: (8) added, p. 1688, § 3, effective August 6. L. 2011: IP(2) and (5) amended and (9) added, (SB 11-242), ch. 244, p. 1068, § 1, effective May 27.

12-38-113. Denial of license. (Repealed)

Source: L. 80: Entire article R&RE, p. 486, § 1, effective July 1. L. 2009: Entire section repealed, (SB 09-239), ch. 401, p. 2169, § 9, effective July 1.

12-38-114. Persons licensed under previous laws. Any person holding a valid Colorado license to engage in the practice of practical or professional nursing issued prior to July 1, 1980, shall continue to be licensed under the provisions of this article.

Source: L. 80: Entire article R&RE, p. 487, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-38-112 and 12-38-203 as they existed prior to 1980.

12-38-115. Temporary licenses and permits. (1) The board may issue a temporary license to practice for a period of four months to an applicant for licensure by endorsement, pending compliance with the requirements for licensure. To obtain a temporary license, the applicant for licensure by endorsement shall show evidence of current licensure in another state or country or in a territory of the United States.

(2) Repealed.

(3) The board may issue a permit to practice as a practical or professional nurse for a period not to exceed two years or as determined by the board to any person from another state or a territory of the United States or a foreign country who is in this state for special training or for observation of nursing educational programs upon proof to the board by such person that he is currently licensed to practice as a nurse in the state, territory, or country of his residency. The nursing practice permitted by such permit shall be limited to that practice performed as part of the special training or nursing educational program.

(3.5) The board may, as it deems appropriate, issue a permit to a person who is under the supervision of a professional nurse licensed pursuant to this article.

(4) A person holding a permit may engage in the practice of practical or professional nursing only under the personal and responsible supervision and direction of a person licensed by the board to engage in the practice of professional nursing.

(5) The board shall summarily withdraw a temporary license or permit issued pursuant to this section if the board determines that the license holder fails to meet the requirements of this section or section 12-38-110, 12-38-111, or 12-38-112. The holder of a temporary license or permit summarily withdrawn has the right to a hearing which shall be conducted pursuant to article 4 of title 24, C.R.S., by the board or by an administrative law judge at the board's discretion.

Source: L. 80: Entire article R&RE, p. 487, § 1, effective July 1. **L. 87:** (5) amended, p. 948, § 38, effective March 13. **L. 95:** (3.5) added, p. 1079, § 5, effective July 1. **L. 2009:** (2) repealed, (SB 09-239), ch. 401, p. 2171, § 13, effective July 1.

Editor's note: This section is similar to former § 12-38-214 as it existed prior to 1980.

12-38-116. Approval of educational programs. (1) Any institution in this state desiring to receive from the board approval of its educational program which prepares individuals for licensure as a practical or as a professional nurse shall apply to the board and submit evidence that it is prepared to carry out an educational program which complies with the provisions of this article and with rules and regulations adopted by the board pursuant to this article.

(2) For the practice of practical nursing, such educational program shall include:

(a) Content fundamental to the knowledge and skills required for clinical nursing appropriate to the practice of practical nursing;

(b) Content relating to the principles of biological, physical, social, and behavioral sciences.

(3) For the practice of professional nursing, such educational program shall include:

(a) Content fundamental to the knowledge and skills required for clinical nursing appropriate to the practice of professional nursing;

(b) Content relating to the principles of biological, physical, social, and behavioral sciences.

(4) Any educational program for practical or professional nurses in this state which was accredited by the former boards of nursing prior to July 1, 1980, shall be deemed to be an approved educational program for the purpose of this article, but such approval shall be subject to the powers and duties of the board under section 12-38-108 to deny or to withdraw approval.

Source: L. 80: Entire article R&RE, p. 487, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-38-111 and 12-38-216 as they existed prior to 1980.

12-38-116.5. Disciplinary procedures of the board - inquiry and hearings panels.

(1) (a) The president of the board shall divide the other ten members of the board into two panels of five members each. Members representing the three different categories of membership (licensed practical nurses, professional nurses, and persons not licensed, employed, or in any way connected with, or with any financial interest in, any health care facility, agency, or insurer) shall be divided between the two panels as equally as possible.

(b) Each panel shall act as both an inquiry and a hearings panel. Members of the board may be assigned from one panel to the other by the president. The president may be a member of both panels, but in no event shall the president or any other member who has considered a complaint as a member of a panel acting as an inquiry panel take any part in the consideration of a formal complaint involving the same matter.

(c) All matters referred to one panel for investigation shall be heard, if referred for formal hearing, by the other panel or a committee of such panel. However, in its discretion, either inquiry panel may elect to refer a case for formal hearing to a qualified administrative law judge, in lieu of a hearings panel of the board, for an initial decision pursuant to section 24-4-105, C.R.S.

(d) The initial decision of an administrative law judge may be reviewed pursuant to section 24-4-105 (14) and (15), C.R.S., by the filing of exceptions to the initial decision with the hearings panel that would have heard the case if it had not been referred to an administrative law judge or by review upon the motion of such hearings panel. The respondent or the board's counsel shall file such exceptions.

(2) Investigations shall be under the supervision of the panel to which they are assigned. The persons making such investigation shall report the results thereof to the assigning panel for appropriate action.

(3) (a) (I) For the purposes of this section:

(A) "Grounds for discipline" includes grounds under sections 12-38-117 and 12-42-113.

(B) "License" includes licensure for a practical nurse or professional nurse and licensure for a psychiatric technician.

(C) "Nurse", "licensee", or "respondent" includes a practical nurse, a professional nurse, and a psychiatric technician as described in section 12-42-102 (4).

(D) "Practice of nursing" includes the practice of practical nursing, the practice of professional nursing, and the practice as a psychiatric technician.

(II) Written complaints relating to the conduct of a nurse licensed or authorized to practice nursing in this state may be made by any person or may be initiated by an inquiry panel of the board on its own motion. The nurse complained of shall be given notice, unless the board determines the complaint to be without merit of investigation, by first-class mail, and the notice shall state the nature of the complaint and shall state that the failure to respond in a materially factual and timely manner constitutes grounds for discipline. The nurse complained of shall be given thirty days to answer or explain in writing the matters described in such complaint. Upon receipt of the nurse's answer or at the conclusion of thirty days, whichever occurs first, the inquiry panel may take further action as set forth in subparagraph (III) of this paragraph (a).

(III) Upon receipt of the nurse's answer or the conclusion of thirty days, the inquiry panel may conduct a further investigation that may be made by one or more members of the inquiry panel, one or more nurses who are not members of the board, a member of the staff

of the board, a professional investigator, or any other person or organization as the inquiry panel directs. Any such investigation shall be entirely informal.

(b) The board shall cause an investigation to be made when the board is informed of:

(I) Disciplinary action taken by an employer of a nurse against the nurse or resignation in lieu of a disciplinary action for conduct that constitutes grounds for discipline under section 12-38-117 or 12-42-113. Such employer shall report such disciplinary action or resignation to the board.

(II) An instance of a malpractice settlement or judgment against a nurse;

(III) A nurse who has not timely renewed his or her license and the nurse is actively engaged in the practice of nursing.

(c) On completion of an investigation, the inquiry panel shall make a finding that:

(I) The complaint is without merit and no further action need be taken;

(II) There is no reasonable cause to warrant further action on the complaint;

(III) An instance of conduct occurred that does not warrant formal action by the board and that should be dismissed, but that indications of possible conduct by the nurse were noted that could lead to serious consequences if not corrected. In such a case, a confidential letter of concern shall be sent to the nurse against whom the complaint was made.

(IV) (A) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(B) When a letter of admonition is sent by the board, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(C) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(V) (A) Facts were disclosed that warrant further proceedings by formal complaint, as provided in subsection (4) of this section, and that the complaint should be referred to the attorney general for preparation and filing of a formal complaint.

(B) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(4) (a) All formal complaints shall be heard and determined in accordance with paragraph (b) of this subsection (4) and section 24-4-105, C.R.S. Except as provided in subsection (1) of this section, all formal hearings shall be conducted by the hearings panel. The nurse may be present in person or represented by counsel, or both, if so desired, to offer evidence and be heard in the nurse's own defense. At formal hearings, the witnesses shall be sworn and a complete record shall be made of all proceedings and testimony.

(b) Except as provided in subsection (1) of this section, an administrative law judge shall preside at the hearing and shall advise the hearings panel on all such legal matters in connection with the hearing as the panel may request. The administrative law judge shall provide such advice or assistance as the hearings panel may request in connection with the preparation of its findings and recommendations or conclusions. Such administrative law judge shall have the authority to administer oaths and affirmations, sign and issue subpoenas, and perform such other duties as the hearings panel may authorize the administrative law judge to perform. Such administrative law judge shall have the qualifications provided in section 24-30-1003 (2), C.R.S.

(c) (I) To warrant a finding of grounds for discipline, the charges shall be established as specified in section 24-4-105 (7), C.R.S. Except as provided in subsection (1) of this section, the hearings panel shall make a report of its findings and conclusions that, when approved by a majority of those members of the hearings panel who have conducted the hearing pursuant to paragraphs (a) and (b) of this subsection (4), shall be the action of the board.

(II) If it is found that the charges are unproven, the hearings panel, or an administrative law judge sitting in lieu of the hearings panel pursuant to subsection (1) of this section, shall enter an order dismissing the complaint.

(III) If the hearings panel finds the charges proven and orders that discipline be imposed, it shall also determine the extent of such discipline, which may be in the form of a letter of admonition regarding a license or suspension for a definite or indefinite period, revocation, or nonrenewal of a license to practice. In addition to any other discipline that may be imposed pursuant to this section, the hearings panel may impose a fine of no less than two hundred fifty dollars but no more than one thousand dollars per violation on any nurse who violates this article or any rule adopted pursuant to this article. The board shall adopt rules establishing a fine structure and the circumstances under which fines may be imposed. All fines collected pursuant to this subparagraph (III) shall be transmitted to the state treasurer who shall credit the same to the general fund. In determining appropriate disciplinary action, the hearings panel shall first consider sanctions that are necessary to protect the public. Only after the panel has considered such sanctions shall it consider and order requirements designed to rehabilitate the nurse. If discipline other than revocation of a license to practice is imposed, the hearings panel may also order that the nurse be granted probation and allowed to continue to practice during the period of such probation. The hearings panel may also include in any disciplinary order that allows the nurse to continue to practice such conditions as the panel may deem appropriate to assure that the nurse is physically, mentally, and otherwise qualified to practice nursing in accordance with generally accepted standards of practice, including any of the following:

(A) Submission by the respondent to such examinations as the hearings panel may order to determine the respondent's physical or mental condition or the respondent's professional qualifications;

(B) The taking by the respondent of such therapy or courses of training or education as may be needed to correct deficiencies found either in the hearing or by such examinations;

(C) The review or supervision of the respondent's practice of nursing as may be necessary to determine the quality of the respondent's practice of nursing and to correct deficiencies therein; or

(D) The imposition of restrictions upon the nature of the respondent's practice to assure that the respondent does not practice beyond the limits of the respondent's capabilities.

(IV) Upon the failure of the respondent to comply with any conditions imposed by the hearings panel pursuant to subparagraph (III) of this paragraph (c), the hearings panel may order revocation or suspension of the respondent's license to practice in this state until such time as the respondent complies with such conditions.

(V) In making any of the orders provided in subparagraphs (III) and (IV) of this paragraph (c), the hearings panel may take into consideration the respondent's prior disciplinary record. If the hearings panel does take into consideration any prior discipline of the respondent, its findings and recommendations shall so indicate.

(VI) In all cases of revocation, suspension, probation, or nonrenewal, the board shall enter in its records the facts of such revocation, suspension, probation, or nonrenewal and of any subsequent action of the board with respect thereto.

(d) The attorney general shall prosecute those charges that have been referred to the office of the attorney general by the inquiry panel pursuant to subparagraph (V) of paragraph (c) of subsection (3) of this section. The board may direct the attorney general to perfect an appeal.

(e) Any person whose license to practice nursing is revoked or who surrenders his or her license to avoid discipline shall not be eligible to apply for any license for two years after the date the license is revoked or surrendered. The two-year waiting period applies to any person whose license to practice nursing or any other health care occupation is revoked by any other legally qualified board.

(5) A majority of the members of the board, three members of the inquiry panel, or three members of the hearings panel shall constitute a quorum. The action of a majority of those present comprising such quorum shall be the action of the board, the inquiry panel, or the hearings panel.

(6) Upon the expiration of any term of suspension, the license shall be reinstated by the board if the board is furnished with evidence that the nurse has complied with all terms of the suspension. If such evidence shows the nurse has not complied with all terms of the suspension, the board may revoke or continue the suspension of the license at a hearing, notice of which and the procedure at which shall be as provided in this section.

(7) In case any nurse is determined to be mentally incompetent or insane by a court of competent jurisdiction and a court enters, pursuant to part 3 or part 4 of article 14 of title 15 or section 27-65-109 (4) or 27-65-127, C.R.S., an order specifically finding that the mental incompetency or insanity is of such a degree that the nurse is incapable of continuing the practice of nursing, the nurse's license shall automatically be suspended by the board, and, notwithstanding any provision of this article to the contrary, such suspension shall continue until the nurse is found by such court to be competent to continue the practice of nursing.

(8) (a) If the board has reasonable cause to believe that a nurse is unable to practice nursing with reasonable skill and safety to patients because of a condition described in section 12-38-117 (1) (i) or (1) (j) or section 12-42-113 (1) (i) or (1) (j), it may require such nurse to submit to mental or physical examinations by a physician or other licensed health care professional designated by the board. If a nurse fails to submit to such mental or physical examinations, the board may suspend the nurse's license until the required examinations are conducted.

(b) Every nurse shall be deemed, by so practicing or by applying for renewal registration of such nurse's license, to have consented to submit to mental or physical examinations when directed in writing by the board. Further, such nurse shall be deemed to have waived all objections to the admissibility of the examining physician's or other licensed health care professional's testimony or examination reports on the ground of privileged communication. Subject to applicable federal law, such nurse shall be deemed to have waived all objections to the production of medical records to the board from health care providers that may be necessary for the evaluations described in paragraph (a) of this subsection (8). Nothing in this section shall prevent the nurse from submitting to the board testimony or examination reports of a physician or other licensed health care professional designated by the nurse to a condition described in paragraph (a) of this subsection (8) that may be considered by the board in conjunction with, but not in lieu of, testimony and examination reports of the physician or licensed health care professional designated by the board.

(c) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than before the board and shall not be deemed a public record nor made available to the public.

(d) The board may require that a nurse submit medical records for review in conjunction with an investigation made pursuant to paragraph (a) of this subsection (8); except that such records shall remain confidential and shall be reviewed by the board only to the extent necessary to conduct an investigation.

(9) (a) Investigations, examinations, hearings, meetings, or any other proceedings of the board conducted pursuant to the provisions of this section shall be exempt from the open meetings provisions of the "Colorado Sunshine Act of 1972" contained in part 4 of article 6 of title 24, C.R.S., requiring that proceedings of the board be conducted publicly, and the open records provisions of article 72 of title 24, C.R.S., requiring that the minutes or records of the board with respect to action of the board taken pursuant to the provisions of this section be open to public inspection.

(b) Notwithstanding the exemptions in paragraph (a) of this subsection (9), records of disciplinary action taken by the board pursuant to this section shall be open to public inspection pursuant to the open records provisions of article 72 of title 24, C.R.S.

(10) A physician or other licensed health care professional who, at the request of the board, examines a nurse shall be immune from suit for damages by the nurse examined if the examining physician or examining licensed health care professional conducted the examination and made findings or a diagnosis in good faith.

(11) All investigations completed or in progress pursuant to section 12-38-117 or 12-42-113, as said sections existed on June 30, 1999, including those cases that have been

referred to hearing, are before an administrative law judge, or are awaiting final disposition by the board, shall be referred to a panel of the board by the director of the division of professions and occupations for final adjudication. All actions taken and decisions rendered by the board prior to July 1, 1999, are hereby ratified.

(12) Final board action may be judicially reviewed in the court of appeals, and judicial proceedings for the enforcement of a board order may be instituted in accordance with section 24-4-106, C.R.S.

(13) (a) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board including, but not limited to, hospital and physician records. Upon certification of the custodian that the copies are true and complete except for the patient's name, the copies shall be deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. No privilege of confidentiality shall exist with respect to such copies, and no liability shall lie against the board or the custodian or the custodian's authorized employee for furnishing or using such copies in accordance with this subsection (13).

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(14) Any member of the board or the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any liability, civil or criminal, that otherwise might result by reason of such participation.

(15) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee or registrant is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required license or registration, the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (15), the respondent may request a hearing on the question of whether acts or practices in violation of this part 1 have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(16) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 1, then, in addition to any specific powers granted pursuant to this part 1, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed or unregistered practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (16) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (16) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (16). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (16) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (16) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or registration, or has or is about to engage in acts or practices constituting violations of this part 1, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or unlicensed or unregistered practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (16), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom such order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(17) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed or unregistered act or practice, any act or practice constituting a violation of this part 1, any rule promulgated pursuant to this part 1, any order issued pursuant to this part 1, or any act or practice constituting grounds for administrative sanction pursuant to this part 1, the board may enter into a stipulation with such person.

(18) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(19) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in subsection (12) of this section.

Source: L. 99: Entire section added, p. 236, § 6, effective July 1. L. 2004: (3)(c)(IV), (3)(c)(V), (13), and (14) amended, p. 1833, § 77, effective August 4. L. 2006: (15) to (19) added, p. 800, § 31, effective July 1. L. 2009: IP(4)(c)(III) and (9) amended and (4)(e) added, (SB 09-239), ch. 401, pp. 2167, 2172, 2171, §§ 5, 15, 11, effective July 1; (9) amended, (SB 09-138), ch. 400, p. 2161, § 9, effective July 1. L. 2010: (7) amended, (SB 10-175), ch. 188, p. 778, § 10, effective April 29.

Cross references: For the legislative declaration contained in the 1999 act enacting this section, see section 1 of chapter 84, Session Laws of Colorado 1999.

ANNOTATION

Law reviews. For article, “Administrative Subpoenas Under CRS Title 12: Defending Potential Abuse”, see 22 Colo. Law. 723 (1993).

Annotator’s note. Since § 12-38-116.5 is similar to repealed CSA, C. 114, § 6, a relevant case construing that provision has been included in the annotations to this section.

Procedural due process requires that nurse who signed a stipulation agreeing to six-month licensure suspension be provided with notice that the stipulation had been accepted and an order of suspension entered prior to being charged with violating the provisions of the stipulation agreement. Colo. State Bd. of Nursing v. Lang, 842 P.2d 1383 (Colo. App. 1992).

If due process is to obtain, as it should in these hearings, then obviously it is violated if members of a board are permitted to vote in a revocation matter when they have not attended the hearing, and the respondent thus is denied the right of a full and fair hearing on the charges presented. Colo. State Bd. of Nurse Exam’rs v. Hohu, 129 Colo. 195, 268 P.2d 401 (1954).

Such hearings, involving a valued right of a respondent, cannot be conducted on a correspondence school pattern. Colo. State Bd. of Nurse Exam’rs v. Hohu, 129 Colo. 195, 268 P.2d 401 (1954).

The board has the power to determine what constitutes gross incompetency, dishonesty, intemperance, immorality, unprofessional conduct, or any habit rendering a nurse

unfit as defined by the statute. Colo. State Bd. of Nurse Exam’rs v. Hohu, 129 Colo. 195, 268 P.2d 401 (1954).

If such board abuses that power the court, on certiorari, will reverse its judgment and it is proper for the court to determine whether the evidence shows if respondent is guilty of any of the statutory grounds for revocation. Colo. State Bd. of Nurse Exam’rs v. Hohu, 129 Colo. 195, 268 P.2d 401 (1954).

Under the strict rule concerning certiorari, the supreme court is permitted to determine whether or not the board abused its discretion. Colo. State Bd. of Nurse Exam’rs v. Hohu, 129 Colo. 195, 268 P.2d 401 (1954).

Such determination cannot be made without considering the testimony and the facts before the board, together with the charges made. Colo. State Bd. of Nurse Exam’rs v. Hohu, 129 Colo. 195, 268 P.2d 401 (1954).

Certiorari does not mean that the courts, after reviewing the entire record, must permit boards to deprive people of valuable rights arbitrarily and without due process of law. Colo. State Bd. of Nurse Exam’rs v. Hohu, 129 Colo. 195, 268 P.2d 401 (1954).

This section does not authorize the nursing board to subpoena records of medical and psychiatric treatment received by a licensee, it only authorizes the subpoena of records which pertain to the professional conduct of such licensee. Colo. Bd. of Nursing v. Bethesda Hosp., 809 P.2d 1051 (Colo. App. 1990).

12-38-117. Grounds for discipline. (1) “Grounds for discipline”, as used in this article, means any action by any person who:

(a) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(b) (I) Has been convicted of a felony or any crime that would constitute a violation of this article.

(II) (A) For purposes of this paragraph (b), “conviction” includes the entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence.

(B) A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be prima facie evidence of such conviction.

(III) Repealed.

(c) Has willfully or negligently acted in a manner inconsistent with the health or safety of persons under his care;

(d) Has had a license to practice nursing or any other health care occupation suspended or revoked in any jurisdiction. A certified copy of the order of suspension or revocation shall be prima facie evidence of such suspension or revocation.

(e) Has violated any provision of this article or has aided or knowingly permitted any person to violate any provision of this article;

(f) Has negligently or willfully practiced nursing in a manner which fails to meet generally accepted standards for such nursing practice;

(g) Has negligently or willfully violated any order, rule, or regulation of the board pertaining to nursing practice or licensure;

(h) Has falsified or in a negligent manner made incorrect entries or failed to make essential entries on patient records;

(i) Excessively uses or abuses alcohol, habit-forming drugs, controlled substances, as defined in section 18-18-102 (5), C.R.S., or other drugs having similar effects, or is diverting controlled substances, as defined in section 18-18-102 (5), C.R.S., or other drugs having similar effects from the licensee's place of employment; except that the board has the discretion not to discipline the licensee if such licensee is participating in good faith in a program approved by the board designed to end such excessive use or abuse;

(j) Has a physical or mental disability which renders him unable to practice nursing with reasonable skill and safety to the patients and which may endanger the health or safety of persons under his care;

(k) Has violated the confidentiality of information or knowledge as prescribed by law concerning any patient;

(l) Has engaged in any conduct which would constitute a crime as defined in title 18, C.R.S., and which conduct relates to such person's employment as a practical or professional nurse. In conjunction with any disciplinary proceeding pertaining to this paragraph (l), the board shall be governed by the provisions of section 24-5-101, C.R.S.

(m) (I) Has violated abuse of health insurance pursuant to section 18-13-119, C.R.S.; or

(II) Has advertised through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the licensee will perform any act prohibited by section 18-13-119 (3), C.R.S.;

(n) Has engaged in any of the following activities and practices: Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies; the administration, without clinical justification, of treatment which is demonstrably unnecessary; the failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care for the profession; or ordering or performing, without clinical justification, any service, X ray, or treatment which is contrary to recognized standards of the practice of nursing as interpreted by the board;

(o) Has committed a fraudulent insurance act, as defined in section 10-1-128, C.R.S.;

(p) Has prescribed, distributed, or given to himself or herself or a family member any controlled substance as defined in part 2 of article 18 of title 18, C.R.S., or as contained in schedule II of 21 U.S.C. sec. 812;

(q) Has dispensed, injected, or prescribed an anabolic steroid, as defined in section 18-18-102 (3), C.R.S., for the purpose of hormonal manipulation that is intended to increase muscle mass, strength, or weight without a medical necessity to do so or for the intended purpose of improving performance in any form of exercise, sport, or game;

(r) Has dispensed or injected an anabolic steroid, as defined in section 18-18-102 (3), C.R.S., unless such anabolic steroid is dispensed from a pharmacy pursuant to a written prescription or is dispensed by any person licensed to practice medicine in the course of such person's professional practice;

(s) Has administered, dispensed, or prescribed any habit-forming drug or any controlled substance as defined in section 18-18-102 (5), C.R.S., other than in the course of legitimate professional practice;

(t) Has been disciplined by another state, territory, or country based upon an act or omission that is defined substantially the same as a ground for discipline pursuant to this subsection (1);

(u) Willfully fails to respond in a materially factual and timely manner to a complaint issued pursuant to section 12-38-116.5 (3);

(v) Has failed to accurately complete and submit to the board the designated questionnaire upon renewal of a license pursuant to section 12-38-111 (3), 12-38-112 (3), or 12-38-112.5 (8);

(w) (I) Represents himself or herself to an individual or to the general public by use of any word or abbreviation to indicate or induce others to believe that he or she is a licensed practical or professional nurse unless the person is actually licensed as a practical nurse or professional nurse, respectively; or

(II) Uses the title "nurse", "registered nurse", "R.N.", "practical nurse", "trained practical nurse", "licensed vocational nurse", "licensed practical nurse", or "L.P.N." unless the person is licensed by the board;

(x) Practices as a practical or professional nurse during a period when the person's license has been suspended, revoked, or placed on inactive status pursuant to section 12-38-118.5;

(y) Sells or fraudulently obtains or furnishes a license to practice as a nurse or aids or abets therein;

(z) Has failed to report to the board, within forty-five days after a final conviction, that the person has been convicted of a crime, as defined in title 18, C.R.S.; or

(aa) Fails to maintain professional liability insurance in accordance with section 12-38-111.8.

(2) to (5) Repealed.

Source: **L. 80:** Entire article R&RE, p. 488, § 1, effective July 1. **L. 82:** (1)(i) amended, p. 253, § 7, effective May 3. **L. 85:** (1)(b) amended and (1)(m) added, pp. 526, 682, §§ 2, 8, effective July 1. **L. 89:** (1)(n) and (1)(o) added, p. 673, § 15, effective July 1. **L. 95:** IP(1), (1)(b), and (1)(i) amended and (1)(p) to (1)(t) added, p. 1079, § 6, effective July 1. **L. 99:** IP(1) amended, (1)(b)(III) and (2) to (5) repealed, and (1)(u) added, p. 243, §§ 7, 8, effective July 1. **L. 2003:** (1)(o) amended, p. 621, § 32, effective July 1; (1)(v) added, p. 1688, § 4, effective August 6. **L. 2004:** (1)(s) amended, p. 1194, § 37, effective August 4. **L. 2006:** (1)(w) to (1)(y) added with relocated provisions, p. 88, § 29, effective August 7. **L. 2008:** (1)(x) amended, p. 1760, § 2, effective August 5. **L. 2009:** (1)(i) and (1)(v) amended and (1)(z) and (1)(aa) added, (SB 09-239), ch. 401, pp. 2168, 2186, §§ 8, 32, effective July 1. **L. 2012:** (1)(i), (1)(q), (1)(r), and (1)(s) amended, (HB 12-1311), ch. 281, p. 1612, § 19, effective July 1.

Editor's note: (1) This section is similar to former §§ 12-38-119 and 12-38-217 as they existed prior to 1980.

(2) Subsections (1)(w)(I), (1)(w)(II), (1)(x), and (1)(y) are similar to former § 12-38-123 (1)(b)(I), (1)(b)(II), (1)(c), and (1)(d) as they existed prior to 2006.

Cross references: (1) For an alternative disciplinary action for persons licensed pursuant to this article, see § 24-34-106.

(2) For the legislative declaration contained in the 1999 act amending the introductory portion to subsection (1), repealing subsections (1)(b)(III), (2), (3), (4), and (5), and enacting subsection (1)(u), see section 1 of chapter 84, Session Laws of Colorado 1999.

ANNOTATION

Annotator's note. Since § 12-38-117 is similar to repealed CSA, C. 114, § 6, a relevant case construing that provision has been included in the annotations to this section.

The purpose of the general assembly in amending the statute in July 1985 was to allow discipline in cases in which a plea of guilty resulted in a conviction. *Weber v. Colo. State Bd. of Nursing*, 830 P.2d 1128 (Colo. App. 1992).

The legislative intent in amending subsection (1)(b) was to allow discipline in cases where a guilty plea results in a conviction. *Weber v. Colo. State Bd. of Nursing*, 830 P.2d 1128 (Colo. App. 1992).

But subsection (1)(b) does not allow discipline in cases where a guilty plea results in the successful completion of a deferred judgment. Thus, where a nurse's guilty pleas resulted in a deferred judgment and had been dismissed by the time the Board brought charges, the nurse did not have a conviction of guilty and had not violated subsection (1)(b).

Weber v. Colo. State Bd. of Nursing, 830 P.2d 1128 (Colo. App. 1992).

A licensing board is, however, entitled to consider the conduct giving rise to criminal charges in the context of other disciplinary rules. *Weber v. Colo. State Bd. of Nursing*, 830 P.2d 1128 (Colo. App. 1992).

This section defines the grounds for revocation of a license. *Colo. State Bd. of Nurse Exam'rs v. Hohu*, 129 Colo. 195, 268 P.2d 401 (1954).

This section provides adequate notice of the proscribed conduct to those persons licensed to practice nursing in this state. *Kibler v. State*, 718 P.2d 531 (Colo. 1986); *Weber v. Colo. State Bd. of Nursing*, 830 P.2d 1128 (Colo. App. 1992).

Licenses once issued are not to be revoked for simply violating rules of the board, or what the board may determine to be professional ethics; it must be for a breach of the statute, and that is a matter for the courts to determine. *Colo. State Bd. of Nurse Exam'rs v. Hohu*, 129 Colo. 195, 268 P.2d 401 (1954).

Petitioner violated subsection (1)(a) where she failed to disclose on her application that she had plead guilty to check fraud and that such pleas had not been withdrawn at the time she filed her application. Petitioner knew of such guilty pleas and had a duty to disclose them on her application. *Weber v. Colo. State Bd. of Nursing*, 830 P.2d 1128 (Colo. App. 1992).

Subsection (1)(i) requires that an addiction or dependency must be proven to exist at the time of the hearing in order to be the source of a disciplinary action and, in the present case, the state board of nursing erred in imposing discipline where the evidence did not support the conclusion that on the date of the hearing the claimant had an alcohol addiction or dependency. *State Bd. of Nursing v. Crickenberger*, 757 P.2d 1167 (Colo. App. 1988).

If it was held to be the rule that profanity is a ground for revoking a license, then there could be a serious depletion in the ranks of all professions. *Colo. State Bd. of Nurse Exam'rs v. Hohn*, 129 Colo. 195, 268 P.2d 401 (1954).

Statute violated where licensee failed to disclose on nursing license application guilty pleas for writing insufficient funds checks when the pleas had not been withdrawn. *Weber v. Colo. State Bd. of Nursing*, 830 P.2d 1128 (Colo. App. 1992).

Nurse did not violate statute when, at the time the nursing board brought disciplinary action against her, she did not have an existing conviction for a felony, nor did her pleas of guilty legally exist since they had been dismissed with prejudice. *Weber v. Colo. State Bd. of Nursing*, 830 P.2d 1128 (Colo. App. 1992).

Following a successful completion of a deferred judgment, there no longer exists a plea of guilty to a felony and no judgment of conviction ever existed. Therefore, a professional licensing board may not discipline a licensee under the statute. *Weber v. Colo. State Bd. of Nursing*, 830 P.2d 1128 (Colo. App. 1992).

12-38-118. Withholding or denial of license - hearing. (1) (a) The board is empowered to determine summarily whether an applicant for a license or a temporary license to practice as a nurse possesses the qualifications required by this article, whether there is probable cause to believe that an applicant has done any of the acts set forth in section 12-38-117 as grounds for discipline, or whether the applicant has had a license to practice nursing or any other health care occupation revoked by any legally authorized board.

(b) As used in this section:

(I) "Applicant" includes a nurse seeking reinstatement or reactivation of a license pursuant to section 12-38-118.5, but does not include a renewal applicant.

(II) "Legally authorized board" means a board created pursuant to the laws of this state or of another state for the purpose of licensing or otherwise authorizing a person to engage in a health care occupation. The term includes any governmental entity charged with licensing or other oversight of persons engaged in a health care occupation.

(2) (a) (I) If the board determines that an applicant does not possess the qualifications required by this article, that probable cause exists to believe that an applicant has done any of the acts set forth in section 12-38-117, or that the applicant has had a nursing or other health care occupation license revoked by another legally authorized board, the board may withhold or deny the applicant a license.

(II) The board may refuse to issue a license or temporary license to practice as a nurse to any applicant during the time the applicant's license is under suspension in another state.

(III) The board may refuse to issue a license or may grant a license subject to terms of probation if the board determines that an applicant for a license has not actively practiced practical or professional nursing, or has not otherwise maintained continued competency, as determined by the board, during the two years immediately preceding the application for licensure under this article.

(b) If the board refuses to issue a license to an applicant pursuant to paragraph (a) of this subsection (2), the provisions of section 24-4-104 (9), C.R.S., shall apply. Upon such refusal, the board shall provide the applicant with a statement in writing setting forth the following:

(I) The basis of the board's determination that the applicant:

(A) Does not possess the qualifications required by this article;

(B) Has had a nursing or other health care occupation license revoked or suspended by another legally authorized board; or

(C) Has not actively practiced practical or professional nursing, or has not maintained continued competency, during the previous two years; or

(II) The factual basis for probable cause that the applicant has done any of the acts set forth in section 12-38-117.

(c) If the board refuses to issue a license to an applicant on the grounds that the applicant's nursing or other health care occupation license was revoked by another legally authorized board, the board may require the applicant to pass a written examination as provided in section 12-38-110, as a prerequisite to licensure. The applicant shall not be allowed to take the written examination until at least two years after the revocation of the nursing or other health care occupation license.

(3) If the applicant requests a hearing pursuant to the provisions of section 24-4-104 (9), C.R.S., and fails to appear without good cause at such hearing, the board may affirm its prior action of withholding or denial without conducting a hearing.

(4) Following a hearing, the board shall affirm, modify, or reverse its prior action in accordance with its findings at such hearing.

(5) No action shall lie against the board for the withholding or denial of a license or temporary license without a hearing in accordance with the provisions of this section if the board acted reasonably and in good faith.

(6) (a) At the hearing, the applicant shall have the burden of proof to show that:

(I) The applicant possesses the qualifications required for licensure under this article;

(II) The applicant's nursing or other health care occupation license was not revoked by another legally authorized board; or

(III) The applicant has actively practiced practical or professional nursing, or has maintained continued competency, during the two years prior to application for a license under this article.

(b) The board shall have the burden of proof to show commission of acts set forth in section 12-38-117.

Source: L. 80: Entire article R&RE, p. 489, § 1, effective July 1. L. 2008: (1) amended, p. 1760, § 3, effective August 5. L. 2009: (1), (2), and (6) amended, (SB 09-239), ch. 401, p. 2169, § 10, effective July 1.

Editor's note: This section is similar to former §§ 12-38-119.5 and 12-38-217.5 as they existed prior to 1980.

12-38-118.5. Inactive license status - reactivation. (1) A nurse licensed pursuant to section 12-38-111 or 12-38-112 may request that the board place his or her license on inactive status. Such request shall be made in the form and manner designated by the board.

(2) A nurse requesting inactive license status shall provide an affidavit or other document required by the board certifying that, immediately upon the conferral of inactive status, the nurse shall not practice nursing in the state unless and until the nurse's license is reactivated pursuant to subsection (6) of this section.

(3) Upon receiving the documentation pursuant to subsection (2) of this section, the board shall approve a request for inactive license status. However, the board may deny such a request if the board has probable cause to believe that the requesting nurse has committed any of the acts set forth in section 12-38-117.

(4) A license on inactive status shall constitute a single state license issued by Colorado and without multistate licensure privilege pursuant to part 32 of article 60 of title 24, C.R.S.

(5) A nurse with a license on inactive status is not authorized to practice nursing in Colorado. Any nurse practicing nursing while his or her license is inactive shall be subject to disciplinary action pursuant to section 12-38-116.5 and criminal penalties pursuant to section 12-38-123.

(6) (a) A nurse with a license on inactive status who wishes to resume the practice of nursing shall file an application in the form and manner designated by the board and pay the license reactivation fees established pursuant to section 12-38-108. The board shall reactivate such license unless paragraph (b) of this subsection (6) applies.

(b) The board shall deny an application for reactivation of an inactive license:

(I) Pursuant to section 12-38-118; or

(II) If the board determines that the nurse requesting reactivation has not actively practiced nursing in another state for the two-year period immediately preceding the filing of the request for reactivation or has not otherwise demonstrated continued competency to return to the active practice of nursing in a manner approved by the board.

Source: L. 2008: Entire section added, p. 1759, § 1, effective August 5.

12-38-119. Mental and physical examination of licensees. (Repealed)

Source: L. 80: Entire article R&RE, p. 490, § 1, effective July 1. L. 99: Entire section repealed, p. 244, § 10, effective July 1.

Editor's note: This section was similar to former §§ 12-38-123 and 12-38-225 as they existed prior to 1980.

Cross references: For the legislative declaration contained in the 1999 act repealing this section, see section 1 of chapter 84, Session Laws of Colorado 1999.

12-38-120. Disciplinary proceedings - administrative law judges - judicial review. (Repealed)

Source: L. 80: Entire article R&RE, p. 491, § 1, effective July 1. L. 85: (6) amended, p. 526, § 3, effective July 1. L. 87: (1) and (4) amended, p. 948, § 39, effective July 1. L. 95: (4) and (7) amended, p. 1081, § 8, effective July 1. L. 99: Entire section repealed, p. 245, § 11, effective July 1.

Editor's note: This section was similar to former §§ 12-38-119.7 and 12-38-218 as they existed prior to 1980.

Cross references: For the legislative declaration contained in the 1999 act repealing this section, see section 1 of chapter 84, Session Laws of Colorado 1999.

12-38-121. Immunity in professional review. (1) If a professional review committee is established pursuant to section 12-38-109 to investigate the quality of care being given by a person licensed pursuant to this article, it shall include in its membership at least three persons licensed in the same category as the licensee under review, but such committee may be authorized to act only by the board.

(2) Any member of the board or of a professional review committee authorized by the board, any member of the board's or committee's staff, any person acting as a witness or consultant to the board or committee, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board or committee member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 80: Entire article R&RE, p. 492, § 1, effective July 1. L. 2004: (2) amended, p. 1835, § 78, effective August 4.

Editor's note: This section is similar to former §§ 12-38-119.1 and 12-38-218.1 as they existed prior to 1980.

12-38-122. Surrender of license. (1) Prior to the initiation of an investigation or hearing, any licensee or temporary license holder may surrender his license to practice nursing.

(2) Following the initiation of an investigation or hearing and upon a finding that to do so would be in the public interest, the board may allow a licensee or temporary license holder to surrender his license to practice.

(3) The board shall not issue a license or temporary license or permit to a former licensee or temporary license or permit holder whose license has been surrendered unless the licensee meets all of the requirements of this article for a new applicant, including the passing of an examination.

(4) The surrender of a license in accordance with this section removes all rights and privileges to practice nursing, including renewal of a license.

Source: L. 80: Entire article R&RE, p. 492, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-38-119.6 and 12-38-218.5 as they existed prior to 1980.

12-38-123. Unauthorized practice - penalties. (1) It is unlawful for any person:

(a) To practice as a practical or professional nurse unless licensed therefor.

(b) to (d) Repealed.

(2) Any person who practices or offers or attempts to practice practical or professional nursing without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 80: Entire article R&RE, p. 493, § 1, effective July 1. L. 85: (2) amended, p. 408, § 13, effective July 1. L. 89: (2) amended, p. 826, § 25, effective July 1. L. 2002: (2) amended, p. 1480, § 80, effective October 1. L. 2004: (1)(b) amended, p. 735, § 1, effective May 12. L. 2006: (1)(b) to (1)(d) repealed and (2) amended, pp. 89, 88, §§ 32, 30, effective August 7.

Editor's note: (1) This section is similar to former §§ 12-38-120 and 12-38-219 as they existed prior to 1980.

(2) Subsections (1)(b)(I), (1)(b)(II), (1)(c), and (1)(d) were relocated to § 12-38-117 (1)(w)(I), (1)(w)(II), (1)(x), and (1)(y), and subsection (1)(b)(III) was relocated to § 12-38-125 (1)(m), in 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Law reviews. For note, "Acts of Diagnosis by Nurses and the Colorado Professional Nursing Practice Act", see 45 Den. L.J. 467 (1968).

Nurse who signed stipulation agreeing to a six-month licensure suspension held not to be

in violation of subsection (1)(c) where nurse received no notice that the board had accepted the stipulation and entered an order of suspension. *Colo. State Bd. of Nursing v. Lang*, 842 P.2d 1383 (Colo. App. 1992).

12-38-124. Injunctive proceedings. The board, in the name of the people of the state of Colorado, may apply for injunctive relief through the attorney general in any court of competent jurisdiction to enjoin any person who does not possess a currently valid or active practical or professional nurse license from committing any act declared to be unlawful or prohibited by this article. If it is established that the defendant has been or is committing an act declared to be unlawful or prohibited by this article, the court or any judge thereof shall enter a decree perpetually enjoining said defendant from further committing such act. In the case of a violation of any injunction issued under the provisions of this section, the court or any judge thereof may summarily try and punish the offender for contempt of court. Such injunctive proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided for in this article.

Source: L. 80: Entire article R&RE, p. 493, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-38-119.8 and 12-38-224 as they existed prior to 1980.

- 12-38-125. Exclusions.** (1) No provision of this article shall be construed to prohibit:
- (a) Gratuitous care of friends or members of the family;
 - (b) Domestic administration of family remedies or care of the sick by domestic servants, housekeepers, companions, or household aides of any type, whether employed regularly or because of an emergency of illness, but who shall not in any way assume to practice practical or professional nursing;
 - (c) Nursing assistance in the case of an emergency;
 - (d) The practice of nursing in this state by any legally qualified nurse of another state whose engagement requires him to accompany and care for a patient temporarily residing in this state, during the period of one such engagement, not to exceed six months in length, if such person does not represent or hold himself out as a practical or professional nurse licensed to practice in this state;
 - (e) The practice of any nurse licensed in this state or another state or a territory of the United States who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of his official duties;
 - (f) The practice of nursing by students enrolled in an educational program approved by the board when such practice is performed as part of an educational program prior to the graduation of such student;
 - (g) The practice of nursing by any nurse licensed in any other state or any territory of the United States or any other country enrolled in a baccalaureate or graduate program when such practice is performed as a part of such program;
 - (h) (I) The administration and monitoring of medications in facilities pursuant to part 3 of article 1.5 of title 25, C.R.S.
 - (II) Repealed.
 - (i) (I) The administration of nutrition or fluids through gastrostomy tubes as provided in section 27-10.5-103 (2) (k), C.R.S., as a part of residential or day program services provided through service agencies approved by the department of human services pursuant to section 27-10.5-104, C.R.S.
 - (II) Repealed.
 - (j) The administration of topical and aerosol medications within the scope of physical therapy practice as provided in section 12-41-113 (2);
 - (k) The practice of administration and monitoring as defined in section 25-1.5-301 (1) and (3), C.R.S.;
 - (l) The administration of medications by child care providers to children cared for in family child care homes pursuant to section 26-6-119, C.R.S.;
 - (m) A person who provides nonmedical support services from using the title "Christian Science nurse" when offering or providing services to a member of his or her own religious organization.

Source: L. 80: Entire article R&RE, p. 493, § 1, effective July 1. L. 88: (1)(h) added, p. 1001, § 5, effective July 1. L. 91: (1)(i) added, p. 1163, § 3, effective March 29; (1)(h)(II) amended, p. 930, § 4, effective April 1; (1)(j) added, p. 1667, § 4, effective July 1. L. 92: (1)(i)(II) repealed, p. 2010, § 4, effective June 2; (1)(h) amended and (1)(k) added, p. 1149, § 3, effective July 1. L. 94: (1)(i)(I) amended, p. 2638, § 79, effective July 1. L. 96: (1)(h)(II) amended, p. 797, § 9, effective May 23. L. 98: (1)(h) amended, p. 542, § 3, effective July 1. L. 2002: (1)(l) added, p. 128, § 3, effective March 26. L. 2003: (1)(h)(I) and (1)(k) amended, p. 702, § 14, effective July 1. L. 2006: (1)(m) added with relocated provisions, p. 88, § 31, effective August 7. L. 2009: (1)(i)(I) amended, (SB 09-044), ch. 57, p. 210, § 17, effective March 25; (1)(h)(II) repealed, (SB 09-128), ch. 365, p. 1914, § 3, effective July 1.

Editor's note: (1) This section is similar to former §§ 12-38-121 and 12-38-221 as they existed prior to 1980.

(2) Subsection (1)(m) is similar to former § 12-38-123 (1)(b)(III) as it existed prior to 2006.

12-38-126. Religious exclusions. No provision in this article shall be construed as applying to a person who nurses or cares for the sick in accordance with the practice or tenets of any church or religious denomination which teaches reliance upon spiritual means through prayer for healing, and who does not hold himself out to the public to be a licensed practical or professional nurse.

Source: L. 80: Entire article R&RE, p. 494, § 1, effective July 1.

Editor's note: This section is similar to former § 12-38-222 as it existed prior to 1980.

12-38-127. Continuing education. In addition to any other authority conferred upon the board by this article, the board is authorized to require no more than twenty hours of continuing education every two years as a condition of renewal of licenses and to establish procedures and standards for such educational requirements. The board shall, to assure that the continuing education requirements imposed do not have the effect of restraining competition among providers of such education, recognize a variety of alternative means of compliance with such requirements. The board shall adopt rules and regulations that are necessary to carry out the provisions of this section, such rules and regulations to be promulgated in accordance with the provisions of article 4 of title 24, C.R.S.

Source: L. 80: Entire article R&RE, p. 494, § 1, effective July 1.

Editor's note: This section is similar to former § 12-38-223 as it existed prior to 1980.

12-38-128. Independent practice - direct reimbursement. Nothing in this article shall be deemed to prohibit any licensee from practicing practical or professional nursing independently for compensation upon a fee for services basis. Nothing in this article shall be deemed to prohibit or require the direct reimbursement for nursing services and care through qualified governmental and insurance programs to persons duly licensed in accordance with this article.

Source: L. 80: Entire article R&RE, p. 494, § 1, effective July 1.

ANNOTATION

Applied in *Prof'l Health Care, Inc. v. Bigsby*,
709 P.2d 86 (Colo. App. 1985).

12-38-129. Disposition of fees - appropriation. All fees collected pursuant to the authority of the state board of nursing shall be transmitted to the state treasurer who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for the expenditures of the board incurred in the performance of its duties.

Source: L. 80: Entire article R&RE, p. 494, § 1, effective July 1. L. 95: Entire section amended, p. 1027, § 2, effective October 1. L. 2009: Entire section amended, (SB 09-239), ch. 401, p. 2172, § 14, effective July 1.

Editor's note: This section is similar to former §§ 12-38-118 and 12-38-215 as they existed prior to 1980.

12-38-130. Limitation of article. Nothing in this article shall be interpreted as conveying to the practice of nursing the performance of medical practice as regulated by article 36 of this title.

Source: L. 80: Entire article R&RE, p. 494, § 1, effective July 1.

12-38-131. Nursing peer health assistance or nurse alternative to discipline program - fund - rules. (1) As a condition of licensure and for the purpose of supporting a nursing peer health assistance program or a nurse alternative to discipline program, every applicant for an initial license or to reinstate a license and any person renewing a license issued pursuant to this article shall pay to the administering entity designated pursuant to paragraph (c) of subsection (3) of this section a fee in an amount set by the board, not to exceed twenty-five dollars per year; except that the board may adjust such amount each January 1 to reflect changes in the United States department of labor's bureau of labor statistics consumer price index, or its successor index, for the Denver-Boulder consolidated metropolitan statistical area for the price of goods paid by urban consumers.

(2) (a) No later than June 30, 2008, the board shall transfer any remaining balance in the impaired professional diversion fund, as such fund existed prior to January 1, 2008, to the administering entity chosen by the board pursuant to paragraph (c) of subsection (3) of this section.

(b) Moneys in the fund shall be used to support a nursing peer health assistance program or nurse alternative to discipline program in providing assistance to licensees needing help in dealing with physical, emotional, psychiatric, psychological, drug abuse, or alcohol abuse problems that may be detrimental to their ability to practice nursing.

(3) (a) The board shall select one or more recognized peer health assistance organizations or nurse alternative to discipline programs as designated providers. For purposes of selecting designated providers, the board shall use a competitive bidding process that encourages participation from interested vendors. To be eligible for designation by the board pursuant to this section, a peer health assistance organization or nurse alternative to discipline program shall:

(I) Offer assistance and education to licensees concerning the recognition, identification, and prevention of physical, emotional, psychiatric, psychological, drug abuse, or alcohol abuse problems and provide for intervention when necessary or under circumstances that may be established in rules promulgated by the board;

(II) Evaluate the extent of physical, emotional, psychiatric, psychological, drug abuse, or alcohol abuse problems and refer the licensee for appropriate treatment;

(III) Monitor the status of a licensee who has been referred for treatment, including assessing continued public protection;

(IV) Provide counseling and support for a licensee and for the family of a licensee referred for treatment;

(V) Receive referrals from the board; and

(VI) Make services available to all licensees statewide.

(b) The board contract with the designated provider or providers selected pursuant to paragraph (a) of this subsection (3) shall include specific deliverables, performance measures, and documentation of results.

(c) The board shall designate an administering entity for a program established pursuant to this section. Such entity shall be a nonprofit private entity that is qualified under 26 U.S.C. sec. 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, and shall be dedicated to providing support for charitable, benevolent, educational, or scientific purposes that are related to nursing, nursing education, nursing research and science, and other nursing charitable purposes.

(d) The administering entity shall:

(I) Collect the required annual payments, directly or through the board;

(II) Distribute the moneys collected, less expenses, to the approved designated provider, as directed by the board;

(III) Provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(IV) Post a surety performance bond in an amount specified by the board to secure performance under this section.

(e) The administering entity may recover from the fee required by subsection (1) of this section the actual administrative costs incurred in performing its duties under this section. Such recovery shall not exceed ten percent of the total amount collected.

(f) The board, at its discretion, may collect the required annual payments payable to the administering entity for the benefit of the administering entity and shall transfer all such payments to the administering entity. All required annual payments collected or due to the board for each fiscal year shall be deemed custodial funds that are not subject to appropriation by the general assembly, and such funds shall not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

(4) Notwithstanding sections 12-38-116.5 and 24-4-104, C.R.S., the board may immediately suspend the license of any licensee who is referred to a peer health assistance program or nurse alternative to discipline program by the board and who fails to attend or to complete the program. If the licensee objects to the suspension, he or she may submit a written request to the board for a formal hearing on the suspension within ten days after receiving notice of the suspension, and the board shall grant the request. In the hearing, the licensee shall bear the burden of proving that his or her license should not be suspended.

(5) The records of a proceeding pertaining to the rehabilitation of a licensee under a program established pursuant to this section shall be confidential and shall not be subject to subpoena unless the licensee has been referred to the board for disciplinary action.

(6) Nothing in this section shall be construed to create any liability of the board, members of the board, or the state of Colorado for the actions of the board in making awards to peer health assistance organizations or nurse alternative to discipline programs or in designating licensees to participate in the programs of such organizations. No civil action may be brought or maintained against the board, its members, or the state for an injury alleged to have been the result of an act or omission of a licensee participating in or referred to a program provided by a peer health assistance organization or to a nurse alternative to discipline program. However, the state shall remain liable under the provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., if an injury alleged to have been the result of an act or omission of a licensee participating in or referred to a peer health assistance diversion program or nurse alternative to discipline program occurred while such licensee was performing duties as an employee of the state.

(7) The board is authorized to promulgate rules necessary to implement this section.

Source: **L. 89:** Entire section added, p. 691, § 1, effective July 1. **L. 91:** (4)(b) and (6)(a) amended, p. 973, § 1, effective May 6. **L. 95:** Entire section R&RE, p. 1081, § 9, effective July 1. **L. 2002:** (1)(b)(II) amended, p. 655, § 1, effective May 28. **L. 2003:** (2)(a), (2)(b), (2)(c)(I), (2)(c)(IV), and (8)(c) amended, p. 912, § 15, effective August 6. **L. 2004:** (11) amended, p. 1836, § 79, effective January 1, 2005. **L. 2007:** Entire section R&RE, p. 729, § 1, effective January 1, 2008. **L. 2009:** (1) amended, (SB 09-239), ch. 401, p. 2174, § 18, effective July 1. **L. 2010:** (3)(d)(I) amended and (3)(f) added, (HB 10-1128), ch. 172, p. 616, § 14, effective April 29.

12-38-132. Delegation of nursing tasks. (1) Any registered nurse, as defined in section 12-38-103 (11), may delegate any task included in the practice of professional nursing, as defined in section 12-38-103 (10), subject to the requirements of this section. In no event may a registered nurse delegate to another person the authority to select medications if such person is not, independent of such delegation, authorized by law to select medications.

(2) Delegated tasks shall be within the area of responsibility of the delegating nurse and shall not require any delegatee to exercise the judgment required of a nurse.

(3) No delegation shall be made without the delegating nurse making a determination that, in his or her professional judgment, the delegated task can be properly and safely performed by the delegatee and that such delegation is commensurate with the patient's safety and welfare.

(4) The delegating nurse shall be solely responsible for determining the required degree of supervision the delegatee will need, after an evaluation of the appropriate factors which shall include but not be limited to the following:

- (a) The stability of the condition of the patient;
- (b) The training and ability of the delegatee;
- (c) The nature of the nursing task being delegated; and
- (d) Whether the delegated task has a predictable outcome.

(5) An employer of a nurse may establish policies, procedures, protocols, or standards of care which limit or prohibit delegations by nurses in specified circumstances.

(6) The board may promulgate rules pursuant to this section, including but not limited to standards on the assessment of the proficiency of the delegatee to perform delegated tasks, and standards for accountability of any nurse who delegates nursing tasks. Such rules shall be consistent with the provisions of part 3 of article 1.5 of title 25 and section 27-10.5-103 (2) (k), C.R.S.

Source: L. 92: Entire section added, p. 2009, § 2, effective June 2. **L. 2003:** (6) amended, p. 702, § 15, effective July 1.

12-38-133. Repeal of article - review of functions. (1) This article is repealed, effective July 1, 2020.

(2) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the state board of nursing created by this article.

Source: L. 95: Entire section added, p. 1087, § 10, effective July 1. **L. 2007:** (1) amended, p. 382, § 2, effective August 3. **L. 2009:** (1) amended, (SB 09-239), ch. 401, p. 2165, § 1, effective July 1.

PART 2

THE NURSING SHORTAGE ALLEVIATION ACT OF 2002

12-38-201 and 12-38-202. (Repealed)

Source: L. 2009: Entire part repealed, (SB 09-239), ch. 401, p. 2185, § 30, effective July 1.

Editor's note: This part 2 was added in 2002 and was not amended prior to its repeal in 2009. For the text of this part 2 prior to 2009, consult the 2008 Colorado Revised Statutes.

PART 3

PILOT PROGRAM IMPLEMENTATION COMMITTEE

12-38-301. Pilot program implementation committee for direct-care nurse decision-making - funding - definitions - repeal. (Repealed)

Editor's note: (1) This part 3 was added in 2008 and was not amended prior to its repeal in 2011. For the text of this part 3 prior to 2011, consult the 2010 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Subsection (8) provided for the repeal of this part 3, effective July 1, 2011. (See L. 2008, p. 705.)

ARTICLE 38.1

Nurse Aides

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		12-38.1-201 to	
		12-38.1-208.	(Repealed)

PART 1

GENERAL PROVISIONS

12-38.1-101. Legislative declaration. It is declared to be the policy of the state of Colorado that, in order to safeguard life, health, property, and the public welfare of the people of the state of Colorado, and in order to protect the people of the state of Colorado against unauthorized, unqualified, and improper application of services by nurse aides in a medical facility, it is necessary that a proper regulatory authority be established. The general assembly further declares it to be the policy of this state to regulate the practice of nurse aides in medical facilities through a state agency with the power to enforce the provisions of this article. Any person who practices as a nurse aide in a medical facility without qualifying for proper certification and without submitting to the regulations provided in this article endangers the public health thereby. The general assembly hereby finds and declares that this article will meet the requirements of the federal “Omnibus Budget Reconciliation Act of 1987”.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 5, § 1, effective July 7.

Cross references: For the federal “Omnibus Budget Reconciliation Act of 1987”, see Pub.L. 100-203, 101 Stat. 1330 (1987).

- 12-38.1-102. Definitions.** As used in this article, unless the context otherwise requires:
- (1) “Approved education program” means:
 - (a) A course of training conducted by an educational or health care institution which implements the basic nurse aide curriculum prescribed and approved by the board.
 - (b) Repealed.
 - (2) “Board” means the state board of nursing in the division of professions and occupations in the department of regulatory agencies, created in section 12-38-104.

(3) "Certified nurse aide" means a person who meets the qualifications specified in this article and who is currently certified by the board. Only a person who holds a certificate to practice as a nurse aide in this state pursuant to the provisions of this article shall have the right to use the title "Certified Nurse Aide" and its abbreviation, "C.N.A."

(3.5) "Home health agency" means a provider of home health services, as defined in section 25.5-4-103 (7), C.R.S., that is certified by the department of public health and environment.

(4) "Medical facility" means a nursing facility licensed by the department of public health and environment or home health agencies certified to receive medicare or medicaid funds, pursuant to the federal "Social Security Act", as amended, distinct part nursing facilities, or home health agencies or entities engaged in nurse aide practices as such practices are defined in subsection (5) of this section. "Medical facility" does not include hospitals and other facilities licensed or certified pursuant to section 25-1.5-103 (1) (a), C.R.S.

(4.5) "Nursing facility" shall have the same meaning as set forth in section 25.5-4-103 (14), C.R.S.

(5) "Practice of a nurse aide" or "nursing aide practice" means the performance of services requiring the education, training, and skills specified in this article for certification as a nurse aide. Such services are performed under the supervision of a dentist, physician, podiatrist, professional nurse, licensed practical nurse, or other licensed or certified health care professional acting within the scope of his license or certificate.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 5. § 1, effective July 7. L. 93: (3) and (4) amended, p. 1745, § 2, effective July 1. L. 2002: (3.5) and (4.5) added, p. 1287, § 1, effective June 7; (1) amended, p. 958, § 2, effective July 1. L. 2003: (4) amended, p. 702, § 16, effective July 1. L. 2006: (3.5) and (4.5) amended, p. 2000, § 43, effective July 1.

Editor's note: Subsection (1)(b)(II) provided for the repeal of subsection (1)(b), effective July 1, 2008. (See L. 2002, p. 958.)

12-38.1-103. Certification - state board of nursing. (1) In addition to all other powers and duties conferred and imposed upon the board by law, the board shall have the authority to certify nurse aides to practice in the state of Colorado, and the board shall implement the provisions of this article.

(2) The department of public health and environment, which is otherwise responsible for the regulation of certain medical facilities, shall, as necessary, assist the board in implementing the provisions of this article.

(3) The board shall promulgate rules and regulations to carry out the purposes of this article and to ensure compliance with federal law and regulation relating to nurse aides.

(4) The board shall maintain a registry of all certified nurse aides as well as a record of all final disciplinary action taken against persons under the provisions of this article. Such registry shall conform to all requirements of federal law and regulation.

(5) (a) The board shall not issue a certificate to a former holder of a certificate whose certificate was revoked unless the applicant meets the requirements of this article, has successfully repeated an approved education program as required by the board, and has repeated and passed a competency evaluation.

(b) No nurse aide certificate holder who has had a certificate revoked may apply for recertification before a one-year waiting period after such revocation.

(6) Funding for the nurse aide certification program, as operated by the department of regulatory agencies, shall be provided by the federal medicaid and medicare programs. Medicaid funding shall be secured by the department of health care policy and financing and medicare funding shall be secured by the department of public health and environment. All such funding shall be forwarded to the department of regulatory agencies for its use in operating the nurse aide certification program. The departments of health care policy and financing and public health and environment shall take all reasonable and necessary steps to secure such funding from the federal medicaid and medicare programs.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 6, § 1, effective July 7. L. 93: (5) and (6) added, p. 1746, § 3, effective July 1. L. 94: (2) and (6) amended, pp. 2728, 2623, §§ 337, 39, effective July 1.

12-38.1-104. Application for certification - fee. (1) Every applicant for certification as a nurse aide, whether qualifying by competency evaluation or by endorsement, shall submit the application on forms provided by the board.

(2) (a) The application submitted pursuant to subsection (1) of this section shall be accompanied by an application fee established pursuant to section 24-34-105, C.R.S.

(b) The board may reduce the application fee if federal funds are available. Such fee shall not be subject to the provisions of section 24-34-104.4, C.R.S.

(3) (a) Repealed.

(b) (Deleted by amendment, L. 2003, p. 2631, § 5, effective June 5, 2003.)

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 6, § 1, effective July 7. L. 95: Entire section amended, p. 1028, § 3, effective October 1. L. 2002: (3) amended, p. 959, § 3, effective July 1. L. 2003: (3) amended, p. 2631, § 5, effective June 5. L. 2005: (3)(a) repealed, p. 1021, § 5, effective August 8.

12-38.1-105. Application for certification by competency evaluation. (1) Every applicant for certification by competency evaluation shall pay the required application fee and shall submit written evidence that said applicant:

(a) Has not committed any act or omission that would be grounds for discipline or denial of certification under this article; and

(b) Has successfully completed an approved education program.

(c) Repealed.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 6, § 1, effective July 7. L. 95: Entire section amended, p. 1028, § 4, effective October 1. L. 2002: (1)(c) amended, p. 959, § 4, effective July 1. L. 2005: (1)(c) repealed, p. 1022, § 6, effective August 8.

12-38.1-106. Application for certification by endorsement. (1) Every applicant for certification by endorsement shall pay the required application fee, shall submit the information required by the board in the manner and form specified by the board, and shall submit written evidence that said applicant:

(a) Is certified to practice as a nurse aide by another state or territory of the United States with requirements that are essentially similar to the requirements for certification set out in this article and that such certification is in good standing;

(b) Has not committed any act or omission that would be grounds for discipline or denial of certification under this article;

(c) Has successfully completed an education program approved by the board or a nurse aide training program that meets the standards for such programs specified in this article and those standards set by the board; and

(d) Has no record of abuse, negligence, or misappropriation of resident's property or any disciplinary action taken or pending in any other state or territory against such certification.

(e) Repealed.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 7, § 1, effective July 7. L. 95: (1)(e) added, p. 1028, § 5, effective October 1. L. 2002: (1)(e) amended, p. 959, § 5, effective July 1. L. 2005: (1)(e) repealed, p. 1022, § 7, effective August 8.

12-38.1-107. Certification by competency evaluation. (1) All applicants except those certified by endorsement shall be required to pass a clinical competency evaluation. Such evaluation shall be in a written or oral form and shall include the following areas:

(a) Basic nursing skills;

- (b) Personal care skills;
- (c) Recognition of mental health and social services needs;
- (d) Basic restorative services;
- (e) Resident or patient rights.

(2) Competency evaluations shall be held at such times and places as the board determines but shall be held at least four times per year.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 7, § 1, effective July 7.

12-38.1-108. Approved nurse aide training programs. (1) Except for any medical facility or program that has been explicitly disapproved by the department of public health and environment, the board may approve any nurse aide training program offered by or held in a medical facility or offered and held outside a medical facility. Such approval by the board shall be sufficient to authorize and permit the operation of such training program.

(2) The curriculum content for nurse aide training must include material which will provide a basic level of both knowledge and demonstrable skills for each individual completing the program and be presented in such a manner which will take into consideration individuals with limited literacy skills. The curriculum content must include needs of populations which may be served by an individual medical facility.

(3) The following topics shall be included in the curriculum:

- (a) Communication and interpersonal skills;
- (b) Infection control;
- (c) Safety and emergency procedures;
- (d) Promoting residents' and patients' independence;
- (e) Respecting residents' and patients' rights.

(4) The training program shall be designed to enable participants to develop and demonstrate competency in the following areas:

- (a) Basic nursing skills;
- (b) Personal care skills;
- (c) Recognition of mental health and social services needs;
- (d) Basic restorative services;
- (e) Resident or patient rights.

(5) The board or its designee shall inspect and survey each nurse aide training program it approves during the first year following such approval and every two years thereafter. Such inspection or survey may be made in conjunction with surveys of medical facilities conducted by the department of public health and environment.

(6) The board may require a nurse aide training program to include up to twenty-five percent more hours than the minimum requirements established in the federal "Omnibus Budget Reconciliation Act of 1987", as amended, Pub.L. 100-203, 101 Stat. 1330 (1987). Any additional training hours shall be within the subject areas required by federal law.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 7, § 1, effective July 7. L. 94: (1) and (5) amended, p. 2728, § 338, effective July 1. L. 2009: (6) amended, (SB 09-138), ch. 400, p. 2163, § 11, effective July 1.

Cross references: For the federal "Omnibus Budget Reconciliation Act of 1987", see Pub.L. 100-203, 101 Stat. 1330 (1987).

12-38.1-109. Renewal of certification. Each certificate to practice as a nurse aide shall be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her certification pursuant to the schedule established by the

director of the division of professions and occupations, such certificate shall expire. Any person whose certificate has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

Source: **L. 89, 1st Ex. Sess.:** Entire article added, p. 8, § 1, effective July 7. **L. 93:** Entire section amended, p. 1746, § 4, effective July 1. **L. 2003:** Entire section amended, p. 2631, § 6, effective June 5. **L. 2004:** Entire section amended, p. 1837, § 81, effective August 4.

12-38.1-110. Advisory committee. (1) To assist in the performance of its duties under this article, the board may designate an advisory committee, which shall report to the board. Such committee shall be composed of seven members who have expertise in an area under review. One member shall be a certified nurse aide; one member shall be a licensed professional nurse or a licensed practical nurse as defined in section 12-38-103, who supervises certified nurse aides; one member shall represent a home health agency; one member shall represent a nursing facility; one member shall be a department of public health and environment employee; and two members shall be members of the public. Committee members shall receive a per diem allowance pursuant to section 24-34-102 (13), C.R.S., for their services and shall be reimbursed for the actual and necessary expenses in the performance of their duties from the division of professions and occupations cash fund by the general assembly.

(2) (Deleted by amendment, L. 93, p. 1747, § 5, effective July 1, 1993.)

Source: **L. 89, 1st Ex. Sess.:** Entire article added, p. 8, § 1, effective July 7. **L. 93:** (1) and (2) amended, p. 1747, § 5, effective July 1. **L. 94:** (1) amended, p. 2728, § 339, effective July 1. **L. 2003:** (1) amended, p. 2632, § 7, effective June 5. **L. 2009:** (1) amended, (SB 09-138), ch. 400, p. 2158, § 4, effective July 1.

12-38.1-110.3. Medication administration advisory committee - created - department of regulatory agencies - report. (Repealed)

Source: **L. 2002:** Entire section added, p. 1287, § 2, effective June 7. **L. 2003:** (5) added, p. 2632, § 8, effective June 5. **L. 2006:** (5) repealed, p. 2000, § 44, effective July 1. **L. 2009:** Entire section repealed, (SB 09-138), ch. 400, p. 2158, § 5, effective July 1.

12-38.1-110.5. Medication aides - training - scope of duties - rules. (1) Prior to a certified nurse aide obtaining authority as a medication aide to administer medications, the certified nurse aide shall meet all applicable requirements as established by rules of the board. The board shall promulgate rules regarding the scope of practice, education, experience, and certification requirements for a nurse aide to obtain authority to administer medications. The board shall consider, but not be limited to, reducing the number of required hours of education, expanding the allowable routes of administration, reducing or eliminating the required hours of work experience, and developing different scopes of practice depending on practice setting, if appropriate.

(2) and (3) (Deleted by amendment, L. 2009, (SB 09-138), ch. 400, p. 2161, § 10, effective July 1, 2009.)

(4) The board shall promulgate rules regarding the supervision requirements for a medication aide, the requirements for a registered nurse to perform a patient assessment before a medication aide administers medications to the patient, and requirements for a registered nurse to review medications to be administered by a medication aide.

(5) The administration of medications by medication aides shall not alter any requirement or limitation applicable to the delegation of nursing tasks pursuant to section 12-38-132.

(6) (Deleted by amendment, L. 2009, (SB 09-138), ch. 400, p. 2161, § 10, effective July 1, 2009.)

Source: L. 2005: Entire section added, p. 1019, § 1, effective August 8. **L. 2009:** (1), (2), (3), and (6) amended, (SB 09-138), ch. 400, p. 2161, § 10, effective July 1.

12-38.1-111. Grounds for discipline. (1) The board may suspend, revoke, or deny any person's certification to practice as a nurse aide or authority to practice as a medication aide, or may issue to the person a letter of admonition, upon proof that such person:

(a) Has procured or attempted to procure a certificate by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(b) Has been convicted of a felony or has had a court accept a plea of guilty or nolo contendere to a felony. A certified copy of such conviction or plea from a court of competent jurisdiction shall be prima facie evidence of such conviction or plea. In considering discipline based on the grounds specified in this paragraph (b), the board shall be governed by the provisions of section 24-5-101, C.R.S.

(c) (Deleted by amendment, L. 2003, p. 2633, § 10, effective June 5, 2003.)

(d) Has had a certification to practice as a nurse aide or to practice any other health care occupation suspended or revoked in any jurisdiction. A certified copy of the order of suspension or revocation shall be prima facie evidence of such suspension or revocation.

(e) Has violated any provision of this article or has aided or knowingly permitted any person to violate any provision of this article;

(f) (Deleted by amendment, L. 2003, p. 2633, § 10, effective June 5, 2003.)

(g) Has negligently or willfully violated any order, rule, or regulation of the board pertaining to practice or certification as a nurse aide;

(h) Has verbally or physically abused a person under the care of the certified nurse aide;

(i) Has habitual intemperance or excessively uses any habit-forming drug or any controlled substance as defined in section 18-18-102 (5), C.R.S., or other drugs having similar effects, or is diverting controlled substances, as defined in section 18-18-102 (5), C.R.S., or other drugs having similar effects from the person's place of employment;

(j) Has misused any drug or controlled substance, as defined in section 18-18-102 (5), C.R.S.;

(k) Has a physical or mental disability which renders him unable to practice as a certified nurse aide with reasonable skill and safety to the patients and which may endanger the health or safety of persons under his care;

(l) Has violated the confidentiality of information or knowledge as prescribed by law concerning any patient;

(m) Has misappropriated patient or facility property;

(n) Has engaged in any conduct that would constitute a crime as defined in title 18, C.R.S., if such conduct relates to the person's ability to practice as a nurse aide. In considering discipline based upon the grounds specified in this paragraph (n), the board shall be governed by the provisions of section 24-5-101, C.R.S.

(o) Has neglected a person under the care of the certified nurse aide;

(p) Has willfully or negligently acted in a manner inconsistent with the health or safety of persons under his or her care;

(q) Has willfully or negligently practiced as a medication aide in a manner that does not meet generally accepted standards for such practice;

(r) Has willfully or negligently violated any order or rule of the board pertaining to the practice or authorization as a medication aide;

(s) Has practiced in a medical facility as a nurse aide except as provided in this article;

(t) (Deleted by amendment, L. 2009, (SB 09-138), ch. 400, p. 2160, § 6, effective July 1, 2009.)

(u) Has practiced as a nurse aide during any period when his or her certificate has been suspended or revoked;

(v) Has sold or fraudulently obtained or furnished a certificate to practice as a nurse aide or has aided or abetted therein;

(w) Has failed to respond in a materially factual and timely manner to a complaint as grounds for discipline pursuant to section 12-38.1-114;

(x) Has failed to report a criminal conviction to the board within forty-five days after the conviction.

(2) Except as otherwise provided in subsection (1) of this section, the board need not find that the actions which form the basis for the disciplinary action were willful. However, the board, in its discretion, may consider whether such action was willful in determining the sanctions it imposes on the nurse aide.

(3) (Deleted by amendment, L. 2003, p. 2633, § 10, effective June 5, 2003.)

(4) An employer of a medication aide shall report conduct that constitutes grounds for discipline pursuant to this section to the board and any disciplinary action taken by the employer against a medication aide or the resignation of a medication aide in lieu of a disciplinary action resulting from such conduct.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 8, § 1, effective July 7. L. 93: (1)(m) amended and (3) added, p. 1747, § 6, effective July 1. L. 95: (1)(n) added, p. 1029, § 6, effective October 1. L. 2003: IP(1), (1)(c), (1)(f), (1)(h) to (1)(j), and (3) amended and (1)(o) added, p. 2633, § 10, effective June 5. L. 2004: IP(1) amended, p. 1837, § 82, effective August 4; (1)(i) amended, p. 1195, § 38, effective August 4. L. 2005: IP(1) amended and (1)(p), (1)(q), (1)(r), and (4) added, p. 1021, §§ 2, 3, effective August 8. L. 2006: (1)(s) to (1)(v) added with relocated provisions, p. 89, § 33, effective August 7. L. 2009: IP(1), (1)(i), and (1)(t) amended and (1)(w) and (1)(x) added, (SB 09-138), ch. 400, p. 2160, § 6, effective July 1. L. 2012: (1)(i) amended, (HB 12-1311), ch. 281, p. 1613, § 20, effective July 1.

Editor's note: Subsections (1)(s), (1)(t), (1)(u), and (1)(v) are similar to former § 12-38.1-118 (1)(a), (1)(b), (1)(c), and (1)(d) as they existed prior to 2006.

12-38.1-112. Withholding or denial of certification. (1) If the board determines that an applicant for an initial certificate to practice as a nurse aide does not possess the qualifications specified in section 12-38.1-105 or 12-38.1-106, that section 12-38.1-111 (1) (n) is applicable, or that there is reasonable cause to believe that the applicant has committed any of the acts set forth in section 12-38.1-111 as grounds for discipline, it may deny the applicant a certificate. When the board denies a certificate, it shall comply with the following procedures:

(a) The provisions of section 24-4-104, C.R.S., shall apply, and the board shall provide the applicant with a written statement that sets forth the basis for the board's determination.

(b) If the applicant requests a hearing pursuant to section 24-4-104 (9), C.R.S., the following shall apply:

(I) An applicant whose certification has been denied on the basis of a lack of qualifications has the burden of proof to show that he possesses the qualifications required under this article.

(II) For an applicant whose certification has been denied on the basis of reasonable cause to believe that grounds for discipline exist, the board has the burden of proof to show the commission of acts constituting grounds for discipline under this article.

(c) If a hearing is conducted, the board shall affirm, modify, or reverse its prior determination and action in accordance with the findings resulting from such hearing.

(d) If an applicant who has requested a hearing pursuant to section 24-4-104 (9), C.R.S., fails to appear at such hearing, absent a determination by the board that there was good cause for such failure to appear, the board may affirm its prior action of withholding certification without conducting a hearing on the matter.

(e) If the board withholds certification without a hearing in accordance with the provisions of this section, it shall be immune from suit concerning such withholding unless it has acted unreasonably or has failed to act in good faith.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 9, § 1, effective July 7. L. 95: IP(1) amended, p. 1029, § 7, effective October 1.

12-38.1-113. Mental and physical competency of nurse aides. (1) If any certified nurse aide is determined to be mentally ill by a court of competent jurisdiction, the board

shall automatically suspend his certification, and such suspension shall continue until the certified nurse aide is determined by such court to be restored to competency; duly discharged as restored to competency; or otherwise determined to be competent in any other manner provided by law.

(2) (a) If the board has reasonable cause to believe that the physical or mental condition of a certified nurse aide has resulted in the nurse aide being unable to practice with reasonable skill or that the practice of the nurse aide is a threat to the safety of the nurse aide's patients, the board may require the nurse aide to submit to a mental or physical examination by a physician or other licensed health care provider designated by the board.

(b) If a nurse aide fails to submit to a mental or physical examination, the board may suspend the nurse aide's certification until the required examination or examinations are conducted.

(3) Every person who applies to the board for certification as a nurse aide shall be deemed by virtue of such application to have given his consent to undergo a physical or mental examination at any time if the board so requests. Any request by the board to a nurse aide to submit to such an examination shall be in writing and shall contain the basis upon which the board determined that reasonable cause to believe the condition specified in paragraph (a) of subsection (2) of this section exists.

(4) A certified nurse aide who has been requested to submit to a physical or mental examination may provide the board with information concerning such nurse aide's physical or mental condition from a physician of the nurse aide's own choice. The board may consider such information in conjunction with, but not in lieu of, testimony and information provided by the physician designated by the board to examine the nurse aide.

(5) The results of any mental or physical examination requested by the board pursuant to this section shall not be used as evidence in any proceeding except a proceeding conducted pursuant to this article. The results of such examination shall not be deemed to be public records and shall not be made available to the public.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 10, § 1, effective July 7. **L. 2009:** (2) amended, (SB 09-138), ch. 400, p. 2161, § 8, effective July 1.

12-38.1-114. Disciplinary proceedings - hearing officers. (1) The board, through the department of regulatory agencies, may employ hearing officers to conduct hearings as provided by this article or to conduct hearings on any matter within the board's jurisdiction, upon such conditions and terms as the board determines to be appropriate.

(2) A proceeding for discipline of a certified nurse aide may be commenced when the board has reasonable grounds to believe that a nurse aide certified by the board has committed acts which may violate the provisions of this article.

(3) The license of a person certified by the board as a nurse aide may be revoked or such person may otherwise be disciplined upon written findings by the board that the licensee has committed acts that violate the provisions of this article.

(4) Any certified nurse aide disciplined under subsection (3) of this section shall be notified by the board, by a certified letter to the most recent address provided to the board by the certified nurse aide, no later than thirty days following the date of the board's action, of the action taken, the specific charges giving rise to the action, and the certified nurse aide's right to request a hearing on the action taken.

(5) (a) Within thirty days after notification is sent by the board, the certified nurse aide may file a written request with the board for a hearing on the action taken. Upon receipt of the request the board shall grant a hearing to the certified nurse aide. If the certified nurse aide fails to file a written request for a hearing within thirty days, the action of the board shall be final on that date.

(b) (Deleted by amendment, L. 93, p. 1747, § 7, effective July 1, 1993.)

(6) The attendance of witnesses and the production of books, patient records, papers, and other pertinent documents at the hearing may be summoned by subpoenas issued by the board, which shall be served in the manner provided by the Colorado rules of civil procedure for service of subpoenas.

(7) Disciplinary proceedings shall be conducted in the manner prescribed by article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to said article by the board or a hearing officer at the board's discretion.

(8) Failure of the certified aide to appear at the hearing without good cause shall be deemed a withdrawal of his or her request for a hearing, and the board's action shall be final on that date. Failure, without good cause, of the board to appear at the hearing shall be deemed cause to dismiss the proceeding.

(9) (a) No previously issued certificate to engage in practice as a nurse aide shall be revoked or suspended except under the procedure set forth in this section, except in emergency situations as provided by section 24-4-104, C.R.S.

(b) The denial of an application to renew an existing certificate shall be treated in all respects as a revocation.

(10) (a) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board. The person providing documents shall prepare them from the original record and shall delete from the copy provided pursuant to the subpoena the name of the patient, but the patient shall be identified by a numbered code to be retained by the custodian of the records from which the copies were made. Upon certification of the custodian that the copies are true and complete except for the patient's name, they shall be deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. No privilege of confidentiality shall exist with respect to such copies, and no liability shall lie against the board or the custodian or the custodian's authorized employee for furnishing or using such copies in accordance with this subsection (10).

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(10.5) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the certificate holder that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the certificate holder.

(11) Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any criminal or civil liability that otherwise might result by reason of such participation.

(12) An employer of a nurse aide shall report to the board any disciplinary action taken against the nurse aide or any resignation in lieu of a disciplinary action for conduct which constitutes a violation of this article.

(13) Except when a decision to proceed with a disciplinary action has been agreed upon by a majority of the board or its designee and notice of formal complaint is drafted and served on the licensee by first-class mail, any investigations, examinations, hearings,

meetings, or any other proceedings of the board related to discipline that are conducted pursuant to the provisions of this section shall be exempt from the open records provisions of article 72 of title 24, C.R.S., requiring that the proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to the provisions of this section be open to public inspection.

(14) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a certificate holder is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required certificate, the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or uncertified practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (14), the respondent may request a hearing on the question of whether acts or practices in violation of this part 1 have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(15) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 1, then, in addition to any specific powers granted pursuant to this part 1, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or uncertified practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (15) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (15) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (15). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (15) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (15) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required certificate, or has or is about to engage in acts or practices constituting violations of this part 1, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or uncertified practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (15), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(16) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any uncertified act or practice, any act or practice constituting a violation of this part 1, any rule promulgated pursuant to this part 1, any order issued pursuant to this part 1, or any act or practice constituting grounds for

administrative sanction pursuant to this part 1, the board may enter into a stipulation with such person.

(17) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(18) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-38.1-116.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 11, § 1, effective July 7. L. 93: (3) to (9) amended and (10) to (13) added, p. 1747, § 7, effective July 1. L. 2003: (3) and (13) amended, p. 2633, §§ 11, 12, effective June 5. L. 2004: (10) and (11) amended, p. 1837, § 83, effective August 4. L. 2006: (10.5) and (14) to (18) added, p. 801, § 32, effective July 1.

12-38.1-115. Surrender of certificate. (1) Prior to the initiation of an investigation or hearing, any certified nurse aide may surrender his certificate to practice as a nurse aide to the board.

(2) Following the initiation of an investigation or hearing and upon a finding that to conduct such an investigation or hearing would not be in the public interest, the board may allow a certified nurse aide to surrender his certificate to practice.

(3) The board shall not issue a certificate to a former holder of a certificate whose certificate has been denied, revoked, or surrendered unless a two-year waiting period has passed since the date of the surrender and the applicant has met the requirements of this article, has successfully repeated an approved education program, and has repeated and passed a competency evaluation.

(4) The surrender of a certificate in accordance with this section removes all rights and privileges to practice as a nurse aide, including the right to apply for renewal of a certificate.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 12, § 1, effective July 7. L. 93: (3) amended, p. 1750, § 8, effective July 1. L. 2009: (3) amended, (SB 09-138), ch. 400, p. 2163, § 13, effective July 1.

12-38.1-116. Judicial review. The court of appeals shall have initial jurisdiction to review all final actions and orders of the board that are subject to judicial review. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 12, § 1, effective July 7.

12-38.1-117. Exclusions. (1) This article shall not be construed to affect or apply to:

(a) The gratuitous care of friends or family members;

(b) A person for hire who does not represent himself or herself as or hold himself or herself out to the public as a certified nurse aide. However, no person for hire who is not a nurse aide certified under this article shall perform the duties of or hold himself or herself out as being able to perform the full duties of a certified nurse aide.

(c) Nursing assistance in the case of an emergency;

(d) A person who is directly employed by a medical facility while acting within the scope and course of such employment for the first four consecutive months of such person's employment at such medical facility if such person is pursuing initial certification as a nurse aide. A person may utilize this exclusion only once in any twelve-month period. This exclusion shall not apply to any person who has allowed his or her certification to lapse, had his or her certification as a nurse aide suspended or revoked, or had his or her application for such certification denied.

(e) Any person licensed, certified, or registered by the state of Colorado who is acting within the scope of such license, certificate, or registration;

(f) Any person performing services pursuant to sections 12-38-132 and 27-10.5-103 (2) (k), C.R.S., and part 3 of article 1.5 of title 25, C.R.S.

Source: **L. 89, 1st Ex. Sess.:** Entire article added, p. 12, § 1, effective July 7. **L. 93:** (1)(f) added, p. 1750, § 9, effective July 1. **L. 2003:** (1)(b) and (1)(d) amended, p. 2634, § 13, effective June 5; (1)(f) amended, p. 703, § 17, effective July 1. **L. 2009:** (1)(d) amended, (SB 09-138), ch. 400, p. 2163, § 12, effective July 1.

12-38.1-118. Unauthorized practices - penalties.

(1) Repealed.

(2) Any person who practices or offers or attempts nursing aide practice or medication administration without an active certificate of authority issued under this article; practices in a medical facility as a nurse aide except as provided in this article; uses any designation in connection with his or her name that tends to imply that he or she is a certified nurse aide unless he or she is so certified under this article; practices as a nurse aide during any period when his or her certificate has been suspended or revoked; or sells or fraudulently obtains or furnishes a certificate to practice as a nurse aide or aids or abets therein commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and any person committing a second or subsequent offense commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: **L. 89, 1st Ex. Sess.:** Entire article added, p. 13, § 1, effective July 7. **L. 93:** (2) amended, p. 1750, § 10, effective July 1. **L. 2002:** (2) amended, p. 1480, § 81, effective October 1. **L. 2006:** (1) repealed and (2) amended, p. 89, §§ 35, 34, effective August 7. **L. 2009:** (2) amended, (SB 09-138), ch. 400, p. 2160, § 7, effective July 1.

Editor's note: Subsections (1)(a), (1)(b), (1)(c), and (1)(d) were relocated to § 12-38.1-111 (1)(s), (1)(t), (1)(u), and (1)(v) in 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-38.1-119. Injunctive proceedings. The board may apply for injunctive relief through the attorney general in any court of competent jurisdiction to enjoin any person who does not possess a current valid certificate as a nurse aide issued under the provisions of this article from committing any act declared to be unlawful under or prohibited by this article. Such injunctive proceedings shall be in addition to and not in lieu of all penalties and other remedies provided for in this article.

Source: **L. 89, 1st Ex. Sess.:** Entire article added, p. 13, § 1, effective July 7.

12-38.1-120. Repeal of article. This article is repealed, effective September 1, 2020. Prior to such repeal, the certification functions of the state board of nursing shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: **L. 89, 1st Ex. Sess.:** Entire article added, p. 13, § 1, effective July 7. **L. 91:** Entire section amended, p. 683, § 28, effective April 20. **L. 93:** Entire section amended, p. 1751, § 11, effective July 1. **L. 2003:** Entire section amended, p. 2630, § 1, effective June 5. **L. 2004:** Entire section amended, p. 348, § 10, effective July 1. **L. 2009:** Entire section amended, (SB 09-138), ch. 400, p. 2157, § 1, effective July 1.

PART 2

DIRECT CARE PROVIDER CAREER PATH
PILOT PROGRAM

12-38.1-201 to 12-38.1-208. (Repealed)

Editor’s note: (1) This part 2 was added in 2002. For amendments to this part 2 prior to its repeal in 2008, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.
(2) Section 12-38.1-208 provided for the repeal of this part 2, effective July 1, 2008. (See L. 2002, p. 958.)

ARTICLE 39

Nursing Home Administrators

Editor’s note: This article was numbered as article 8 of chapter 91, C.R.S. 1963. This article was repealed and reenacted in 1978 and was subsequently repealed and reenacted in 1993, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1993, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers prior to 1993 are shown in editor’s notes following those sections that were relocated.

12-39-101.	Legislative declaration.	12-39-110.	Endorsement.
12-39-102.	Definitions.	12-39-111.	Grounds for discipline.
12-39-103.	Administrator license required.	12-39-112.	Withholding or denial of license - hearing.
12-39-103.5.	State training school.	12-39-113.	Mental and physical examination of licensees.
12-39-104.	Board of examiners of nursing home administrators - creation - subject to termination.	12-39-114.	Disciplinary proceedings - administrative law judge - judicial review.
12-39-104.5.	Qualifications of board members.	12-39-115.	Temporary advisory committees - immunity.
12-39-105.	Powers and duties of the board - rules.	12-39-116.	Unauthorized practice - penalties.
12-39-106.	Qualifications for admission to examination.	12-39-117.	Cease-and-desist orders.
12-39-107.	Administrator-in-training.	12-39-118.	Injunctive proceedings.
12-39-107.5.	Board to promulgate rules.	12-39-119.	Administration of nursing homes relying on treatment by spiritual means.
12-39-108.	Licenses.	12-39-120.	Records.
12-39-109.	Examinations.	12-39-121.	Repeal of article.

12-39-101. Legislative declaration. The general assembly declares that the intent of this article is to provide a measure of protection to the residents of nursing homes in this state who are aged or who have disabilities by establishing a means to regulate nursing home administrators to ensure quality administration and sound management of nursing homes. It is also the intent of the general assembly that the board of examiners of nursing home administrators be adequately funded to carry out the duties and functions specified by this article as well as the legislative intent expressed in this section.

Source: L. 93: Entire article R&RE, p. 1469, § 1, effective July 1; entire section amended, p. 1632, § 11, effective July 1.

Editor’s note: (1) This section is similar to former § 12-39-101 as it existed prior to 1993.
(2) Amendments to this section by Senate Bill 93-15 and Senate Bill 93-242 were harmonized.

12-39-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" means the board of examiners of nursing home administrators.

(2) "Nursing home administrator" means any individual licensed and responsible for planning, organizing, directing, and controlling the operation of a nursing home or who in fact performs such functions, whether or not such functions are shared by one or more other persons.

(3) "Nursing home administrator-in-training" means an individual registered with the board pursuant to the provisions of this article.

(4) "Nursing home facility" shall have the same meaning as that set forth in section 25-1-1002, C.R.S., and shall include nursing care facilities, whether proprietary or non-profit, which are licensed under section 25-1.5-103 (1) (a) (I), C.R.S., or pursuant to the rules for nursing homes promulgated by the department of public health and environment. The term "nursing home" includes but is not limited to nursing homes owned or administered by the state government or any agency or political subdivision thereof.

(5) "Practice of nursing home administration" means the planning, organizing, directing, and control of the operation of a nursing home.

(6) "Reasonable grounds" means facts and circumstances sufficiently strong to warrant a prudent person to believe that the facts and circumstances are true.

Source: L. 93: Entire article R&RE, p. 1469, § 1, effective July 1. L. 94: (4) amended, p. 2729, § 340, effective July 1. L. 2003: (4) amended, p. 703, § 18, effective July 1.

Editor's note: This section is similar to former § 12-39-103 as it existed prior to 1993.

12-39-103. Administrator license required. No person shall practice or offer to practice nursing home administration in this state or use any title, sign, card, or device to indicate that such person is a nursing home administrator, unless such person has been duly licensed as a nursing home administrator as required by this article.

Source: L. 93: Entire article R&RE, p. 1470, § 1, effective July 1.

Editor's note: This section is similar to former § 12-39-102 as it existed prior to 1993.

12-39-103.5. State training school. The nursing home administrator in each of the three state home and training schools at Grand Junction, Pueblo, and Wheat Ridge is not required to be the superintendent of such facility.

Source: L. 93: Entire article R&RE, p. 1470, § 1, effective July 1.

Editor's note: This section is similar to former § 12-39-102 as it existed prior to 1993.

12-39-104. Board of examiners of nursing home administrators - creation - subject to termination. (1) (a) The board of examiners of nursing home administrators is hereby created in the division of professions and occupations in the department of regulatory agencies. The board is composed of the following members appointed by the governor:

(I) Three members who are practicing nursing home administrators duly licensed under this article, at least one of whom shall be from nonprofit facility administration.

(II) Repealed.

(III) Three members shall be representative of the public at large; except that upon the expiration of the term of office of the one member of the board representing the public whose term expires on July 1, 2011, the board shall consist of two members representative of the public at large.

(b) No more than three of the members of the board shall be officials or full-time employees of state government or local governments. The term of office for each member of the board shall be four years. No member of the board shall serve more than two consecutive terms. All the members of the board shall be residents of this state.

(2) (a) The governor shall make appointments to the board. In making an appointment to fill a vacancy on the board in the position of, or to fill the remainder of an unexpired term for, a nursing home administrator who is from nonprofit facility administration, as required by subparagraph (I) of paragraph (a) of subsection (1) of this section, if the governor, after a good-faith attempt, is unable to find a nursing home administrator candidate who comes from nonprofit facility administration to fill the vacancy or complete the unexpired term, the governor may appoint any qualified nursing home administrator to complete the unexpired term or fill the vacancy in that board position. If the appointment is to fill a vacancy, the board member may serve the full term and is eligible for appointment for a second term.

(b) The governor may remove any board member for negligence, incompetency, unprofessional conduct, or willful misconduct. Actions constituting neglect of duty include but are not limited to three unexcused absences from scheduled meetings in any one calendar year. The governor shall fill a vacancy in the membership of the board for the remainder of the unexpired term. A member who is a practicing nursing home administrator or long-term care professional shall serve for a full term only if, during such term, such member is actively employed as a practicing member of his or her profession without a lapse of employment greater than one hundred twenty days.

(3) The board shall elect annually from its membership a chair and vice-chair. The board shall hold two or more meetings each year. At any meeting a majority shall constitute a quorum.

(4) The board shall exercise its powers and perform its duties and functions specified by this article under the department of regulatory agencies and the executive director thereof and the division of professions and occupations as if the same were transferred to the department by a **type 1** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(5) The director of the division of professions and occupations in the department of regulatory agencies may appoint, subject to section 13 of article XII of the state constitution, a program director to the board. The program director shall not be a member of the board, but shall have such powers and shall perform such duties as are prescribed by law and the rules of the board. Additional staff may be appointed by the director of the division of professions and occupations to adequately assist the board and the program director in keeping records and in the performance of their duties. These employees, if any, shall be appointed and serve in accordance with section 13 of article XII of the state constitution.

(6) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the board of examiners of nursing home administrators created by this section.

(7) Repealed.

Source: **L. 93:** Entire article R&RE, p. 1470, § 1, effective July 1. **L. 99:** (1) and (2) amended, p. 359, § 1, effective July 1. **L. 2003:** (7) repealed, p. 913, § 16, effective August 6. **L. 2009:** IP(1)(a), (1)(a)(II), (1)(a)(III), and (5) amended, (SB 09-169), ch. 225, p. 1022, § 4, effective May 4. **L. 2012:** IP(1)(a), (1)(a)(I), and (2) amended, (SB 12-091), ch. 121, p. 410, § 1, effective September 1.

Editor's note: (1) This section is similar to former § 12-39-104 as it existed prior to 1993.

(2) Subsection (1)(a)(II)(D) provided for the repeal of subsection (1)(a)(II), effective July 1, 2011. (See L. 2009, p. 1022.)

12-39-104.5. Qualifications of board members. (1) A nursing home administrator is qualified to be appointed to the board if the person:

- (a) Is a legal resident of Colorado;
- (b) Is currently licensed as a nursing home administrator; and
- (c) Has been actively engaged as a licensed nursing home administrator for at least three years.

(2) Notwithstanding subsection (1) of this section, a person convicted of a felony in Colorado or any other state or of violating this article or any law governing the practice of nursing home administrators shall not be appointed to or serve on the board.

Source: L. 99: Entire section added, p. 360, § 2, effective July 1. L. 2009: (1)(c) amended, (SB 09-169), ch. 225, p. 1022, § 5, effective May 4. L. 2012: (1) amended, (SB 12-091), ch. 121, p. 411, § 2, effective September 1.

12-39-105. Powers and duties of the board - rules. (1) (a) The board has the following powers and duties:

(I) (A) To adopt rules defining standards of nursing home administration, including the responsibilities and duties of nursing home administrators, consistent with this article. The standards established in the rules shall be met by individuals in order to receive and retain a license and shall be designed to ensure that nursing home administrators are qualified by education and training in the appropriate field to serve as nursing home administrators.

(B) To develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(II) To issue licenses to individuals determined, after application of such techniques, to meet such standards specified in subparagraph (I) of this paragraph (a);

(III) To revoke, suspend, withhold, or refuse to renew any license previously issued by the board, to place a licensee or temporary license holder on probation, or to issue a letter of admonition to a licensee in accordance with section 12-39-111 (3) in any case where the individual holding any such license is determined to have failed to conform to the standards developed pursuant to subparagraph (I) of this paragraph (a) or to have committed an act that constitutes grounds for discipline as set forth in section 12-39-111;

(IV) To establish and carry out procedures designed to ensure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards specified in subparagraph (I) of this paragraph (a);

(V) To conduct investigations, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the board and, in connection with any investigation following the filing of a signed complaint, an investigation initiated by the board, or any hearing, to administer oaths and issue subpoenas compelling the attendance and testimony of witnesses and the production of books, papers, or records relevant to an investigation or hearing;

(VI) (Deleted by amendment, L. 2009, (SB 09-169), ch. 225, p. 1023, § 6, effective May 4, 2009.)

(b) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board. The person providing documents shall prepare them from the original record and shall delete from the copy provided pursuant to the subpoena the name of the resident, but shall identify the resident by a numbered code, to be retained by the custodian of the records from which the copies were made. Upon certification of the custodian that the copies are true and complete except for the resident's name, they shall be deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. No privilege of confidentiality shall exist with respect to the copies, and no liability shall lie against the board, the custodian, or the custodian's authorized employee for furnishing or using the copies in accordance with this subsection (1).

(c) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(2) Repealed.

(3) (a) The board shall develop rules, with input from long-term care facility provider associations, the department of public health and environment, the office of the state attorney general, and consumer representatives, concerning factors to be considered in determining performance that fails to meet generally accepted standards for nursing home administrators and whether or not remedial or disciplinary actions are warranted. The board may create an advisory committee to assist the board in developing standards that describe the responsibilities and duties of nursing home administrators.

(b) If after an investigation the board determines that there are reasonable grounds to believe that the performance of a licensed administrator is inconsistent with the health or safety of residents in the care of the facility in which the administrator works and is contrary to standards adopted by the board, the board may initiate disciplinary action as may be warranted.

(4) The board shall have the authority to make rules consistent with law as may be necessary for the proper performance of its duties and to take such other actions as may be necessary to enable the state to meet the requirements set forth in section 1908 of the federal "Social Security Act", the federal rules promulgated thereunder, and other pertinent federal requirements.

Source: **L. 93:** Entire article R&RE, p. 1471, § 1, effective July 1. **L. 94:** IP(2)(a) and (3)(a) amended, p. 2729, § 341, effective July 1. **L. 95:** (1)(a)(III) amended, p. 1093, § 7, effective May 31. **L. 96:** (1)(a)(VI) amended, p. 1243, § 104, effective August 7. **L. 99:** (2) repealed, p. 360, § 3, effective July 1. **L. 2004:** (1)(b) amended and (1)(c) added, p. 1838, § 84, effective August 4. **L. 2009:** (1)(a)(I)(A), (1)(a)(III), (1)(a)(V), (1)(a)(VI), (1)(b), and (3)(a) amended, (SB 09-169), ch. 225, p. 1023, § 6, effective May 4.

Editor's note: This section is similar to former §§ 12-39-105 and 12-39-117 as they existed prior to 1993.

Cross references: For the legislative declaration contained in the 1996 act amending subsection (1)(a)(VI), see section 1 of chapter 237, Session Laws of Colorado 1996.

ANNOTATION

Applied in *In re Estate of Smith v. O'Halloran*, 557 F. Supp. 289 (D. Colo. 1983) (decided under prior version of this section).

12-39-106. Qualifications for admission to examination. (1) The board shall admit to examination for licensure as a nursing home administrator any applicant who pays a fee as determined by the board, who submits evidence of suitability prescribed by the board, who is twenty-one years of age or older, and who provides written documentation that the applicant meets one of the following requirements:

(a) The applicant has successfully completed the administrator-in-training program pursuant to section 12-39-107; or

(b) The applicant has successfully completed a bachelor's degree or higher degree in public health administration or health administration, a master's degree in management or business administration, or any degree or degrees deemed appropriate by the board; or

(c) (I) The applicant has successfully completed an associate's degree or higher degree in a health care-related field or a bachelor's degree in business or public administration and has a minimum of one year of experience in administration in a nursing home or hospital. For the purposes of this section, a registered nurse who is a graduate of a three-year diploma program meets the associate degree requirement.

(II) For purposes of the experience required by this paragraph (c), an applicant must have day-to-day, on-site responsibility for supervising, directing, managing, monitoring, or exercising reasonable control over subordinates for one year.

(2) If the applicant fails to provide evidence satisfactory to the board that the applicant meets the requirements of subsection (1) of this section, the applicant shall not be admitted

to take the licensing examination, and the applicant shall not be entitled to or be granted a license as a nursing home administrator.

(3) (Deleted by amendment, L. 99, p. 361, § 4, effective July 1, 1999.)

Source: L. 99: Entire section amended, p. 361, § 4, effective July 1. L. 2009: (1)(b), (1)(c), and (2) amended, (SB 09-169), ch. 225, p. 1024, § 7, effective May 4. L. 2012: (1) amended, (SB 12-091), ch. 121, p. 411, § 3, effective September 1.

Editor's note: This section is similar to former § 12-39-106 as it existed prior to 1993.

12-39-107. Administrator-in-training. (1) The board may grant admission into the nursing home administrator-in-training program to an applicant for a nursing home administrator's license who meets the board's criteria for education and experience, pursuant to section 12-39-107.5. Upon successful completion of the one-thousand-hour training period, the applicant is eligible to take the examination.

(2) (Deleted by amendment, L. 2009, (SB 09-169), ch. 225, p. 1024, § 8, effective May 4, 2009.)

(3) Every nursing home administrator-in-training shall register the fact of such training with the board in accordance with the rules and on forms provided by the board.

(4) The board shall, by rule, establish a monitoring mechanism that will provide oversight of the administrator-in-training program, including a requirement that an administrator-in-training submit periodic progress reports to the board.

(5) (Deleted by amendment, L. 99, p. 362, § 5, effective July 1, 1999.)

(6) The board may waive any portion required by subsection (1) of this section if it finds that the applicant has prior experience or training sufficient to satisfy requirements established by rule of the board.

Source: L. 93: Entire article R&RE, p. 1474, § 1, effective July 1. L. 99: (1) and (5) amended, p. 362, § 5, effective July 1. L. 2009: (2), (4), and (6) amended, (SB 09-169), ch. 225, p. 1024, § 8, effective May 4. L. 2012: (1) amended, (SB 12-091), ch. 121, p. 412, § 4, effective September 1.

Editor's note: This section is similar to former § 12-39-111 as it existed prior to 1993.

12-39-107.5. Board to promulgate rules. The board shall promulgate rules defining the criteria for the education and experience necessary for admittance to the administrator-in-training program. The board shall furnish copies of the appropriate rules to members of the public upon request. Such criteria for the education and experience necessary for admittance to the administrator-in-training program shall not exceed successful completion of two years of college level study in an accredited institution of higher education in areas relating to health care or two years of board approved experience in nursing home administration or comparable health management experience for each year of required education.

Source: L. 99: Entire section added, p. 362, § 6, effective July 1.

12-39-108. Licenses. (1) Any license issued by the board shall be valid for a period determined pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(2) Repealed.

(3) Only an individual who has qualified as a licensed nursing home administrator under the provisions of this article and who holds a valid current license pursuant to the provisions of this section has the privilege of using the title "nursing home administrator" and the right and the privilege of using the abbreviation "N.H.A." after such person's name.

(4) The board shall maintain a list of all licensed nursing home administrators, which list shall show: the place of residence, the name and age of each licensee, any action taken by the board, the number of the license issued to the licensee, and such other pertinent information as the board may deem necessary. The department shall keep a list of applicants who are denied.

(5) The board may issue a temporary license to an applicant for a period not to exceed six months. The board shall promulgate rules and regulations for the issuance of such a temporary license.

(6) A temporary license shall be granted to an applicant who is employed as a hospital administrator by a general hospital licensed or certified by the department of public health and environment. Such temporary permit shall be granted for a period not to exceed twelve months and shall be void at such time the license holder is no longer employed by the general hospital.

(7) The board shall establish, pursuant to section 24-34-105, C.R.S., and publish annually a schedule of fees for the licensing of nursing home administrators.

(8) All moneys collected or received by the board shall be transmitted to the state treasurer who shall credit the same as provided in section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for the expenditures of the board incurred in the performance of its duties under this article, which expenditures shall be made from such appropriations upon vouchers and warrants drawn pursuant to law.

(9) No nursing home administrator who has had a license revoked may apply for licensure before a one-year waiting period following the date of such revocation and must comply with all requirements established by rules and regulations of the board.

(10) Each licensee shall, within thirty days, notify the board of any conviction of a felony or the acceptance of a guilty plea or a plea of nolo contendere to a felony.

Source: L. 93: Entire article R&RE, p. 1475, § 1, effective July 1. L. 94: (6) amended, p. 2729, § 342, effective July 1. L. 2004: (1) amended, p. 1839, § 85, effective August 4. L. 2009: (2) repealed, (SB 09-169), ch. 225, p. 1025, § 9, effective May 4.

Editor's note: This section is similar to former § 12-39-109 as it existed prior to 1993.

12-39-109. Examinations. (1) The board shall determine the subjects of the state examination for all applicants for licensure as nursing home administrators.

(2) Examinations shall be held at least semiannually at such times and places as the board shall designate. Any examination shall be prepared or approved by the board.

(3) The board shall have the authority to select and administer a national examination.

Source: L. 93: Entire article R&RE, p. 1476, § 1, effective July 1.

Editor's note: This section is similar to former § 12-39-107 as it existed prior to 1993.

12-39-110. Endorsement. (1) (a) The board shall issue a license to any person duly licensed to practice nursing home administration in another state or territory of the United States who:

(I) Provides written documentation verifying that the applicant has passed a national examination administered by a nationally recognized testing entity for nursing home administrators and has passed an examination in another state; and

(II) Successfully completes the Colorado state examination provided in section 12-39-109.

(b) For purposes of this section, “state or territory” includes the District of Columbia and the commonwealth of Puerto Rico.

(2) An applicant for licensure under this section shall submit to the board, in a manner prescribed by the board, all of the following:

(a) Evidence that the applicant holds a current, active license to practice nursing home administration issued by a state or territory of the United States other than Colorado. Such evidence shall include a license history from the state or territory that issued the license, indicating whether any disciplinary or other adverse actions are currently pending or have ever been taken in connection with that license and the final disposition of such actions, if any. If an applicant is or has been licensed in more than one state or territory other than Colorado, the applicant shall submit a license history or similar record as described in this paragraph (a) from each such state or territory.

(b) A license history or similar record, as described in paragraph (a) of this subsection (2), relating to any license or registration which the applicant holds or has held in any other health care occupation in any state or territory other than Colorado. For purposes of this section, “health care occupation” includes without limitation the practices of medicine, dentistry, psychiatry, psychology, nursing, physical therapy, gerontology, chiropractic, podiatry, midwifery, optometry, pharmacy, and any other practice in which individuals are treated for medical or psychological problems or conditions, as well as the rendition of any service supportive to or ancillary to those practices.

(c) (I) Verification that the applicant has been engaged in the practice of nursing home administration, has taught in a health care administration program, or has served as a member of a nursing home survey or accreditation team for one year immediately preceding the date of the receipt of the application, or has been engaged in one of the services described in this subparagraph (I) for three of the five years immediately preceding the date of the receipt of the application; or

(II) Evidence that the applicant has demonstrated competency as a nursing home administrator as determined by the board.

Source: **L. 93:** Entire article R&RE, p. 1476, § 1, effective July 1. **L. 2010:** IP(2) and (2)(c) amended, (HB 10-1175), ch. 46, p. 174, § 4, effective July 1, 2011. **L. 2012:** (1) amended, (SB 12-091), ch. 121, p. 412, § 5, effective September 1.

Editor’s note: This section is similar to former § 12-39-110 as it existed prior to 1993.

12-39-111. Grounds for discipline. (1) The board has the power to revoke, suspend, withhold, or refuse to renew any license, to place on probation a licensee or temporary license holder, or to issue a letter of admonition to a licensee in accordance with the procedures set forth in subsection (3) of this section, upon proof that such person:

(a) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(b) Has been convicted of a felony or pled guilty or nolo contendere to a felony. A certified copy of the judgment of conviction by a court of competent jurisdiction shall be prima facie evidence of such conviction. In considering a possible revocation, suspension, or nonrenewal of a license or temporary license the board shall be governed by the provisions of section 24-5-101, C.R.S.

(c) Has had a license to practice nursing home administration or any other health care occupation suspended or revoked in any jurisdiction. A certified copy of the order of suspension or revocation shall be prima facie evidence of such suspension or revocation.

(d) Has violated or aided or abetted a violation of any provision of this article, any rule or regulation adopted under this article, or any lawful order of the board;

(e) Has committed or engaged in any act or omission which fails to meet generally accepted standards for such nursing home administration practice or licensure;

(f) Has falsified or made incorrect entries or failed to make essential entries on resident records;

(g) Is addicted to or dependent on alcohol or habit-forming drugs, abuses or engages in the habitual or excessive use of any such habit-forming drug or any controlled substance as

defined in section 18-18-102 (5), C.R.S., or participates in the unlawful use of controlled substances as specified in section 18-18-404, C.R.S.; except that the board has the discretion not to discipline the licensee if such person is participating, in good faith, in a program approved by the board designed to end such addiction or dependency;

(h) Has a physical or mental disability that renders the licensee unable to practice nursing home administration with reasonable skill and safety to the residents and that may endanger the health or safety of persons under the licensee's care;

(i) Has violated the confidentiality of information or knowledge as prescribed by law concerning any resident;

(j) Has violated section 18-13-119, C.R.S., concerning the abuse of health insurance;

(k) Has failed to post in the nursing home facility in a conspicuous place and in clearly legible type a notice giving the address and telephone number of the board and stating that complaints may be made to the board;

(l) Has practiced as a nursing home administrator without a license;

(m) Has used in connection with the person's name any designations tending to imply that the person is a licensed nursing home administrator, unless the person in fact holds a valid license;

(n) Has practiced as a nursing home administrator during a period when the person's license has been suspended or revoked; or

(o) Has sold, fraudulently obtained, or furnished a license to practice as a nursing home administrator, or has aided or abetted therein.

(2) The board need not find that the actions which are grounds for discipline were willful or negligent, but it may consider the same in determining the nature of disciplinary sanctions to be imposed.

(3) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(b) When a letter of admonition is sent by the board, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(4) If the board finds the charges proven and orders that discipline be imposed, it may also require the licensee to participate in a treatment program or course of training or education as a requirement for reinstatement as may be needed to correct any deficiency found in the hearing.

(5) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

Source: L. 93: Entire article R&RE, p. 1477, § 1, effective July 1. L. 2004: (1)(g) amended, p. 1195, § 39, effective August 4; (3) amended and (5) added, p. 1839, § 86, effective August 4. L. 2006: (1)(l) to (1)(o) added with relocated provisions, p. 89, § 36, effective August 7. L. 2009: (1)(f), (1)(h), and (1)(i) amended, (SB 09-169), ch. 225, p. 1025, § 10, effective May 4. L. 2012: (1)(g) amended, (HB 12-1311), ch. 281, p. 1613, § 21, effective July 1.

Editor's note: (1) This section is similar to former § 12-39-112 as it existed prior to 1993.

(2) Subsections (1)(l), (1)(m), (1)(n), and (1)(o) are similar to former § 12-39-116 (1)(a), (1)(b), (1)(c), and (1)(d) as they existed prior to 2006.

12-39-112. Withholding or denial of license - hearing. The board has the authority, pursuant to article 4 of title 24, C.R.S., to determine whether an applicant for a license or a temporary license to practice as a nursing home administrator possesses the qualifications

required by this article, or whether there are reasonable grounds to believe that such applicant has done any of the acts set forth in section 12-39-111 as grounds for discipline. As used in this section, "applicant" does not include a person seeking the renewal of a license.

Source: L. 93: Entire article R&RE, p. 1479, § 1, effective July 1.

Cross references: For an alternative disciplinary action for persons licensed or registered pursuant to this article, see § 24-34-106.

12-39-113. Mental and physical examination of licensees. (1) (a) If the board has reasonable grounds to believe that a licensee or temporary license holder is unable to practice with reasonable skill and safety to residents because of a condition described in section 12-39-111 (1) (g) or (1) (h), it may require the person to submit to a mental or physical examination by a physician or other licensed health care professional it designates. Upon the failure of the person to submit to the mental or physical examination, unless due to circumstances beyond the person's control, the board may suspend the person's license until the person submits to the required examinations.

(b) Every licensee or temporary license holder by engaging in the practice of nursing home administration in this state or by applying for the renewal of a license or temporary license shall be deemed to have given consent to submit to a mental or physical examination when so directed in writing by the board. The direction to submit to such an examination shall contain the basis of the board's reasonable grounds to believe that the licensee is unable to practice with reasonable skill and safety to residents because of a condition described in section 12-39-111 (1) (g) or (1) (h). The licensee shall be deemed to have waived all objections to the admissibility of the examining physician's or other licensed health care professional's testimony or examination reports on the ground of privileged communication.

(2) Nothing in this section shall prevent the licensee from submitting testimony or examination reports of a physician or other licensed health care professional designated by the licensee that pertains to a condition described in section 12-39-111 (1) (g) or (1) (h) that may be considered by the board in conjunction with, but not in lieu of, testimony and examination reports of the physician or other licensed health care professional designated by the board.

(3) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than one before the board and shall not be deemed public records nor made available to the public.

Source: L. 93: Entire article R&RE, p. 1479, § 1, effective July 1. **L. 2009:** (1) and (2) amended, (SB 09-169), ch. 225, p. 1025, § 11, effective May 4.

12-39-114. Disciplinary proceedings - administrative law judge - judicial review. (1) The board, through the department of regulatory agencies, has the authority to designate an administrative law judge to conduct hearings on any matter within the board's jurisdiction. Any designated administrative law judge shall have the powers and duties set forth in article 4 of title 24, C.R.S., and shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S.

(2) Disciplinary proceedings may be commenced when the board has reasonable grounds to believe that a licensee under the board's jurisdiction has committed acts in violation of section 12-39-111.

(3) Disciplinary proceedings shall be conducted in the manner prescribed by article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to said article by the board or an administrative law judge, at the board's discretion.

(4) No previously issued license to engage in the practice of nursing home administration shall be revoked or suspended until a hearing has been conducted pursuant to section 24-4-105, C.R.S., or, for emergency situations, pursuant to section 24-4-104 (4), C.R.S. The

denial of an application to renew an existing license shall be treated in all respects as a revocation.

(5) Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any liability, civil or criminal, that otherwise might result by reason of such action.

(6) Complaints, investigations, hearings, meetings, or any other proceedings of the board conducted pursuant to the provisions of this article and relating to disciplinary proceedings shall be exempt from the provision of any law requiring that proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to the provisions of this article be open to public inspection; except that this exemption shall apply only when the board, or an administrative law judge acting on behalf of the board specifically determines that it is in the best interest of a complainant or other recipient of services to keep such proceedings or documents relating thereto closed to the public, or if the licensee is violating section 12-39-111 (1) (g), participating in good faith in a program approved by the board or designed by the board to end any addiction or dependency specified in said section, and the licensee has not violated any provisions of the board order regarding participation in such a treatment program. If the board determines that it is in the best interest of a complainant or other recipient of services to keep such proceedings or documents relating thereto closed to the public, then the final action of the board shall be open to the public without disclosing the name of the client or other recipient. Final board actions and orders appropriate for judicial review may be judicially reviewed in the court of appeals in accordance with section 24-4-106 (11), C.R.S.

(7) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.

Source: L. 93: Entire article R&RE, p. 1480, § 1, effective July 1. L. 2006: (7) added, p. 803, § 33, effective July 1.

Editor's note: This section is similar to former § 12-39-112 as it existed prior to 1993.

12-39-115. Temporary advisory committees - immunity. (1) The board may appoint temporary advisory committees, including temporary professional review committees, to assist in the performance of its duties with respect to individual investigations. Each temporary advisory committee shall consist of at least three licensees who have expertise in the area under review. Members of temporary advisory committees shall receive no compensation for their services but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties.

(2) If a professional review committee is established pursuant to subsection (1) of this section to investigate the quality of care being given by a person licensed pursuant to this article, such committee shall include in its membership at least three persons licensed in the same category as the licensee under review, but such committee may be authorized to act only by the board.

(3) Any member of the board or of a professional review committee, any member of the board's or committee's staff, any person acting as a witness or consultant to the board or committee, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board or committee member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 93: Entire article R&RE, p. 1481, § 1, effective July 1. L. 2004: (3) amended, p. 1840, § 87, effective August 4.

12-39-116. Unauthorized practice - penalties.

(1) Repealed.

(2) Any person who practices or offers or attempts to practice as a nursing home administrator without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and any person who commits a second or subsequent offense commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 93: Entire article R&RE, p. 1481, § 1, effective July 1. L. 2002: (2) amended, p. 1480, § 82, effective October 1. L. 2006: (1) repealed and (2) amended, p. 90, §§ 38, 37, effective August 7.

Editor's note: (1) This section is similar to former § 12-39-113 as it existed prior to 1993.

(2) Subsections (1)(a), (1)(b), (1)(c), and (1)(d) were relocated to § 12-39-111 (1)(l), (1)(m), (1)(n), and (1)(o) in 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-39-117. Cease-and-desist orders. (1) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required license, the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (1), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(2) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (2) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (2). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (2) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's

determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (2), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom such order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(3) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the board may enter into a stipulation with such person.

(4) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(5) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-39-114 (6).

Source: L. 93: Entire article R&RE, p. 1482, § 1, effective July 1. L. 2006: Entire section amended, p. 804, § 34, effective July 1.

12-39-118. Injunctive proceedings. The board, in the name of the people of the state of Colorado, may apply for injunctive relief through the attorney general or the district attorney in any court of competent jurisdiction to enjoin any person who does not possess a currently valid or active nursing home administrator's license from committing any act declared to be unlawful or prohibited by this article. In any action taken pursuant to this section the court shall not require the board to plead or prove irreparable injury or inadequacy of a remedy at law or to post a bond. If it is established that the defendant has been or is committing an act declared to be unlawful or prohibited by this article, the court or any judge thereof shall enter a decree perpetually enjoining said defendant from further committing such act. In the case of a violation of any injunction issued under the provisions of this section, the court or any judge thereof may summarily try and punish the offender for contempt of court. Such injunctive proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided in this article.

Source: L. 93: Entire article R&RE, p. 1482, § 1, effective July 1.

Editor's note: This section is similar to former § 12-39-114 as it existed prior to 1993.

12-39-119. Administration of nursing homes relying on treatment by spiritual means. A person who serves as an administrator of a nursing home conducted exclusively for persons who rely upon treatment by spiritual means alone, through prayer in accordance with the creed or tenets of a church or religious denomination, shall be exempt from the provisions of this article.

Source: L. 93: Entire article R&RE, p. 1482, § 1, effective July 1.

Editor's note: This section is similar to former § 12-39-118 as it existed prior to 1993.

12-39-120. Records. The board shall keep formal records of all complaints it receives and of the final disposition of such complaints. The board shall be responsible for implementing a tracking system to facilitate the retrieval of such records.

Source: L. 93: Entire article R&RE, p. 1483, § 1, effective July 1.

12-39-121. Repeal of article. (1) This article is repealed, effective July 1, 2018.

(2) Prior to such repeal, the licensing functions of the board of examiners of nursing home administrators shall be reviewed as provided in section 24-34-104, C.R.S.

Source: L. 93: Entire article R&RE, p. 1482, § 1, effective July 1. **L. 99:** (1) amended, p. 362, § 7, effective July 1. **L. 2009:** (1) amended, (SB 09-169), ch. 225, p. 1021, § 1, effective May 4.

ARTICLE 40

Optometrists

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12-40-101. Legislative declaration. The practice of optometry in the state of Colorado is declared to affect the public health and safety and is subject to regulation and control in the public interest. Optometry is declared to be a learned profession, and it is further declared to be a matter of public interest and concern that the practice of optometry as defined in this article be limited to qualified persons having been examined and meeting this state's minimum acceptable level of competence and having been admitted to the practice of optometry under the provisions of this article. The priority of this article shall be to

protect the consumers of the services provided through appropriate disciplinary procedures. This article shall be liberally construed to carry out these objects and purposes in accordance with this declaration of policy.

Source: L. 61: p. 578, § 1. **CRS 53:** § 102-2-1. **C.R.S. 1963:** § 102-1-1. **L. 92:** Entire section amended, p. 2020, § 1, effective July 1.

ANNOTATION

The regulation of the practice of optometry by the general assembly is constitutionally permissible under the police power because like other learned professions, it affects the public health, safety, and welfare. *Dixon v. Zick*, 179 Colo. 278, 500 P.2d 130 (1972).

In carrying out the responsibility of regulating the practice of optometry, a law enacted must reasonably bear upon or relate to the health, safety, and welfare of the public. *Dixon v. Zick*, 179 Colo. 278, 500 P.2d 130 (1972).

12-40-102. Practice of optometry defined. (1) (a) The “practice of optometry” means the evaluation, diagnosis, prevention, or treatment of diseases, disorders, or conditions of the vision system, eyes, and adjacent and associated structures, including the use or prescription of lenses, prisms, vision therapy, vision rehabilitation, and prescription or nonprescription drugs including schedule III, IV, and V controlled narcotic substances for ocular disease, so long as an optometrist is practicing within the scope of his or her education as is commonly taught in accredited schools and colleges of optometry and is practicing in accordance with applicable federal and Colorado law and board rules.

(b) The following are part of the practice of optometry:

- (I) The removal of superficial foreign bodies from the human eye or its appendages;
- (II) Postoperative care in the following situations:
 - (A) With referral from a physician;
 - (B) If ninety days have expired after the surgery unless the physician justifies medically indicated reasons for extending the postoperative period; and
 - (C) If the patient has been released by the physician;
- (III) The treatment of anterior uveitis;
- (IV) The treatment of glaucoma with all topical and oral antiglaucoma drugs;
- (V) Epilation;
- (VI) Dilation and irrigation of the lacrimal system;
- (VII) Punctal plug insertion and removal;
- (VIII) Anterior corneal puncture;
- (IX) Corneal scraping for cultures;
- (X) Debridement of corneal epithelium; and
- (XI) Removal of corneal epithelium.

(c) Any person who is engaged in the prescribing or performing without referral of visual training or orthoptics, the prescribing of any contact lenses, including plano or cosmetic contact lenses, the fitting or adaptation of such contact lenses to the human eye, the use of scientific instruments to train the visual system or any abnormal condition of the eyes for the correction or improvement of, or the relief to, the visual function, or who holds oneself out as being able to do so, is engaged in the practice of optometry.

(d) The “practice of optometry” does not include:

(I) Surgery of or injections into the globe, orbit, eyelids, or ocular adnexa. “Surgery” means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or laser means.

(II) The use of schedule I or II narcotics;

(III) Treatment of posterior uveitis; or

(IV) The use of injectable drugs, except for the use of an epinephrine auto-injector to counteract anaphylactic reaction.

(2) A licensed optometrist who uses or prescribes prescription or nonprescription drugs shall provide the same level and standard of care to his or her patients as the standard of care provided by an ophthalmologist using or prescribing the same drugs.

(3) A therapeutic optometrist is an optometrist licensed pursuant to this article who meets the requirements of section 12-40-109.5 (1.5) and (3). A licensed optometrist shall not use prescription or nonprescription drugs for treatment of eye disease or disorder or for any therapeutic purpose unless he or she is a therapeutic optometrist.

(4) (Deleted by amendment, L. 2011, (SB 11-094), ch. 129, p. 443, § 10, effective April 22, 2011.)

(5) (a) (Deleted by amendment, L. 2011, (SB 11-094), ch. 129, p. 443, § 10, effective April 22, 2011.)

(b) Nothing in this section prohibits an optometrist from charging a fee for prescribing, adjusting, fitting, adapting, or dispensing ophthalmic devices, such as contact lenses, that are classified by the federal food and drug administration as a drug, as long as the drug delivered by the ophthalmic device is not a schedule I or II controlled substance.

(6) (Deleted by amendment, L. 2011, (SB 11-094), ch. 129, p. 443, § 10, effective April 22, 2011.)

(7) (a) An optometrist who meets the requirements established by the board pursuant to sections 12-40-107 (1) (n) and 12-40-109.5 (3) may treat anterior uveitis and glaucoma.

(b) (Deleted by amendment, L. 2002, p. 60, § 5, effective July 1, 2002.)

Source: L. 61: p. 579, § 1. **CRS 53:** § 102-2-4. **C.R.S. 1963:** § 102-1-4. **L. 79:** Entire section amended, p. 528, § 1, effective June 7; entire section amended, p. 1666, § 136, effective July 19. **L. 83:** Entire section amended, p. 545, § 1, effective July 1. **L. 88:** Entire section amended, p. 528, § 1, effective July 1. **L. 92:** (5) amended, p. 2020, § 2, effective July 1. **L. 96:** (1), (3), and (5) amended and (6) and (7) added, p. 1885, § 1, effective July 1. **L. 2002:** (5) and (7) amended, pp. 59, 60, §§ 4, 5, effective July 1. **L. 2009:** (5) amended, (SB 09-251), ch. 249, p. 1121, § 2, effective July 1. **L. 2011:** (1) to (6) amended, (SB 11-094), ch. 129, p. 443, § 10, effective April 22.

ANNOTATION

Optometrists may prescribe contact lenses.
Winograd v. Johnson, 38 Colo. App. 432, 561 P.2d 1274 (1976).

Applied in Dixon v. State Bd. of Optometric Exam'rs, 39 Colo. App. 200, 565 P.2d 960 (1977).

12-40-103. Proprietor defined. (1) The term “proprietor”, as used in this article, includes any person, group, association, or corporation not licensed under this article who:

(a) For financial gain employs optometrists in the operation of an optometry office;

(b) Places, directly or indirectly, in possession of an optometrist such materials or equipment as may be necessary for the operation of an optometrist's office on the basis of any fee splitting, income division, profit sharing, or similar agreement or on any basis that has the effect of any such agreement, but the term “proprietor” does not include the bona fide seller of optometry equipment or material secured by chattel mortgage, conditional sales contract, or other title retention agreements or the bona fide leasing of such equipment by the manufacturer or by his or her franchised dealer; or

(c) Under the guise of a rental percentage lease or sublease or other leasing or rental arrangement, participates in the direction and control of a licensee's practice and business or in the receipts or profits accruing therefrom, but a bona fide percentage sale lease basing the rental of the premises let upon a percentage of gross income of not to exceed the reasonable, going rate for like quarters and location, as determined by the board after investigation, shall not be deemed an avoidance of the provisions of this section. Certified copies of all such leasing and rental arrangements and renewals thereof shall be filed with the board by the licensee within thirty days after execution.

Source: L. 61: p. 579, § 1. **CRS 53:** § 102-2-5. **C.R.S. 1963:** § 102-1-5. **L. 2011:** (1)(a) and (1)(b) amended, (SB 11-094), ch. 129, p. 445, § 11, effective April 22.

ANNOTATION

Annotator's note. Since § 12-40-103 is similar to repealed CSA, C. 120, § 20, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

None of the general prohibitions in § 12-40-118 relate to the geographic location of the place where the practice of the profession is conducted, nor do the proscriptions of this section, but on the contrary, all of the provisions are directed to the conduct of the licensee or a

“proprietor”. *Dixon v. Zick*, 179 Colo. 278, 500 P.2d 130 (1972).

A physician cannot practice generally as the employee of a layman, whereas an optometrist may. *People v. Painless Parker Dentist*, 85 Colo. 304, 275 P. 928 (1929).

If a physician practices only the optometric branch of his profession under employment by a layman he is protected by this section. *Bebber v. Fisher*, 106 Colo. 197, 102 P.2d 741 (1940).

12-40-104. Persons entitled to practice optometry - title protection of optometrists. It shall be unlawful for any person to practice optometry in this state, except those who are duly licensed optometrists before July 1, 1961, pursuant to the law of this state and those who are duly licensed optometrists pursuant to the provisions of this article. A person licensed as an optometrist pursuant to the provisions of this article may use the title “optometrist”, the initials “O.D.”, or the term “doctor of optometry”. No other person shall use the title “optometrist”, “O.D.”, “doctor of optometry”, or any other word or abbreviation to indicate or induce others to believe that one is licensed to practice optometry in this state.

Source: L. 61: p. 578, § 1. CRS 53: § 102-2-2. C.R.S. 1963: § 102-1-2. L. 92: Entire section amended, p. 2021, § 3, effective July 1.

ANNOTATION

This section prohibits an unlicensed person or optician fitting or adapting contact lenses to the human eye. *Burt v. People ex rel. Dunbar*, 161 Colo. 193, 421 P.2d 480 (1966).

Where an injunction forbids the use of any optical instrument or the performance of any act when done “for the purpose of fitting or adapting contact lenses to the human eye” unless licensed to do so prior thereto, the trial court erred in finding that the optician had violated its order and in adjudging him in contempt, because nothing in the act prohibits an optician from examining and commenting on the physical characteristics of contact lenses. *Burt v. People ex rel. Dunbar*, 161 Colo. 193, 421 P.2d 480 (1966).

Where the evidence shows that there was no prescribing or fitting or adapting of lenses to eyes, and the optician exercised no medical judgment by his acts and gave no medical advice, his comments relating merely to the physical characteristics of the lenses presented, even the placing of the nonprescription dye in the eyes and looking at the lenses when they were on, so long as he did not attempt to do anything about what he saw, is not within the prohibition of either this section or the injunction. *Burt v. People ex rel. Dunbar*, 161 Colo. 193, 421 P.2d 480 (1966).

12-40-105. Persons excluded from operation of this article. (1) This article does not apply to:

(a) Professional practice by a physician or surgeon licensed to practice medicine under the laws of the state of Colorado and ancillary or technical assistants working under the direction of any such physician or surgeon, with the exception of the fitting of contact lenses which must be done under the physician's or surgeon's direct supervision;

(b) The practice of optometry in the discharge of their official duties by optometrists or physicians and surgeons in the service of the United States armed forces, public health service, Coast Guard, or veterans administration;

(c) Opticians, persons, firms, and corporations who duplicate or repair spectacles or eyeglasses; opticians, persons, firms, and corporations who supply or sell spectacles, eyeglasses, or ophthalmic lenses, including but not limited to contact lenses, if such spectacles, eyeglasses, and ophthalmic lenses are provided pursuant to a valid prescription;

(d) Persons serving a post-doctorate residency or an optometry student internship under the supervision of an optometrist licensed in Colorado as part of a curriculum from an accredited college of optometry.

Source: **L. 61:** p. 578, § 1. **CRS 53:** § 102-2-3. **C.R.S. 1963:** § 102-1-3. **L. 79:** (1)(c) added, p. 528, § 2, and (1) amended, p. 529, § 3, effective June 7. **L. 92:** Entire section amended, p. 2021, § 4, effective July 1. **L. 2002:** (1)(c) amended, p. 60, § 6, effective July 1. **L. 2011:** IP(1) and (1)(d) amended, (SB 11-094), ch. 129, p. 445, § 12, effective April 22.

12-40-106. State board of optometry - subject to termination. (1) (a) The state board of optometry, referred to in this article as the “board”, is under the supervision and control of the division of professions and occupations as provided by section 24-34-102, C.R.S. The board consists of five optometrists and two members-at-large, to be appointed by the governor to serve for terms of four years; except that no person shall be appointed to serve more than two consecutive terms. Each member of the board, except for the members-at-large, must have been actually engaged and licensed in the practice of optometry in Colorado for the five years preceding the member’s appointment. At least one of the two members-at-large must not be a member or representative of, nor have any direct interest in, any profession, agency, or institution providing health services.

(b) Any four members of the board constitute a quorum for the purpose of holding examinations, granting licenses, or transacting any business connected with the board.

(c) The governor shall fill a vacancy in the membership of the board for the remainder of the unexpired term. The governor may remove a member of the board for misconduct, incompetency, or neglect of duty.

(d) A board member having a personal or private interest in any matter before the board shall disclose such fact to the board and shall not participate in related discussions or votes.

(2) The board shall organize annually by electing one of its members as president and one as vice-president.

(3) (a) Repealed.

(b) (Deleted by amendment, L. 92, p. 2021, § 5, effective July 1, 1992.)

Source: **L. 61:** p. 580, § 1. **CRS 53:** § 102-2-6. **C.R.S. 1963:** § 102-1-6. **L. 68:** p. 123, § 119. **L. 73:** p. 1073, § 1. **L. 76:** (3) added, p. 624, § 23, effective July 1. **L. 79:** IP(1), (1)(b), and (1)(c) amended, p. 529, § 3, effective June 7. **L. 85:** (1) and (2) amended, p. 533, § 1, effective July 1. **L. 87:** (1) amended, p. 904, § 8, effective June 15. **L. 91:** (3) amended, p. 683, § 30, effective April 20. **L. 92:** (1) and (3) amended, p. 2021, § 5, effective July 1. **L. 2002:** (3)(a) repealed, p. 62, § 12, effective July 1. **L. 2011:** (1) and (2) amended, (SB 11-094), ch. 129, p. 442, § 9, effective April 22.

12-40-107. Powers and duties of the board - rules. (1) In addition to all other powers and duties conferred upon the board by this article, the board has the following powers and duties:

(a) To determine acceptability of scores from tests administered by any approved or accredited national testing organization;

(b) To prescribe rules to carry out effectively the provisions of this article. The board shall set the passing score of any examination at a minimum acceptable level of competence for the practice of optometry.

(c) Repealed.

(d) To grant licenses in conformity with this article to such applicants as have been found qualified;

(e) and (f) Repealed.

(g) To adopt and promulgate such rules and regulations as the board may deem necessary or proper to carry out the provisions and purposes of this article;

(h) Repealed.

(i) (Deleted by amendment, L. 92, p. 2022, § 6, effective July 1, 1992.)

(j) To aid the several district attorneys of this state in the enforcement of this article and in the prosecution of all persons, firms, associations, or corporations charged with the violation of any of its provisions;

(k) To establish programs of education for optometrists wishing to enter new, proven, and generally accepted areas of lawful practice involving techniques for which they have not received appropriate education;

(l) To prepare and distribute to consumers as is reasonably necessary written communication providing information concerning the board and the regulation of optometry in Colorado;

(m) (l) To make investigations, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the board.

(II) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board.

(III) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(n) To prescribe rules authorizing optometrists to utilize therapeutic procedures and therapeutic techniques in the practice of optometry as defined in section 12-40-102. These rules shall in no way expand the practice of optometry as defined in section 12-40-102 nor shall such rules include the use of therapeutic or cosmetic lasers. Such rules shall specify approved programs of education offered by an accreditation organization recognized or approved by the commission on recognition of postsecondary accreditation or the United States department of education or their successors.

(2) Repealed.

Source: L. 61: p. 580, § 1. CRS 53: § 102-2-7. C.R.S. 1963: § 102-1-7. L. 79: IP(1), (1)(b); and (1)(c) amended and (1)(g) to (1)(k) added, p. 529, § 4, effective June 7. L. 82: (1)(j) amended, p. 622, § 12, effective April 4. L. 83: (1)(l) amended, p. 830, § 22, effective July 1. L. 85: (1)(g) amended, p. 534, § 2, and (1)(c), (1)(e), (1)(f), and (1)(h) repealed, p. 539, § 15, effective July 1. L. 92: Entire section amended, p. 2022, § 6, effective July 1. L. 96: (1)(n) added, p. 1886, § 2, effective July 1. L. 2002: (2) repealed, p. 60, § 7, effective July 1. L. 2004: (1)(m) amended, p. 1841, § 88, effective August 4. L. 2011: (1)(a), (1)(b), (1)(k), and (1)(l) amended, (SB 11-094), ch. 129, p. 446, § 13, effective April 22.

ANNOTATION

Any regulations by an administrative body charged with the responsibility of implementing the legislative act regulating practice of optometry must reasonably relate to the public health, safety, and welfare. *Dixon v. Zick*, 179 Colo. 278, 500 P.2d 130 (1972).

State board of optometric examiners must strictly comply with its enabling statute. *Sherrerd v. Johnson*, 32 Colo. App. 367, 511 P.2d 923 (1973).

The optometry statute contains no provisions governing the procedures to be followed

by the board under the rule-making power. *Colo. State Bd. of Optometric Exam'rs v. Dixon*, 165 Colo. 488, 440 P.2d 287 (1968).

The general provisions of the administrative code are therefore applicable. *Colo. State Bd. of Optometric Exam'rs v. Dixon*, 165 Colo. 488, 440 P.2d 287 (1968).

Judicial review, including injunctive relief, is available to persons aggrieved by agency "action" including an agency rule, where irreparable damage would otherwise result. *Colo. State Bd. of Optometric Exam'rs v. Dixon*, 165

Colo. 488, 440 P.2d 287 (1968).

The trial court is specifically authorized to postpone the effective date of agency action pending review. Colo. State Bd. of Optometric Exam'rs v. Dixon, 165 Colo. 488, 440 P.2d 287 (1968).

The supreme court could not say as a mat-

ter of law that there was an abuse of discretion in revoking the license under the uncontradicted evidence of immoral and unprofessional conduct. Cardamon v. State Bd. of Optometric Exam'rs, 165 Colo. 520, 441 P.2d 25 (1968).

12-40-107.2. Volunteer optometrist license. (1) A person licensed to practice optometry pursuant to this article may apply to the board for volunteer licensure status. The board shall designate the form and manner of the application. The board may:

(a) Grant the application by issuing a volunteer license; or
(b) Deny the application if the licensee has been disciplined for any of the causes set forth in section 12-40-118.

(2) A person applying for a license under this section:

(a) Must either:

(I) Hold an active and unrestricted license to practice optometry in Colorado and be in active practice in this state; or

(II) Have been on inactive status pursuant to article 70 of this title for not more than two years; and

(b) Shall:

(I) Pay a reduced license fee in lieu of the fee authorized by section 24-34-105, C.R.S. The director shall reduce the volunteer optometrist license fee from the license fee charged pursuant to section 12-40-113 (1) (a).

(II) Attest that, after a date certain, the applicant will no longer earn income as an optometrist;

(III) Maintain liability insurance as provided in section 12-40-126; and

(IV) Comply with the continuing education requirements established in section 12-40-113 (1) (f); except that the board may establish lesser continuing education requirements for volunteer licensees.

(3) The face of each volunteer license issued pursuant to this section shall plainly indicate the volunteer status of the licensee.

(4) The board may conduct disciplinary proceedings pursuant to section 12-40-119 against any person licensed under this section for an act committed while the person was licensed pursuant to this section.

(5) A person licensed under this section may apply to the board for a return to active licensure status by filing an application in the form and manner designated by the board. The board may approve such application and issue a license to practice optometry or may deny the application if the licensee has been disciplined for or engaged in any of the activities set forth in section 12-40-118.

(6) An optometrist with a volunteer license shall provide optometry services only if the services are performed on a limited basis for no fee or other compensation.

Source: L. 2011: Entire section added, (SB 11-094), ch. 129, p. 437, § 4, effective April 22.

12-40-107.5. Limitation on authority. The authority granted the board under the provisions of this article shall not be construed to authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

Source: L. 89: Entire section added, p. 673, § 16, effective July 1.

Cross references: For the legislative declaration contained in the 1989 act enacting this section, see section 1 of chapter 111, Session Laws of Colorado 1989.

12-40-108. Application for license - licensure by endorsement. (1) A person who desires to practice optometry in the state may file with the board an application for a license, giving the information required in a form and manner approved by the board. The applicant shall demonstrate that he or she possesses the following qualifications:

- (a) The applicant has attained the age of twenty-one years.
- (b) The applicant has graduated with the degree of doctor of optometry from a school or college of optometry accredited by a regional or professional accreditation organization that is recognized or approved by the council on postsecondary accreditation or the United States commissioner of education. The board has the authority, upon its investigation and approval of the standards thereof, to approve any other college of optometry.
- (c) The applicant has successfully passed the written examination of the national board of examiners in optometry. The board shall have the authority, upon its investigation and approval of the examination standards, to approve some body other than the national board of examiners in optometry as the examining body.

(c.5) Repealed.

(d) The applicant is not addicted to or dependent on, and has not habitually or excessively used or abused, intoxicating liquors, habit-forming drugs, or controlled substances as defined in section 18-18-102 (5), C.R.S.

(e) After July 1, 1988, the applicant has satisfied the requirements of section 12-40-109.5 or equivalent requirements approved by the board, including passing a standardized national examination in the treatment and management of ocular disease.

(f) After July 1, 1996, the applicant has satisfied the requirements of section 12-40-109.5 (3) or equivalent requirements approved by the board, including passing a standardized national examination in the treatment and management of ocular disease.

(2) (Deleted by amendment, L. 2011, (SB 11-094), ch. 129, p. 446, § 14, effective April 22, 2011.)

(3) (a) The board may issue a license by endorsement to engage in the practice of optometry to an applicant who:

(I) (A) Is currently licensed and is in practice and good standing in another state or territory of the United States or in a foreign country if the applicant presents proof satisfactory to the board at the time of application for a Colorado license by endorsement;

(B) Pays a fee as prescribed by the board; and

(II) (A) Possesses credentials and qualifications that are substantially equivalent to requirements for licensure by examination; or

(B) Has demonstrated competency as an optometrist as determined by the board.

(b) The board shall specify by rule what shall constitute substantially equivalent credentials and qualifications or competency.

Source: L. 61: p. 581, § 1. CRS 53: § 102-2-8. C.R.S. 1963: § 102-1-8. L. 73: p. 529, § 67. L. 77: (1)(a) amended, p. 643, § 6, effective March 16. L. 79: (1)(b) and (1)(c) amended and (1)(c.5) added, p. 530, § 5, effective June 7. L. 81: (1)(d) amended, p. 736, § 14, effective July 1. L. 85: IP(1) and (1)(c) amended, p. 534, § 3, and (1)(c.5) repealed, p. 539, § 15, effective July 1. L. 88: (1)(e) amended, p. 529, § 2, effective July 1. L. 92: (3) added, p. 2024, § 7, effective July 1. L. 96: IP(1) amended and (1)(f) added, p. 1887, § 3, effective July 1. L. 2002: (1)(a), (1)(b), (1)(c), (1)(d), and (1)(e) amended, p. 61, § 10, effective July 1. L. 2004: (1)(d) amended, p. 1195, § 40, effective August 4. L. 2010: (3) amended, (HB 10-1175), ch. 46, p. 175, § 5, effective July 1, 2011. L. 2011: IP(1), (1)(b), and (2) amended, (SB 11-094), ch. 129, p. 446, § 14, effective April 22. L. 2012: (1)(d) amended, (HB 12-1311), ch. 281, p. 1614, § 22, effective July 1.

12-40-108.5. Current licensees - treatment and therapeutic practice. On and after July 1, 1988, a person who is licensed under this article as an optometrist on June 30, 1988, and who is otherwise qualified under this article may use prescription or nonprescription drugs for examination purposes. However, such optometrist may use prescription or nonprescription drugs for treatment of eye disease or disorder or for any therapeutic purpose only if he or she meets the requirements of section 12-40-109.5 (1.5) and (3) on or after July 1, 1988.

Source: **L. 88:** Entire section added, p. 529, § 3, effective July 1. **L. 96:** Entire section amended, p. 1887, § 4 effective July 1. **L. 2011:** Entire section amended, (SB 11-094), ch. 129, p. 447, § 15, effective April 22.

12-40-109. Examination - licenses. (1) The applicant shall take and submit test scores from the board-approved exam. The examination shall be of such a character as to test the qualifications of the applicant to practice optometry.

(2) Each person who makes a passing grade on the practical and clinical examination and who is otherwise qualified shall be granted a license signed by the board. The license provided for in this section shall be in such form and wording as may be adopted by the board. The optometrist shall display his or her license for viewing by his or her patients, as provided in section 12-40-115. An application for initial licensure as an optometrist shall be accompanied by a processing fee in an amount to be determined by the board pursuant to section 24-34-105, C.R.S.

(3) Any person denied a license under this article and believing himself aggrieved thereby may pursue the remedy for review as provided under article 4 of title 24, C.R.S., if such action is instituted within a period of sixty days after the date of denial.

(4) A person who fails to pass the examination provided for in this section may retake the examination the next time said examination is given.

Source: **L. 61:** p. 582, § 1. **CRS 53:** § 102-2-9. **C.R.S. 1963:** § 102-1-9. **L. 79:** (1) and (2) amended, p. 531, § 6, effective June 7. **L. 85:** (2) and (3) amended and (4) added, p. 534, § 4, effective July 1. **L. 88:** (2) amended, p. 530, § 4, effective July 1. **L. 92:** (1) amended, p. 2024, § 8, effective July 1. **L. 2002:** (1) and (4) amended, p. 61, § 8, effective July 1. **L. 2011:** (1) and (2) amended, (SB 11-094), ch. 129, p. 447, § 16, effective April 22.

ANNOTATION

Former section required the “standard examination” of all persons desiring to commence or continue the practice except as oth-

erwise provided. *Bebber v. Fisher*, 106 Colo. 197, 102 P.2d 741 (1940) (decided under repealed CSA, C. 120, § 8).

12-40-109.5. Use of prescription and nonprescription drugs. (1) Notwithstanding section 12-42.5-118, a licensed optometrist may purchase, possess, and administer prescription or nonprescription drugs for examination purposes only if, after July 1, 1983, the optometrist has complied with the following minimum requirements: Successful completion, by attendance and examination, of at least fifty-five classroom hours of study in general, ocular, and clinical pharmacology which must have been completed within twenty-four months preceding the application for certification; except that, in the event that such classroom hours have been completed since 1976, only six of such classroom hours must have been completed within twenty-four months preceding the application for certification. The courses shall be offered by an institution that is accredited by a regional or professional accreditation organization recognized or approved by the council on postsecondary education or the United States department of education or their successors.

(1.5) Notwithstanding section 12-42.5-118, a licensed optometrist may purchase, possess, administer, and prescribe prescription or nonprescription drugs for treatment on and after July 1, 1988, only if the optometrist has complied with the following minimum requirements within twenty-four months preceding the application for certification: Successful completion, by attendance and examination, of at least sixty classroom hours of study in ocular pharmacology, clinical pharmacology, therapeutics, and anterior segment disease; and successful completion by attendance and examination of at least sixty hours of approved supervised clinical training in the examination, diagnosis, and treatment of conditions of the human eye and its appendages. The courses shall be offered by an institution that is accredited by a regional or professional accreditation organization recognized or approved by the council of postsecondary education or the United States department of education or their successors.

(2) The optometrist shall successfully complete a course in cardiopulmonary resuscitation within twenty-four months before using prescription or nonprescription drugs and shall pass a written and clinical examination approved by the board.

(3) In addition to the requirements of section 12-40-108.5, each therapeutic optometrist shall meet all requirements prescribed by the board before commencing treatment of glaucoma or anterior uveitis.

Source: **L. 83:** Entire section added, p. 546, § 2, effective July 1. **L. 84:** (1) amended, p. 422, § 1, effective March 16. **L. 88:** (1) amended and (1.5) added, p. 530, § 5, effective July 1. **L. 96:** (3) added, p. 1887, § 5, effective July 1. **L. 2011:** Entire section amended, (SB 11-094), ch. 129, p. 447, § 17, effective April 22. **L. 2012:** (1) and (1.5) amended, (HB 12-1311), ch. 281, p. 1614, § 23, effective July 1.

12-40-109.7. Prescriptions - requirement to advise patients. (1) An optometrist licensed under this article may advise the optometrist's patients of their option to have the symptom or purpose for which a prescription is being issued included on the prescription order.

(2) An optometrist's failure to advise a patient under subsection (1) of this section shall not be grounds for any disciplinary action against the optometrist's professional license issued under this article.

Source: **L. 2003:** Entire section added, p. 765, § 8, effective March 25.

12-40-110. Examination fees. (Repealed)

Source: **L. 61:** p. 584, § 1. **CRS 53:** § 102-2-14. **C.R.S. 1963:** § 102-1-14. **L. 73:** p. 1078, § 1. **L. 79:** Entire section repealed, p. 535, § 14, effective June 7.

12-40-111. Disposition of fees - reports - publications. (1) All fees prescribed in this article shall be determined and collected pursuant to section 24-34-105, C.R.S.

(2) and (3) Repealed.

Source: **L. 61:** p. 584, § 1. **CRS 53:** § 102-2-15. **C.R.S. 1963:** § 102-1-15. **L. 64:** p. 159, § 110. **L. 73:** p. 1376, § 38. **L. 79:** (1) R&RE, p. 531, § 7, effective June 7; (1) amended, p. 910, § 10, and (2) amended, p. 439, § 19, effective July 1. **L. 83:** (2) and (3) amended, p. 830, § 23, effective July 1. **L. 96:** (2) and (3) repealed, p. 1226, § 35, effective August 7. **L. 2011:** (1) amended, (SB 11-094), ch. 129, p. 448, § 18, effective April 22.

Cross references: For the legislative declaration contained in the 1996 act repealing subsections (2) and (3), see section 1 of chapter 237, Session Laws of Colorado 1996.

12-40-112. Retention of examination papers. (Repealed)

Source: **L. 61:** p. 582, § 1. **CRS 53:** § 102-2-10. **C.R.S. 1963:** § 102-1-10. **L. 85:** Entire section repealed, p. 539, § 15, effective July 1.

12-40-113. License renewal - requirements - fee - failure to pay. (1) (a) On or before a date designated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies, licenses shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. Any

person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(b) The board shall establish a questionnaire to accompany the renewal form. Said questionnaire shall be designed to determine if the licensee has acted in violation of or has been disciplined for actions that might be considered as violations of this article or that might make the licensee unfit to practice optometry with reasonable care and safety. Failure of the applicant to answer the questionnaire accurately shall be considered unprofessional conduct as specified in section 12-40-118.

(c) Repealed.

(d) and (e) (Deleted by amendment, L. 2004, p. 1841, § 89, effective August 4, 2004.)

(f) Effective April 1, 1993, in addition to all other requirements of this section for license renewal, the board shall require that each optometrist seeking to renew a license shall have completed twenty-four hours of board-approved continuing education. Any optometrist desiring to renew a license to practice optometry in this state shall submit to the board the information the board believes is necessary to show that the optometrist has fulfilled the continuing education requirements of this paragraph (f). Implementation of this paragraph (f) shall occur within existing appropriations.

(2) Repealed.

Source: L. 61: p. 583, § 1. CRS 53: § 102-2-12. C.R.S. 1963: § 102-1-12. L. 73: p. 1075, § 1. L. 79: (1) amended, p. 532, § 8, and (2) repealed, p. 535, § 14, effective June 7. L. 85: (1) amended, p. 535, § 5, effective July 1. L. 92: Entire section amended, p. 2024, § 9, effective July 1. L. 2004: (1)(a) and (1)(c) to (1)(e) amended, p. 1841, § 89, effective August 4. L. 2011: (1)(c) repealed, (SB 11-094), ch. 129, p. 448, § 19, effective April 22.

Editor's note: Subsection (2) was repealed, effective June 7, 1979, prior to the entire section being amended in 1992.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8).

ANNOTATION

A licensed physician who was also licensed as an optometrist under the laws of 1913 but who did not apply for a renewal of his license within 30 days in 1925 was either entitled to practice optometry, as the employee of a layman, by virtue of his physician's license, or by

virtue thereof, he was entitled, without examination, to an optometrist's license provided he paid the statutory fees. *Bebber v. Fisher*, 106 Colo. 197, 102 P.2d 741 (1940) (decided under repealed CSA, C. 120, § 15).

12-40-114. Change of address.

(1) and (2) Repealed.

(3) Every person licensed under this article shall notify the board in writing within thirty days of any change in mailing address.

Source: L. 61: p. 583, § 1. CRS 53: § 102-2-13. C.R.S. 1963: § 102-1-13. L. 73: p. 1077, § 1. L. 79: (2) amended, p. 532, § 9, effective June 7. L. 85: Entire section amended, p. 535, § 6, effective July 1. L. 2011: (1) and (2) repealed, (SB 11-094), ch. 129, p. 449, § 20, effective April 22.

12-40-115. Licenses to be displayed. Every practitioner of optometry shall post and keep conspicuously displayed his or her license in the office wherein he or she practices. If an optometrist practices at several locations in the state, the optometrist shall display his or her license number and name in a manner that can be easily recognized by his or her patients. Each association of persons who engage in the practice of optometry under the

name of a partnership, association, or any other title shall cause to be displayed and kept in a conspicuous place at the entrance of its place of business the name of each person engaged or employed in said partnership or association in the practice of optometry.

Source: L. 61: p. 583, § 1. CRS 53: § 102-2-11. C.R.S. 1963: § 102-1-11. L. 85: Entire section amended, p. 536, § 7, effective July 1. L. 2011: Entire section amended, (SB 11-094), ch. 129, p. 449, § 21, effective April 22.

12-40-116. Records to be kept by the board. The board shall keep a record of all persons to whom licenses have been granted under this article. A copy of said records, certified by the board, shall be admitted in any of the courts of this state, in lieu of the originals, as prima facie evidence of the facts contained in said records. A copy of said records certified by the board of a person charged with a violation of any of the provisions of this article shall be evidence that such person has not been licensed to practice optometry.

Source: L. 61: p. 586, § 1. CRS 53: § 102-2-18. C.R.S. 1963: § 102-1-18. L. 85: Entire section amended, p. 536, § 8, effective July 1. L. 92: Entire section amended, p. 2026, § 10, effective July 1.

ANNOTATION

Law reviews. For article, “The Perennial Problem of Security Priority and Recordation”, see 24 Rocky Mt. L. Rev. 180 (1952).

Section does not provide for categorization of test scores. While this statute delineates all of the areas that are to be tested and provides that each candidate must score 75 on the entire ex-

amination in order to pass, it does not provide for the categorization of test scores so that candidates who each had an average score of 75 on the entire exam passed even though they scored below 75 on one of the three sections of the exam. *Sherrerd v. Johnson*, 32 Colo. App. 367, 511 P.2d 923 (1973).

12-40-117. Patient’s exercise of free choice - release of patient records. (1) No person shall interfere with any patient’s exercise of free choice in the selection of practitioners licensed to perform examinations for refractions and visual training or corrections within the field for which their respective licenses entitle them to practice.

(2) An optometrist shall release to a patient all medical records pursuant to section 25-1-802, C.R.S.

(3) The optometrist shall release to the patient, upon written request, a valid, written contact lens prescription at the time the optometrist would otherwise replace a contact lens without any additional preliminary examination or fitting. The board shall promulgate rules and regulations defining the components of a valid written contact lens prescription.

Source: L. 61: p. 587, § 1. CRS 53: § 102-2-23. C.R.S. 1963: § 102-1-23. L. 92: Entire section amended, p. 2026, § 11, effective July 1.

12-40-118. Unprofessional conduct defined. (1) The term “unprofessional conduct”, as used in this article, means:

(a) Deceiving or attempting to deceive the board or its agents with reference to any proper matter under investigation by the board;

(b) Publishing or circulating, directly or indirectly, any fraudulent, false, deceitful, or misleading claims or statements relating to optometry services or ophthalmic materials or devices;

(c) Employing or offering compensation or merchandise of value to any salesman, runner, patient, or other person as an inducement to secure his or her services or assistance in the solicitation of patronage for the performing, rendering, supplying, or selling of optometry services or ophthalmic materials or devices;

(d) Resorting to fraud, misrepresentation, or deception in applying for, securing, renewing, or seeking reinstatement of a license or in taking any examination provided for in this article;

- (e) The habitual or excessive use or abuse of alcohol, a habit-forming drug, or any controlled substance as defined in section 18-18-102 (5), C.R.S.;
- (f) (Deleted by amendment, L. 2002, p. 62, § 11, effective July 1, 2002.)
- (g) Repealed.
- (h) Disobeying the lawful rule or order of the board or its officers;
- (i) Practicing optometry while license is suspended;
- (j) Practicing optometry as the partner, agent, or employee of or in joint venture or arrangement with any proprietor or with any person who does not hold a license to practice optometry within this state, except as permitted in section 12-40-122. Any licensee holding a license to practice optometry in this state may accept employment from any person, partnership, association, or corporation to examine and prescribe for the employees of such person, partnership, association, or corporation.
- (k) An act or omission constituting grossly negligent optometry practice or two or more acts or omissions that fail to meet generally accepted standards of optometry practice;
- (l) Sharing any professional fees with any person, partnership, or corporation which sends or refers patients to him, except with licensed optometrists with whom he may be associated in practice;
- (m) Failing to:
 - (I) Notify the board, in a manner and within a period determined by the board, of a physical or mental illness or condition that renders an optometrist unable to treat with reasonable skill and safety or that may endanger the health and safety of persons under the care of an optometrist;
 - (II) Act within the limitations created by a physical or mental illness or condition that renders an optometrist unable to treat with reasonable skill and safety or that may endanger the health and safety of persons under the care of an optometrist; or
 - (III) Practice within the limitations created by the physical or mental illness or condition as specified in a confidential agreement between the optometrist and the board entered into pursuant to section 12-40-118.5 (5).
- (n) Failing to refer a patient to the appropriate health care practitioner when the services required by the patient are beyond the scope of competency of the optometrist or the scope of practice of optometry;
- (o) Aiding or abetting, in the practice of optometry, any person not licensed to practice optometry as defined under this article or any person whose license to practice is suspended;
- (p) Interfering with the free choice of any person selecting a physician or other health care practitioner;
- (q) Any disciplinary action against a licensee to practice optometry in another state or country, which action shall be deemed to be prima facie evidence of unprofessional conduct if the grounds for the disciplinary action would be unprofessional conduct or otherwise constitute a violation of any provision of this article;
- (r) Failing to notify the board of a malpractice final judgment or settlement within thirty days;
- (s) Any act or omission which fails to meet generally accepted standards of care whether or not actual injury to a patient is established;
- (t) Conviction of a felony or the acceptance of a plea of guilty or nolo contendere, or a plea resulting in a deferred sentence to a felony;
- (u) Representing that a noncorrectable condition can be permanently corrected;
- (v) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of optometry, including falsifying or making incorrect essential entries or failing to make essential entries on patient records;
- (w) Conduct which is likely to deceive or defraud the public;
- (x) Repealed.
- (y) Negligent malpractice;
- (z) (Deleted by amendment, L. 92, p. 2026, § 12, effective July 1, 1992.)
- (aa) (I) Violation of abuse of health insurance pursuant to section 18-13-119, C.R.S.;

or

(II) Advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the licensee will perform any act prohibited by section 18-13-119 (3), C.R.S.;

(bb) Administering, dispensing, or prescribing any prescription drug, as defined in section 12-42.5-102 (34), or any controlled substance, as defined in section 18-18-102 (5), C.R.S., other than in the course of legitimate professional practice;

(cc) Repealed.

(dd) Engaging in any of the following activities and practices:

(I) Repeatedly ordering or performing demonstrably unnecessary laboratory tests or studies that lack clinical justification;

(II) Administering treatment that is demonstrably unnecessary and lacks clinical justification; or

(III) Ordering or performing any service, X ray, or treatment that is contrary to recognized standards of the practice of optometry, as interpreted by the board, and lacks clinical justification;

(ee) Committing a fraudulent insurance act, as defined in section 10-1-128, C.R.S.;

(ff) Failing to report to the board any optometrist known to have violated or, upon information or belief, believed to have violated any of the provisions of this article;

(gg) Failing to report to the board any surrender of a license to, or any adverse action taken against a licensee by another licensing agency in another state, territory, or country, any governmental agency, any law enforcement agency, or any court for acts of conduct that would constitute grounds for discipline under the provisions of this article;

(hh) Engaging in a sexual act with a patient while a patient-optometrist relationship exists. For the purposes of this paragraph (hh), "patient-optometrist relationship" means that period of time beginning with the initial evaluation through the termination of treatment. For the purposes of this paragraph (hh), "sexual act" means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.

(ii) Failing to provide a patient with copies of patient medical records as required by section 25-1-802, C.R.S.;

(jj) Failing to provide a patient with a valid written contact lens prescription as required by section 12-40-117 (3);

(kk) A violation of any provision of this article;

(II) Practicing beyond the scope of education and training prescribed by rules adopted by the board;

(mm) Failing to respond in an honest, materially responsive, and timely manner to a complaint pursuant to section 12-40-119 (1) (b).

Source: L. 61: p. 585, § 1. CRS 53: § 102-2-17. C.R.S. 1963: § 102-1-17. L. 79: Entire section R&RE, p. 532, § 10, effective June 7. L. 81: (1)(e) amended, p. 736, § 15, effective July 1. L. 83: (1)(g) amended and (1)(s) to (1)(y) added, p. 548, § 1 and, (1)(z) added, p. 546, § 3, effective July 1. L. 85: (1)(g) and (1)(x) repealed, (1)(k) and (1)(t) R&RE, and (1)(aa) added, pp. 539, 536, 683, §§ 15, 9, effective July 1. L. 88: (1)(bb) and (1)(cc) amended, p. 531, § 6, effective July 1. L. 89: (1)(n) and (1)(v) amended and (1)(dd) and (1)(ee) added, p. 673, § 17, effective July 1. L. 92: (1)(d), (1)(m), (1)(n), (1)(q), (1)(s), (1)(v), (1)(z), (1)(bb), and (1)(cc) amended and (1)(ff) to (1)(kk) added, p. 2026, § 12, effective July 1. L. 96: (1)(ll) added, p. 1888, § 6, effective July 1. L. 2002: (1)(e), (1)(f), and (1)(t) amended, p. 62, § 11, effective July 1. L. 2003: (1)(ee) amended, p. 622, § 33, effective July 1. L. 2004: (1)(e) amended, p. 1195, § 41, effective August 4. L. 2009: (1)(cc) amended, (SB 09-251), ch. 249, p. 1122, § 3, effective July 1. L. 2011: (1)(a) to (1)(c), (1)(e), (1)(k), (1)(m), and (1)(dd) amended and (1)(mm) added, (SB 11-094), ch. 129, p. 438, § 5, effective April 22. L. 2012: (1)(e) and (1)(bb) amended and (1)(cc) repealed, (HB 12-1311), ch. 281, p. 1614, § 24, effective July 1.

Cross references: (1) For the legislative declaration contained in the 1989 act amending subsection (1)(n) and (1)(v) and enacting subsection (1)(dd) and (1)(ee), see section 1 of chapter 111, Session Laws of Colorado 1989.

(2) For an exception to the provisions of subsection (1)(j), see § 6-18-303.

ANNOTATION

This section enumerates “general prohibitions” the violation of any provision of which constitutes “unprofessional conduct” and is a ground for revocation or refusal to renew a license. *Dixon v. Zick*, 179 Colo. 278, 500 P.2d 130 (1972).

None of the general prohibitions in this section relate to the geographic location of

the place where the practice of the profession is conducted, nor do the proscriptions of § 12-40-103, but on the contrary, all of the provisions are directed to the conduct of the licensee or a “proprietor”. *Dixon v. Zick*, 179 Colo. 278, 500 P.2d 130 (1972).

12-40-118.5. Mental and physical examination of licensees. (1) If the board has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety, the board may require the licensee to submit to a mental or physical examination by a physician or qualified health care provider designated by the board. If the licensee refuses to undergo a mental or physical examination, unless due to circumstances beyond the licensee’s control, the board may suspend the licensee’s license until an examination has occurred, the results of the examination are known, and the board has made a determination of the licensee’s fitness to practice. The board shall proceed with the order for examination and the determination in a timely manner.

(2) An order to a licensee pursuant to subsection (1) of this section to undergo a mental or physical examination shall contain the basis of the board’s reasonable cause to believe that the licensee is unable to practice with reasonable skill and safety. For the purposes of any disciplinary proceeding authorized under this article, the licensee shall be deemed to have waived all objections to the admissibility of the examining physician’s testimony or examination reports on the ground that they are privileged communications.

(3) The licensee may submit to the board testimony or examination reports from a physician chosen by such licensee and pertaining to any condition which the board has alleged may preclude the licensee from practicing with reasonable skill and safety. These may be considered by the board in conjunction with, but not in lieu of, testimony and examination reports of the physician designated by the board.

(4) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than one before the board and shall not be deemed public records nor made available to the public.

(5) (a) The board may enter into an agreement with an optometrist whose practice is or may be affected by a physical or mental illness or condition that renders the optometrist unable to treat with reasonable skill and safety or that may endanger the health and safety of persons under the care of any optometrist if:

(I) The board believes that one or more limitations of the optometrist’s practice would both enable the optometrist to treat with reasonable skill and safety and would protect the health and safety of persons under the care of the optometrist; and

(II) The optometrist enters into an enforceable agreement with the board to so limit the optometrist’s practice.

(b) An agreement entered into pursuant to this subsection (5):

(I) Is confidential and not subject to disclosure pursuant to the “Colorado Open Records Act”, part 2 of article 72 of title 24, C.R.S.; and

(II) May include provisions for monitoring and reevaluation of the optometrist. The parties may modify or dissolve the agreement as necessary based on the results of the monitoring or reevaluation.

(c) The board may require the licensee to submit to an examination pursuant to this section to evaluate the extent of the illness or condition and its impact on the licensee’s ability to practice with reasonable skill and with safety to patients.

(d) By entering into an agreement with the board pursuant to this section to limit his or her practice, the licensee is not engaging in unprofessional conduct. The agreement is an administrative action and does not constitute a restriction or discipline by the board. However, if the licensee fails to comply with an agreement entered into pursuant to this

section, the failure constitutes unprofessional conduct pursuant to section 12-40-118 and the licensee becomes subject to discipline in accordance with section 12-40-119.

(e) For purposes of this subsection (5), “physical or mental illness or condition” does not include the habitual or excessive use or abuse of alcohol, a habit-forming drug, or any controlled substance as defined in section 18-18-102 (5), C.R.S.

Source: **L. 92:** Entire section added, p. 2028, § 13, effective July 1. **L. 2011:** (1) amended and (5) added, (SB 11-094), ch. 129, pp. 449, 439, §§ 22, 6, effective April 22. **L. 2012:** (5)(e) amended, (HB 12-1311), ch. 281, p. 1615, § 25, effective July 1.

12-40-119. Revocation, suspension, supervision, probation procedure - professional review - reconsideration and review of action by board - rules. (1) (a) With respect to licenses issued pursuant to this article, the board may:

(I) Impose probation, with or without supervision, on a licensee, issue a letter of admonition to a licensee, or suspend, revoke, or refuse to renew any license provided for by this article for any reason stated in section 12-40-118 or for violating any term of probation of the board;

(II) Summarily suspend a license upon the failure of the licensee to comply with any condition of a stipulation or order imposed by the board until the licensee complies with the condition, unless compliance is beyond the control of the licensee; and

(III) Impose a fine not to exceed five thousand dollars on a licensee for a violation of this article or a rule promulgated pursuant to this article other than a violation related to a standard of practice. The board shall, by rule, promulgate a fining schedule with lesser amounts for first violations and increasing amounts for subsequent violations of this subparagraph (III).

(b) Upon its own motion or upon a signed complaint, an investigation may be made if there is reasonable cause to believe that an optometrist licensed by the board has committed an act of unprofessional conduct pursuant to section 12-40-118 or, while under probation, has violated the terms of the probation.

(c) If a licensee requests a hearing to dispute formal board action or if the board finds such probability great and a hearing is conducted, such hearing shall be conducted in accordance with the provisions of section 24-4-105, C.R.S.

(d) The board may revoke, suspend, deny, issue, reissue, or reinstate licenses granted pursuant to this article or under the previous laws of this state, and the board may take such other intermediate action as may be deemed necessary under the circumstances of each case pursuant to this section.

(2) (a) to (c) Repealed.

(d) The hearing shall be conducted in accordance with the provisions of section 24-4-105, C.R.S.; except that the board may use an administrative law judge, who shall perform all of those functions indicated in section 24-4-105 (4), C.R.S.

(e) The action of the board in refusing to grant or renew, revoking, or suspending a license, issuing a letter of admonition, or placing a licensee on probation or under supervision pursuant to subsection (1) of this section may be reviewed by the court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S.

(f) (I) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(II) When a letter of admonition is sent by the board, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(III) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(2.1) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should

be dismissed, but the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.

(2.3) No person whose license is revoked by the board may reapply for a new license under the provisions of this article for at least two years after any such revocation.

(2.5) Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this section shall be immune from any liability, civil or criminal, that otherwise might result by reason of such action.

(3) (a) Repealed.

(b) Any member of the board or of a professional review committee authorized by the board, any member of the board's or committee's staff, any person acting as a witness or consultant to the board or committee, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board or committee member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

(4) (a) The board, on its own motion or upon application, at any time after the refusal to grant a license, the imposition of any discipline, or the ordering of probation, as provided in this section, may reconsider its prior action and grant, reinstate, or restore such license, terminate probation, or reduce the severity of its prior disciplinary action. The taking of any such further action, or the holding of a hearing with respect thereto, rests in the sole discretion of the board.

(b) Upon the receipt of such application, it may be forwarded to the attorney general for such investigation as may be deemed necessary. The proceedings shall be governed by the applicable provisions governing formal hearings in disciplinary proceedings. The attorney general may present evidence bearing upon the matters in issue, and the burden shall be upon the applicant seeking reinstatement to establish the averments of the application as specified in section 24-4-105 (7), C.R.S. No application for reinstatement or for modification of a prior order shall be accepted unless the applicant deposits with the board all amounts unpaid under any prior order of the board.

(5) Upon dismissal of a complaint, which has gone to hearing, the board shall notify the complainant that he or she may receive a copy of the investigation report and the response of the optometrist or other person alleged to have violated the act upon payment of costs of copying and mailing such information.

(6) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(7) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required license, the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (7), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(8) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the board may issue to

such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (8) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (8) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (8). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (8) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (8) and such other evidence related to the matter as the board deems appropriate. The board shall issue such order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (8), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued, and shall be a final order for purposes of judicial review.

(9) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the board may enter into a stipulation with such person.

(10) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(11) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order in a court of competent jurisdiction.

Source: L. 61: p. 584, § 1. CRS 53: § 102-2-16. C.R.S. 1963: § 102-1-16. L. 73: p. 529, § 68. L. 77: (3) added, p. 665, § 9, effective July 1. L. 79: (1) and (2) R&RE, p. 533, § 11 and, (3)(b) amended, p. 535, § 12, effective June 7. L. 81: (1)(b), (2)(a), and (2)(d) amended and (2)(b) and (2)(c) repealed, pp. 782, 783, §§ 1, 2, effective July 1. L. 85: (1)(a), (2)(d), and (3)(b) amended, (1)(b), (1)(c), and (2)(e) R&RE, (1)(d) and (2)(f) added, and (2)(a) and (3)(a) repealed, pp. 536-539, §§ 10-12, 15, effective July 1. L. 87: (2)(d) amended, p. 949, § 42, effective March 13. L. 89: (2.5) added and (3)(b) amended, p. 674, § 18, effective July 1. L. 92: Entire section amended, p. 2029, § 14, effective July 1. L. 2002: (1)(c) amended, p. 61, § 9, effective July 1. L. 2004: (2)(f) and (3)(b) amended

and (6) added, p. 1842, § 90, effective August 4. **L. 2006:** (2.1) and (7) to (11) added, p. 806, § 35, effective July 1. **L. 2011:** (1)(a), (1)(b), (1)(d), (2)(e), (2.1), (2.3), (4)(a), (7)(a), (8)(a), (8)(c)(III), and (9) amended, (SB 11-094), ch. 129, p. 440, § 7, effective April 22.

Editor's note: Subsections (2)(b) and (2)(c) were repealed, effective July 1, 1981, and subsections (2)(a) and (3)(a) were repealed, effective July 1, 1985, prior to the entire section being amended in 1992.

Cross references: For an alternative disciplinary action for persons licensed pursuant to this article, see § 24-34-106.

ANNOTATION

The contention of counsel for the optometrist that the terms, "immoral", "unprofessional", and "dishonorable" are so vague and indefinite as to unconstitutionally deprive the holder of a license of his right to be fully apprised of charges against him, is without merit. *Cardamon v. State Bd. of Optometric Colo.*, 165 Colo. 520, 441 P.2d 25 (1968).

Double notice not required. In a proceeding to revoke an optometrist's license, neither due process considerations nor the statute require double notice that license revocation proceedings have been initiated, as well as a separate notice of the hearing itself. *Dixon v. State Bd. of Optometric Colo.*, 39 Colo. App. 200, 565 P.2d 960 (1977).

Revocation was not excessive penalty. Where a licensed optometrist permitted two un-

licensed employees to practice optometry, the penalty of revocation of his license was not excessive, even though there was no proof that his actions resulted in injury to patients and there was no evidence from which it might be inferred that he was incompetent to practice optometry. *Dixon v. State Bd. of Optometric Colo.*, 39 Colo. App. 200, 565 P.2d 960 (1977).

The supreme court could not say as a matter of law that there was an abuse of discretion by the board in revoking a license under the uncontradicted evidence of immoral and unprofessional conduct. *Cardamon v. State Bd. of Optometric Colo.*, 165 Colo. 520, 441 P.2d 25 (1968).

Applied in *People v. Lee Optical Co.*, 168 Colo. 345, 452 P.2d 21 (1969).

12-40-120. Use of forged or invalid certificate. It is unlawful for any person to use or attempt to use as his or her own a diploma of an optometry school or college, or a license of another person, or a forged diploma or license, or any forged or false identification.

Source: **L. 61:** p. 586, § 1. **CRS 53:** § 102-2-19. **C.R.S. 1963:** § 102-1-19. **L. 2011:** Entire section amended, (SB 11-094), ch. 129, p. 449, § 23, effective April 22.

12-40-121. Sale or forgery of degree or license. (1) It is unlawful:

(a) To sell or offer to sell a diploma conferring an optometry degree or a license granted pursuant to this article or prior optometry practice laws;

(b) To procure a diploma or license with intent that it be used as evidence of the right to practice optometry by a person other than the one upon whom it was conferred or to whom such license was granted;

(c) With fraudulent intent to alter such diploma or license or to use or attempt to use it when it is so altered.

Source: **L. 61:** p. 586, § 1. **CRS 53:** § 102-2-20. **C.R.S. 1963:** § 102-1-20. **L. 2011:** Entire section amended, (SB 11-094), ch. 129, p. 449, § 24, effective April 22.

12-40-122. Corporate practice prohibited - exceptions. The practice of optometry in a corporate capacity is prohibited, but this prohibition does not apply to a professional corporation formed pursuant to this article or to an optometry practice carried on by a nonprofit organization operating to assist indigent persons.

Source: **L. 61:** p. 587, § 1. **CRS 53:** § 102-2-22. **C.R.S. 1963:** § 102-1-22. **L. 73:** p. 1079, § 1. **L. 2011:** Entire section amended, (SB 11-094), ch. 129, p. 450, § 25, effective April 22.

12-40-123. Enforcement - injunction - defense. (1) When the board has reasonable cause to believe that any person is violating any provision of this article or any lawful rule or regulation issued under this article, it may, in addition to all actions provided for in this article and without prejudice thereto, enter an order requiring such person to desist or refrain from such violation. An action may be brought on the relation of the people of the state of Colorado by the attorney general and the board to enjoin such person from engaging in or continuing such violation or from doing any act in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper.

(2) When legal actions are instituted against a board member or authorized personnel for acts occurring while acting in their official capacities and such actions are free of malice, fraud, or willful neglect of duty, the member or employee served shall forthwith transmit any process served upon him to the attorney general who shall furnish counsel and defend against such action without cost to the board member or employee.

Source: L. 61: p. 586, § 1. **CRS 53:** § 102-2-21. **C.R.S. 1963:** § 102-1-21.

12-40-124. Unauthorized practice - penalties. Any person who practices or offers or attempts to practice optometry without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and any person who commits a second or any subsequent offense commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 61: p. 587, § 1. **CRS 53:** § 102-2-24. **C.R.S. 1963:** § 102-1-24. **L. 85:** Entire section amended, p. 409, § 15, effective July 1. **L. 92:** Entire section amended, p. 2031, § 15, effective July 1. **L. 2002:** Entire section amended, p. 1480, § 83, effective October 1. **L. 2006:** Entire section amended, p. 90, § 39, effective August 7.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-40-125. Professional service corporations, limited liability companies, and registered limited liability partnerships for the practice of optometry - definitions.

(1) Persons licensed to practice optometry by the board may form professional service corporations for the practice of optometry under the “Colorado Corporation Code”, if such corporations are organized and operated in accordance with the provisions of this section. The articles of incorporation of such corporations shall contain provisions complying with the following requirements:

(a) The name of the corporation shall contain the words “professional company” or “professional corporation” or abbreviations thereof.

(b) The corporation shall be organized solely for the purposes of conducting the practice of optometry only through persons licensed by the board to practice optometry in the state of Colorado.

(c) The corporation may exercise the powers and privileges conferred upon corporations by the laws of Colorado only in furtherance of and subject to its corporate purpose.

(d) All shareholders of the corporation shall be persons who are licensed by the board to practice optometry in the state of Colorado and who at all times own their shares in their own right. They shall be individuals who, except for illness, accident, and time spent in the armed services, on vacations, and on leaves of absence not to exceed one year, are actively engaged in the practice of optometry in the offices of the corporation.

(e) Provisions shall be made requiring any shareholder who ceases to be or for any reason is ineligible to be a shareholder to dispose of all his shares forthwith, either to the corporation or to any person having the qualifications described in paragraph (d) of this subsection (1).

(f) The president shall be a shareholder and a director, and, to the extent possible, all other directors and officers shall be persons having the qualifications described in paragraph

(d) of this subsection (1). Lay directors and officers shall not exercise any authority whatsoever over professional matters as defined in this article or in the rules and regulations as promulgated by the board.

(g) The articles of incorporation shall provide, and all shareholders of the corporation shall agree, that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation or that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation except during periods of time when the corporation shall maintain in good standing professional liability insurance which shall meet the following minimum standards:

(I) The insurance shall insure the corporation against liability imposed upon the corporation by law in the performance of professional services for others by those officers and employees of the corporation who are licensed by the board to practice optometry.

(II) Such policies shall insure the corporation against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all nonprofessional employees.

(III) The insurance shall be in an amount for each claim of at least fifty thousand dollars multiplied by the number of persons licensed to practice optometry employed by the corporation; the policy may provide for an aggregate maximum limit of liability per year for all claims of one hundred fifty thousand dollars also multiplied by the number of persons licensed to practice optometry employed by the corporation; but no firm shall be required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate maximum limit of liability for all claims during the year of nine hundred thousand dollars.

(IV) The policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured corporation or any stockholder or employee thereof; the conduct of any business enterprise, as distinguished from the practice of optometry, in which the insured corporation under this section is not permitted to engage but which nevertheless may be owned by the insured corporation or in which the insured corporation may be a partner or which may be controlled, operated, or managed by the insured corporation in its own or in a fiduciary capacity including the ownership, maintenance, or use of any property in connection therewith, when not resulting from breach of professional duty, bodily injury to, or sickness, disease, or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof; and the policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(2) Repealed.

(3) The corporation shall do nothing which, if done by a person employed by it and licensed to practice optometry in the state of Colorado, would violate the standards of professional conduct, as provided for in this article. Any violation by the corporation of this section shall be grounds for the board to terminate or suspend its right to practice optometry.

(4) Nothing in this section shall be deemed to diminish or change the obligation of each person employed by the corporation and licensed to practice optometry in this state to conduct his practice in accordance with the standards of professional conduct provided for in this article; any person licensed by the board to practice optometry who by act or omission causes the corporation to act or fail to act in a way which violates such standards of professional conduct, including any provision of this section, shall be deemed personally responsible for such act or omission and shall be subject to discipline therefor.

(5) A professional service corporation may adopt a pension, profit-sharing (whether cash or deferred), health and accident insurance, or welfare plan for all or part of its employees including lay employees, if such plan does not require or result in the sharing of specific or identifiable fees with lay employees and if any payments made to lay employees, or into any such plan in behalf of lay employees, are based upon their compensation or length of service, or both, rather than the amount of fees or income received.

(6) Except as provided in this section, corporations shall not practice optometry.

(7) As used in this section, unless the context otherwise requires:

(a) "Articles of incorporation" includes operating agreements of limited liability companies and partnership agreements of registered limited liability partnerships.

(b) "Corporation" includes a limited liability company organized under the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S., and a limited liability partnership registered under section 7-60-144 or 7-64-1002, C.R.S.

(c) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(d) "Employees" includes employees, members, and managers of a limited liability company and employees and partners of a registered limited liability partnership.

(e) "Share" includes a member's rights in a limited liability company and a partner's rights in a registered limited liability partnership.

(f) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

Source: **L. 73:** p. 1079, § 2. **C.R.S. 1963:** § 102-1-25. **L. 85:** (2) repealed, p. 539, § 15, effective July 1. **L. 95:** (7) added, p. 813, § 34, effective May 24. **L. 97:** (7)(b) amended, p. 918, § 14, effective January 1, 1998.

Editor's note: The "Colorado Corporation Code", articles 1 to 10 of title 7, referred to in the introductory portion to subsection (1), was repealed, effective July 1, 1994, and was replaced on that date by the "Colorado Business Corporation Act", articles 101 to 117 of title 7.

ANNOTATION

Law reviews. For article, "Operating a Personal Service Corporation", see 17 Colo. Law. 2011 (1988).

12-40-126. Financial responsibility - rules. (1) Every optometrist who provides health care services within the state of Colorado shall establish financial responsibility as follows:

(a) By maintaining commercial professional liability insurance coverage with an insurance company authorized to do business in this state in a minimum indemnity amount of one million dollars per incident and three million dollars annual aggregate per year; or

(b) By maintaining a surety bond in a form acceptable to the commissioner of insurance in the amounts set forth in paragraph (a) of this subsection (1); or

(c) By depositing cash or cash equivalents as security with the commissioner of insurance in the amounts set forth in paragraph (a) of this subsection (1); or

(d) By providing any other security acceptable to the commissioner of insurance, which may include approved plans of self-insurance.

(2) (a) The board may, by rule, establish lesser financial responsibility standards than those required in subsection (1) of this section for classes of license holders who have an inactive license or who render limited or occasional optometry services because of administrative or other nonclinical duties, partial or complete retirement, or for other reasons that render the limits provided in paragraph (a) of subsection (1) of this section unreasonable or unattainable.

(b) Nothing in this section precludes or otherwise prohibits a licensed optometrist from rendering appropriate patient care on an occasional basis when the circumstances surrounding the need for such care so warrant.

(3) Each optometrist, as a condition of receiving and maintaining an active license to provide optometry services in this state, shall furnish the board evidence of compliance with subsection (1) of this section. No license shall be issued or renewed unless such evidence of compliance has been furnished.

(4) Notwithstanding the amounts specified in subsection (1) of this section, if the board receives two or more reports concerning any optometrist pursuant to section 12-40-127 during any one-year period, the minimum financial responsibility requirement shall be two times the amount specified in subsection (1) of this section. However, upon motion filed by the optometrist and the presentation of sufficient evidence to the board that one or more such reports involved an action or claim which did not represent any substantial failure to

adhere to accepted professional standards of care, the board may reduce such additional amount to that which would be fair and conscionable.

(5) Repealed.

Source: **L. 88:** Entire section added, p. 531, § 8, effective January 1, 1989; (1)(a) amended, p. 1434, § 27, effective January 1, 1989. **L. 2011:** (1)(a), (2), and (3) amended and (5) repealed, (SB 11-094), ch. 129, pp. 442, 450, §§ 8, 26, 27, effective April 22.

Editor’s note: Amendments to subsection (2) in sections 8 and 26 of Senate Bill 11-094 were harmonized.

12-40-127. Judgments and settlements - reporting. Any final judgment, settlement, or arbitration award against an optometrist for malpractice shall be reported within fourteen days by such optometrist’s malpractice insurance carrier in accordance with section 10-1-125, C.R.S., or by such optometrist if no commercial malpractice insurance coverage is involved to the board for review, investigation, and, where appropriate, disciplinary or other action. Any optometrist who knowingly fails to report as required by this section shall be subject to a civil penalty of not more than two thousand five hundred dollars. Such penalty shall be determined and collected in an action brought by the board in the district court in the city and county of Denver, which court shall have exclusive jurisdiction in such matters. All penalties collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the general fund.

Source: **L. 88:** Entire section added, p. 532, § 8, effective January 1, 1989. **L. 2003:** Entire section amended, p. 622, § 34, effective July 1.

12-40-128. Repeal of article - subject to sunset law. (1) This article is repealed, effective September 1, 2022.

(2) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the functions performed pursuant to this article.

Source: **L. 92:** Entire section added, p. 2031, § 16, effective July 1. **L. 2002:** (1) amended, p. 59, § 3, effective July 1. **L. 2011:** (1) amended, (SB 11-094), ch. 129, p. 436, § 1, effective April 22.

ARTICLE 40.5

Occupational Therapy Practice Act

12-40.5-101.	Short title.	12-40.5-110.	Grounds for discipline - disciplinary proceedings - judicial review.
12-40.5-102.	Legislative declaration.		
12-40.5-103.	Definitions.	12-40.5-111.	Unauthorized practice - penalties.
12-40.5-104.	Use of titles restricted.	12-40.5-112.	Rule-making authority.
12-40.5-105.	Registration required.	12-40.5-113.	Severability.
12-40.5-106.	Registration - application - qualifications - rules.	12-40.5-114.	Mental and physical examination of registrants.
12-40.5-107.	Supervision of occupational therapy assistants.	12-40.5-115.	Repeal of article - review of functions.
12-40.5-108.	Scope of article - exclusions.		
12-40.5-109.	Limitations on authority.		

12-40.5-101. Short title. This article shall be known and may be cited as the “Occupational Therapy Practice Act”.

Source: **L. 2008:** Entire article added, p. 816, § 1, effective July 1.

12-40.5-102. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) Occupational therapy services are provided for the purpose of promoting health and wellness to those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction;

(b) Occupational therapy addresses the physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect health, well-being, and quality of life;

(c) This act is necessary to:

(I) Safeguard the public health, safety, and welfare; and

(II) Protect the public from incompetent, unethical, or unauthorized persons.

(2) The general assembly further determines that it is the purpose of this act to regulate persons who are representing themselves as occupational therapists and who are performing services that constitute occupational therapy.

Source: L. 2008: Entire article added, p. 816, § 1, effective July 1.

12-40.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Activities of daily living” means activities that are oriented toward taking care of one’s own body, such as bathing, showering, bowel and bladder management, dressing, eating, feeding, functional mobility, personal device care, personal hygiene and grooming, sexual activity, sleep, rest, and toilet hygiene.

(2) “Aide” means a person who is not registered by the director and who provides supportive services to occupational therapists and occupational therapy assistants. An aide shall function only under the guidance, responsibility, and supervision of a registered occupational therapist. The aide shall perform only specifically selected tasks for which the aide has been trained and has demonstrated competence to the registered occupational therapist or occupational therapy assistant.

(3) “Department” means the department of regulatory agencies.

(4) “Director” means the director of the division of professions and occupations.

(5) “Division” means the division of professions and occupations in the department of regulatory agencies created in section 24-34-102, C.R.S.

(6) “Instrumental activities of daily living” means activities that are oriented toward interacting with the environment and that may be complex. These activities are generally optional in nature and may be delegated to another person. “Instrumental activities of daily living” include care of others, care of pets, child-rearing, communication device use, community mobility, financial management, health management and maintenance, home establishment and management, meal preparation and cleanup, safety procedures and emergency responses, and shopping.

(7) “Low vision rehabilitation services” means the evaluation, diagnosis, management, and care of the low vision patient, including low vision rehabilitation therapy, education, and interdisciplinary consultation.

(8) “Occupational therapist” means a person registered to practice occupational therapy under this article.

(9) “Occupational therapy” means the therapeutic use of everyday life activities with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings. The practice of occupational therapy includes:

(a) Methods or strategies selected to direct the process of interventions such as:

(I) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired;

(II) Compensation, modification, or adaptation of an activity or environment to enhance performance;

(III) Maintenance and enhancement of capabilities without which performance of everyday life activities would decline;

(IV) Promotion of health and wellness to enable or enhance performance in everyday life activities; and

- (V) Prevention of barriers to performance, including disability prevention;
- (b) Evaluation of factors affecting activities of daily living, instrumental activities of daily living, education, work, play, leisure, and social participation, including:
 - (I) Client factors, including body functions such as neuromuscular, sensory, visual, perceptual, and cognitive functions, and body structures such as cardiovascular, digestive, integumentary, and genitourinary systems;
 - (II) Habits, routines, roles, and behavior patterns;
 - (III) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance; and
 - (IV) Performance skills, including motor, process, and communication and interaction skills;
- (c) Interventions and procedures to promote or enhance safety and performance in activities of daily living, instrumental activities of daily living, education, work, play, leisure, and social participation, including:
 - (I) Therapeutic use of occupations, exercises, and activities;
 - (II) Training in self-care, self-management, home management, and community and work reintegration;
 - (III) Development, remediation, or compensation of physical, cognitive, neuromuscular, and sensory functions and behavioral skills;
 - (IV) Therapeutic use of self, including a person's personality, insights, perceptions, and judgments, as part of the therapeutic process;
 - (V) Education and training of individuals, including family members, caregivers, and others;
 - (VI) Care coordination, case management, and transition services;
 - (VII) Consultative services to groups, programs, organizations, or communities;
 - (VIII) Modification of environments such as home, work, school, or community and adaptation of processes, including the application of ergonomic principles;
 - (IX) Assessment, design, fabrication, application, fitting, and training in assistive technology; adaptive devices, excluding glasses, contact lenses, or other prescriptive devices to correct vision unless prescribed by an optometrist; and orthotic devices and training in the use of prosthetic devices;
 - (X) Assessment, recommendation, and training in techniques to enhance functional mobility, including wheelchair management;
 - (XI) Driver rehabilitation and community mobility;
 - (XII) Management of feeding, eating, and swallowing to enable eating and feeding performance; and
 - (XIII) Application of physical agent modalities and therapeutic procedures such as wound management; techniques to enhance sensory, perceptual, and cognitive processing; and manual techniques to enhance performance skills.
- (10) "Occupational therapy assistant" means a person who has successfully completed an occupational therapy assistant program approved by the department to assist in the practice of occupational therapy under the supervision of an occupational therapist.
- (11) "Registrant" means an occupational therapist registered pursuant to this article.
- (12) "Supervision" means the giving of aid, directions, and instructions that are adequate to ensure the safety and welfare of clients during the provision of occupational therapy by the occupational therapist designated as the supervisor. Responsible direction and supervision by the occupational therapist shall include consideration of factors such as level of skill, the establishment of service competency, experience, work setting demands, the complexity and stability of the client population, and other factors. Supervision is a collaborative process for responsible, periodic review and inspection of all aspects of occupational therapy services and the occupational therapist is legally accountable for occupational therapy services provided by the occupational therapy assistant and the aide.
- (13) "Vision therapy services" means the assessment, diagnosis, treatment, and management of a patient with vision therapy, visual training, visual rehabilitation, orthoptics, or eye exercises.

12-40.5-104. Use of titles restricted. Only a person registered as an occupational therapist may use the titles “occupational therapist registered”, “registered occupational therapist”, “occupational therapist”, or “doctorate of occupational therapy” or use the abbreviation “O.T.”, “O.T.D.”, or “O.T.R.”, or any other generally accepted terms, letters, or figures that indicate that the person is an occupational therapist.

Source: L. 2008: Entire article added, p. 820, § 1, effective July 1.

12-40.5-105. Registration required. Except as otherwise provided in this article, a person shall not practice occupational therapy or represent himself or herself as being able to practice occupational therapy in this state without possessing a valid registration issued by the director in accordance with this article and any rules adopted under this article.

Source: L. 2008: Entire article added, p. 820, § 1, effective July 1.

12-40.5-106. Registration - application - qualifications - rules. (1) Educational and experiential requirements. Every applicant for a registration as an occupational therapist shall have:

(a) Successfully completed the academic requirements of an educational program for occupational therapists that is offered by an institution of higher education and accredited by a national, regional, or state agency recognized by the United States secretary of education, or another such program accredited thereby and approved by the director.

(b) Successfully completed a minimum period of supervised fieldwork experience required by the recognized educational institution where the applicant met the academic requirements described in paragraph (a) of this subsection (1). The minimum period of fieldwork experience for an occupational therapist is twenty-four weeks of supervised fieldwork experience or satisfaction of any generally recognized past standards that identified minimum fieldwork requirements at the time of graduation.

(2) **Application.** (a) When an applicant has fulfilled the requirements of subsection (1) of this section, the applicant may apply for examination and registration upon payment of a fee in an amount determined by the director. A person who fails an examination may apply for reexamination upon payment of a fee in an amount determined by the director.

(b) The application shall be in the form and manner designated by the director.

(3) **Examination.** Each applicant shall pass a nationally recognized examination approved by the director. The examination shall measure the minimum level of competence necessary for consumer protection. The director may contract for assistance in creating and administering the examination.

(4) **Registration.** When an applicant has fulfilled the requirements of subsections (1) to (3) of this section, the director shall issue a registration to the applicant; except that the director may deny a registration if the applicant has committed any act that would be grounds for disciplinary action under section 12-40.5-110.

(5) **Registration by endorsement.** (a) An applicant for registration by endorsement shall file an application and pay a fee as prescribed by the director and shall hold a current, valid license or registration in a jurisdiction that requires qualifications substantially equivalent to those required for registration by subsection (1) of this section.

(b) An applicant for registration shall submit with the application verification that the applicant has actively practiced for a period of time determined by rules of the director or otherwise maintained continued competency as determined by the director.

(c) Upon receipt of all documents required by paragraphs (a) and (b) of this subsection (5), the director shall review the application and make a determination of the applicant's qualification to be registered by endorsement.

(d) The director may deny the registration if the applicant has committed an act that would be grounds for disciplinary action under section 12-40.5-110.

(6) **Registration renewal.** (a) A registrant shall be required to renew the registration issued under this article according to a schedule of renewal dates established by the

director. The registrant shall submit an application in the form and manner designated by the director and shall pay a renewal fee in an amount determined by the director.

(b) Registrations shall be renewed or reinstated in accordance with the schedule established by the director, and such renewal or reinstatement shall be granted pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a registrant fails to renew his or her registration pursuant to the schedule established by the director, the registration shall expire. Any person whose registration has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S., for reinstatement.

(7) **Fees.** All fees collected under this article shall be determined, collected, and appropriated in the same manner as set forth in section 24-34-105, C.R.S., and periodically adjusted in accordance with section 24-75-402, C.R.S.

Source: L. 2008: Entire article added, p. 820, § 1, effective July 1.

12-40.5-107. Supervision of occupational therapy assistants. An occupational therapy assistant may practice only under the supervision of an occupational therapist who is registered to practice occupational therapy in this state. The occupational therapist is responsible for occupational therapy evaluation, appropriate reassessment, treatment planning, and interventions based on standard professional guidelines. Supervision of an occupational therapy assistant by an occupational therapist is a shared responsibility. The supervising occupational therapist and the supervised occupational therapy assistant have legal and ethical responsibility for ongoing management of supervision, including providing, requesting, giving, or obtaining supervision. The frequency, level, and nature of supervision shall be determined by the supervising occupational therapist with input from the occupational therapy assistant, and shall be based on a variety of factors, including the clients' required level of care, the treatment plan, and the experience and pertinent skills of the occupational therapy assistant.

Source: L. 2008: Entire article added, p. 822, § 1, effective July 1.

12-40.5-108. Scope of article - exclusions. (1) This article shall not prevent or restrict the practice, services, or activities of:

(a) A person licensed or otherwise regulated in this state by any other law from engaging in his or her profession or occupation as defined in the article under which he or she is licensed;

(b) A person pursuing a course of study leading to a degree in occupational therapy at an educational institution with an accredited occupational therapy program if that person is designated by a title that clearly indicates his or her status as a student and if he or she acts under appropriate instruction and supervision;

(c) A person fulfilling the supervised fieldwork experience requirements of section 12-40.5-106 (1) if the experience constitutes a part of the experience necessary to meet the requirement of section 12-40.5-106 (1) and the person acts under appropriate supervision; or

(d) The practice of occupational therapy in this state by any legally qualified occupational therapist from another state or country when providing services on behalf of a temporarily absent occupational therapist registered in this state, so long as the unregistered occupational therapist is acting in accordance with rules established by the director. The unregistered practice shall not be of more than four weeks' duration, and no person shall be authorized by the director to undertake such practice more than once in any twelve-month period.

Source: L. 2008: Entire article added, p. 822, § 1, effective July 1.

12-40.5-109. Limitations on authority. Nothing in this article shall be construed to authorize an occupational therapist to engage in the practice of medicine, as defined in

section 12-36-106; physical therapy, as defined in article 41 of this title; vision therapy services or low vision rehabilitation services, except under the referral, prescription, supervision, or comanagement of an ophthalmologist or optometrist; or any other form of healing except as authorized by this article.

Source: L. 2008: Entire article added, p. 822, § 1, effective July 1.

12-40.5-110. Grounds for discipline - disciplinary proceedings - judicial review.

(1) The director may take disciplinary action against a registrant if the director finds that the registrant has represented himself or herself as a registered occupational therapist after the expiration, suspension, or revocation of his or her registration.

(2) The director may revoke, suspend, deny, or refuse to renew a registration, or issue a cease-and-desist order to a registrant in accordance with this section upon proof that the registrant:

(a) Has engaged in a sexual act with a person receiving services while a therapeutic relationship existed or within six months immediately following termination of the therapeutic relationship. For the purposes of this paragraph (a):

(I) "Sexual act" means sexual contact, sexual intrusion, or sexual penetration, as defined in section 18-3-401, C.R.S.

(II) "Therapeutic relationship" means the period beginning with the initial evaluation and ending upon the written termination of treatment.

(b) Has falsified information in an application or has attempted to obtain or has obtained a registration by fraud, deception, or misrepresentation;

(c) Is an excessive or habitual user or abuser of alcohol or habit-forming drugs or is a habitual user of a controlled substance, as defined in section 18-18-102, C.R.S., or other drugs having similar effects; except that the director has the discretion not to discipline the registrant if he or she is participating in good faith in a program to end such use or abuse that the director has approved;

(d) Has a physical or mental condition or disability that renders the registrant unable to provide occupational therapy services with reasonable skill and safety or that may endanger the health or safety of individuals receiving services;

(e) Has violated this article or aided or abetted or knowingly permitted any person to violate this article, a rule adopted under this article, or any lawful order of the director;

(f) Had a license or registration suspended or revoked for actions that are a violation of this act;

(g) Has been convicted of or pled guilty or nolo contendere to a felony or committed an act specified in section 12-40.5-111. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea shall be conclusive evidence of the conviction or plea. In considering the disciplinary action, the director shall be governed by section 24-5-101, C.R.S.

(h) Has fraudulently obtained, furnished, or sold any occupational therapy diploma, certificate, registration, renewal of registration, or record or aided or abetted such act;

(i) Has failed to notify the director of the suspension or revocation of the person's past or currently held license, certificate, or registration required to practice occupational therapy in this or any other jurisdiction;

(j) Has refused to submit to a physical or mental examination when ordered by the director pursuant to section 12-40.5-114; or

(k) Has otherwise violated any provision of this article or lawful order or rule of the director.

(3) Except as otherwise provided in subsection (2) of this section, the director need not find that the actions that are grounds for discipline were willful but may consider whether such actions were willful when determining the nature of disciplinary sanctions to be imposed.

(4) (a) The director may commence a proceeding to discipline a registrant when the director has reasonable grounds to believe that the registrant has committed an act enumerated in this section or has violated a lawful order or rule of the director.

(b) In any proceeding under this section, the director may accept as evidence of grounds for disciplinary action any disciplinary action taken against a licensee or registrant in another jurisdiction if the violation that prompted the disciplinary action in the other jurisdiction would be grounds for disciplinary action under this article.

(5) Disciplinary proceedings shall be conducted in accordance with article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to that article by the director or by an administrative law judge, at the director's discretion. The director has the authority to exercise all powers and duties conferred by this article during the disciplinary proceedings.

(6) (a) No later than thirty days following the date of the director's action, an occupational therapist disciplined under this section shall be notified by the director, by a certified letter to the most recent address provided to the director by the occupational therapist, of the action taken, the specific charges giving rise to the action, and the occupational therapist's right to request a hearing on the action taken.

(b) Within thirty days after notification is sent by the director, the occupational therapist may file a written request with the director for a hearing on the action taken. Upon receipt of the request the director shall grant a hearing to the occupational therapist. If the occupational therapist fails to file a written request for a hearing within thirty days, the action of the director shall be final on that date.

(c) Failure of the occupational therapist to appear at the hearing without good cause shall be deemed a withdrawal of his or her request for a hearing, and the director's action shall be final on that date. Failure, without good cause, of the director to appear at the hearing shall be deemed cause to dismiss the proceeding.

(7) (a) The director may request the attorney general to seek an injunction, in any court of competent jurisdiction, to enjoin a person from committing an act prohibited by this article. When seeking an injunction under this paragraph (a), the attorney general shall not be required to allege or prove the inadequacy of any remedy at law or that substantial or irreparable damage is likely to result from a continued violation of this article.

(b) (I) In accordance with article 4 of title 24, C.R.S., and this article, the director is authorized to investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director.

(II) In order to aid the director in any hearing or investigation instituted pursuant to this section, the director or an administrative law judge appointed pursuant to paragraph (c) of this subsection (7) is authorized to administer oaths, take affirmations of witnesses, and issue subpoenas compelling the attendance of witnesses and the production of all relevant records, papers, books, documentary evidence, and materials in any hearing, investigation, accusation, or other matter before the director or an administrative law judge.

(III) Upon failure of any witness or registrant to comply with a subpoena or process, the district court of the county in which the subpoenaed person or registrant resides or conducts business, upon application by the director with notice to the subpoenaed person or registrant, may issue to the person or registrant an order requiring that person or registrant to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. If the person or registrant fails to obey the order of the court, the person or registrant may be held in contempt of court.

(c) The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings, take evidence, make findings, and report such findings to the director.

(8) (a) The director, the director's staff, any person acting as a witness or consultant to the director, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts.

(b) A person participating in good faith in making a complaint or report or in an investigative or administrative proceeding pursuant to this section shall be immune from any civil or criminal liability that otherwise might result by reason of the participation.

(9) A final action of the director is subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

(10) An employer of an occupational therapist shall report to the director any disciplinary action taken against the occupational therapist or the resignation of the occupational therapist in lieu of disciplinary action for conduct that violates this article.

(11) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(12) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a registrant is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required registration, the director may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (12), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. The hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(13) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other provision of this article, in addition to any specific powers granted pursuant to this article, the director may issue to the person an order to show cause as to why the director should not issue a final order directing the person to cease and desist from the unlawful act or unregistered practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (13) shall be notified promptly by the director of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. The notice may be served on the person against whom the order has been issued by personal service, by first-class, postage prepaid United States mail, or in another manner as may be practicable. Personal service or mailing of an order or document pursuant to this paragraph (b) shall constitute notice of the order to the person.

(c) (I) The hearing on an order to show cause shall be held no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (13). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing be held later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (13) does not appear at the hearing, the director may present evidence that notification was properly sent or served on the person pursuant to paragraph (b) of this subsection (13) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the director reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required registration, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing the person to cease and desist from further unlawful acts or unregistered practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (13), of the final cease-and-desist order within ten calendar days after the hearing

conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(14) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged or is about to engage in an unregistered act or practice; an act or practice constituting a violation of this article, a rule promulgated pursuant to this article, or an order issued pursuant to this article; or an act or practice constituting grounds for administrative sanction pursuant to this article, the director may enter into a stipulation with the person.

(15) If any person fails to comply with a final cease-and-desist order or a stipulation, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(16) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order as provided in subsection (9) of this section.

Source: L. 2008: Entire article added, p. 823, § 1, effective July 1.

12-40.5-111. Unauthorized practice - penalties. A person who practices or offers or attempts to practice occupational therapy without an active registration issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense. For the second or any subsequent offense, the person commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 2008: Entire article added, p. 828, § 1, effective July 1.

12-40.5-112. Rule-making authority. The director shall promulgate rules as necessary for the administration of this article.

Source: L. 2008: Entire article added, p. 828, § 1, effective July 1.

12-40.5-113. Severability. If any provision of this article is held to be invalid, such invalidity shall not affect other provisions of this article that can be given effect without the invalid provision.

Source: L. 2008: Entire article added, p. 828, § 1, effective July 1.

12-40.5-114. Mental and physical examination of registrants. (1) If the director has reasonable cause to believe that a registrant is unable to practice with reasonable skill and safety, the director may order the registrant to take a mental or physical examination administered by a physician or other licensed health care professional designated by the director. Except where due to circumstances beyond the registrant's control, if the registrant fails or refuses to undergo a mental or physical examination, the director may suspend the registrant's registration until the director has made a determination of the registrant's fitness to practice. The director shall proceed with an order for examination and shall make his or her determination in a timely manner.

(2) An order requiring a registrant to undergo a mental or physical examination shall contain the basis of the director's reasonable cause to believe that the registrant is unable to practice with reasonable skill and safety. For purposes of a disciplinary proceeding authorized under this article, the registrant shall be deemed to have waived all objections to the admissibility of the examining physician's or licensed health care professional's testimony or examination reports on the grounds that they are privileged communication.

- (3) The registrant may submit to the director testimony or examination reports from a physician chosen by the registrant and pertaining to any condition that the director has alleged may preclude the registrant from practicing with reasonable skill and safety. The testimony and reports submitted by the registrant may be considered by the director in conjunction with, but not in lieu of, testimony and examination reports of the physician designated by the director.
- (4) The results of a mental or physical examination ordered by the director shall not be used as evidence in any proceeding other than one before the director and shall not be deemed a public record or made available to the public.

Source: L. 2008: Entire article added, p. 828, § 1, effective July 1.

12-40.5-115. Repeal of article - review of functions. This article is repealed, effective July 1, 2013. Prior to such repeal, the director’s powers, duties, and functions under this article shall be reviewed as provided in section 24-34-104, C.R.S.

Source: L. 2008: Entire article added, p. 829, § 1, effective July 1.

ARTICLE 41

Physical Therapists

Editor’s note: This article was numbered as article 6 of chapter 91, C.R.S. 1963. This article was repealed and reenacted in 1979 and was subsequently repealed and reenacted in 1991, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1991, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers prior to 1991 are shown in editor’s notes following those sections that were relocated.

PART 1		12-41-114.6.	Continuing professional competency - rules.
PHYSICAL THERAPISTS		12-41-115.	Grounds for disciplinary action.
12-41-101.	Short title.	12-41-115.5.	Protection of medical records - licensee’s obligations - verification of compliance - non-compliance grounds for discipline - rules.
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12-41-103.	Definitions.	12-41-117.	Disciplinary proceedings - investigations - judicial review.
12-41-103.3.	Physical therapy board - created - repeal.	12-41-118.	Mental and physical examination of licensees.
12-41-103.6.	Powers and duties of board - reports - publications - rules - repeal.	12-41-118.5.	Examinations - notice - confidential agreements.
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12-41-105.	Limitations on authority.	12-41-120.	Reports by insurance companies.
12-41-106.	License required.	12-41-121.	Unauthorized practice - penalties.
12-41-107.	Licensure by examination.	12-41-122.	Violation - fines.
12-41-108.	Temporary permit. (Repealed)	12-41-123.	Injunctive proceedings.
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PART 2

PHYSICAL THERAPIST ASSISTANTS

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PART 1

PHYSICAL THERAPISTS

12-41-101. Short title. This article shall be known and may be cited as the "Physical Therapy Practice Act".

Source: L. 91: Entire article R&RE, p. 1644, § 1, effective July 1.

12-41-102. Legislative declaration. (1) The general assembly hereby finds and declares that the practice of physical therapy by any person who does not possess a valid license issued under the provisions of this article is inimical to the general public welfare. It is not, however, the intent of this article to restrict the practice of any person duly licensed under other laws of this state from practicing within such person's scope of competency and authority under such laws.

(2) Repealed.

Source: L. 91: Entire article R&RE, p. 1644, § 1, effective July 1. L. 2001: (2) repealed, p. 1251, § 1, effective July 1.

12-41-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Accredited physical therapy program" means a program of instruction in physical therapy which is accredited as set forth in section 12-41-107 (1) (a) (II).

(1.5) "Board" means the physical therapy board created in section 12-41-103.3.

(2) "Director" means the director of the division of professions and occupations in the department of regulatory agencies.

(3) "Executive director" means the executive director of the department of regulatory agencies.

(4) Repealed.

(5) "Physical therapist" means a person who is licensed to practice physical therapy. The terms "physiotherapist" and "physical therapy technician" are synonymous with the term "physical therapist".

(5.5) “Physical therapist assistant” means a person who is required to be certified under part 2 of this article and who assists a physical therapist in selected components of physical therapy.

(6) (a) (I) “Physical therapy” means the examination, treatment, or instruction of patients and clients to detect, assess, prevent, correct, alleviate, or limit physical disability, movement dysfunction, bodily malfunction, or pain from injury, disease, and other bodily conditions.

(II) For purposes of this article “physical therapy” includes:

(A) The administration, evaluation, and interpretation of tests and measurements of bodily functions and structures;

(B) The planning, administration, evaluation, and modification of treatment and instruction;

(C) The use of physical agents, measures, activities, and devices for preventive and therapeutic purposes, subject to the requirements of section 12-41-113;

(D) The administration of topical and aerosol medications consistent with the scope of physical therapy practice subject to the requirements of section 12-41-113;

(E) The provision of consultative, educational, and other advisory services for the purpose of reducing the incidence and severity of physical disability, movement dysfunction, bodily malfunction, and pain; and

(F) General wound care, including the assessment and management of skin lesions, surgical incisions, open wounds, and areas of potential skin breakdown in order to maintain or restore the integumentary system.

(b) For the purposes of subparagraph (II) of paragraph (a) of this subsection (6):

(I) “Physical agents” includes, but is not limited to, heat, cold, water, air, sound, light, compression, electricity, and electromagnetic energy.

(II) (A) “Physical measures, activities, and devices” includes, but is not limited to, resistive, active, and passive exercise, with or without devices; joint mobilization; mechanical stimulation; biofeedback; postural drainage; traction; positioning; massage; splinting; training in locomotion; other functional activities, with or without assistive devices; and correction of posture, body mechanics, and gait.

(B) “Biofeedback”, as used in this subparagraph (II), means the use of monitoring instruments by a physical therapist to detect and amplify internal physiological processes for the purpose of neuromuscular rehabilitation.

(III) “Tests and measurements” includes, but is not limited to, tests of muscle strength, force, endurance, and tone; reflexes and automatic reactions; movement skill and accuracy; joint motion, mobility, and stability; sensation and perception; peripheral nerve integrity; locomotor skill, stability, and endurance; activities of daily living; cardiac, pulmonary, and vascular functions; fit, function, and comfort of prosthetic, orthotic, and other assistive devices; posture and body mechanics; limb length, circumference, and volume; thoracic excursion and breathing patterns; vital signs; nature and locus of pain and conditions under which pain varies; photosensitivity; and physical home and work environments.

Source: L. 91: Entire article R&RE, p. 1644, § 1, effective July 1. L. 94: (4) repealed, p. 28, § 1, effective March 9. L. 2007: (6)(a)(I) amended, p. 561, § 1, effective July 1. L. 2011: (1.5), (5.5), and (6)(a)(II)(F) added, (SB 11-169), ch. 172, p. 610, §§ 4, 5, effective July 1.

Editor’s note: This section is similar to former § 12-41-102 as it existed prior to 1991.

12-41-103.3. Physical therapy board - created - repeal. (1) (a) The state physical therapy board is hereby created as the agency for regulation of the practice of physical therapy in this state and to carry out the purposes of this article. The board consists of five physical therapist members and two members from the public at large, each member to be appointed by the governor by no later than January 1, 2012, for terms of four years. A member shall not serve more than two consecutive terms of four years. The governor shall give due consideration to having a geographic, political, urban, and rural balance among the board members.

(b) Each member of the board receives the compensation provided for in section 24-34-102 (13), C.R.S.

(c) The board exercises its powers and performs its duties and functions under the division of professions and occupations as if the powers, duties, and functions were transferred to the division by a **type 1** transfer, as defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S. The division shall provide necessary management support to the board under section 24-34-102, C.R.S.

(d) (I) Notwithstanding paragraph (a) of this subsection (1), the initial terms of the physical therapist members are as follows:

(A) One member serves a two-year term:

(B) Two members serve three-year terms; and

(C) Two members serve four-year terms.

(II) The initial terms for the public members are as follows:

(A) One member serves a two-year term; and

(B) One member serves a four-year term.

(III) This paragraph (d) is repealed, effective September 1, 2016.

(2) A person is qualified to be appointed to the board if the person:

(a) Is a legal resident of Colorado; and

(b) Is currently licensed in good standing, with no restrictions, as a physical therapist and actively engaged in the practice of physical therapy in this state for at least five years preceding his or her appointment, if fulfilling the position of physical therapist on the board.

(3) Should a vacancy occur in any board membership before the expiration of the member's term, the governor shall fill such vacancy by appointment for the remainder of the term in the same manner as in the case of original appointments. A member of the board shall remain on the board until his or her successor has been appointed. A member may be removed by the governor for misconduct, incompetence, or neglect of duty.

Source: L. 2011: Entire section added, (SB 11-169), ch. 172, p. 610, § 6, effective July 1.

12-41-103.6. Powers and duties of board - reports - publications - rules - repeal.

(1) (a) The board shall administer and enforce this article and rules adopted under this article.

(b) The director retains the authority granted to the board until a board is constituted and rules are promulgated. The director's rules remain in effect until repealed by the director. This paragraph (b) is repealed, effective July 1, 2013.

(2) In addition to any other powers and duties given the board by this article, the board has the following powers and duties:

(a) To evaluate the qualifications of applicants for licensure, administer examinations, issue and renew licenses and permits authorized under this article, and to take disciplinary actions authorized under this article;

(b) To adopt all reasonable and necessary rules for the administration and enforcement of this article, including rules regarding:

(I) The supervision of unlicensed persons by physical therapists, taking into account the education and training of the unlicensed individuals; and

(II) Physical therapy of animals, including, without limitation, educational and clinical requirements for the performance of physical therapy of animals and the procedure for handling complaints to the department of regulatory agencies regarding physical therapy of animals. In adopting such rules, the board shall consult with the state board of veterinary medicine established by section 12-64-105.

(c) (I) To conduct hearings upon charges for discipline of a licensee and cause the prosecution and enjoinder of all persons violating this article:

(II) (A) To administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge

pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board.

(B) Upon failure of a witness to comply with a subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. The court may punish a failure to obey its order as a contempt of court.

(d) To maintain a register listing the name of every physical therapist, including the contact address, last-known place of residence, and the license number of each licensee; and

(e) To promote consumer protection and consumer education by such means as the board finds appropriate.

Source: L. 2011: Entire section added, (SB 11-169), ch. 172, p. 611, § 7, effective July 1.

Editor's note: This section is similar to former § 12-41-125 as it existed prior to 2011.

12-41-104. Use of titles restricted. A person licensed as a physical therapist may use the title “physical therapist” or the letters “P.T.” or any other generally accepted terms, letters, or figures which indicate that the person is a physical therapist. No other person shall be so designated or shall use the terms “physical therapist”, “licensed physical therapist”, “physiotherapist”, or “physical therapy technician”, or the letters “P.T.” or “L.P.T.”.

Source: L. 91: Entire article R&RE, p. 1646, § 1, effective July 1.

Editor's note: This section is similar to former § 12-41-103 as it existed prior to 1991.

12-41-105. Limitations on authority. (1) Nothing in this article authorizes a physical therapist to perform any of the following acts:

(a) Practice of medicine, surgery, or any other form of healing except as authorized by the provisions of this article; or

(b) Use of roentgen rays and radioactive materials for therapeutic purposes; the use of electricity for surgical purposes; or the diagnosis of disease.

Source: L. 91: Entire article R&RE, p. 1646, § 1, effective July 1. **L. 2011:** IP(1) and (1)(b) amended, (SB 11-169), ch. 172, p. 613, § 8, effective July 1.

Editor's note: This section is similar to former § 12-41-104 as it existed prior to 1991.

12-41-106. License required. Except as otherwise provided by this article, any person who practices physical therapy or who represents oneself as being able to practice physical therapy in this state must possess a valid license under this article.

Source: L. 91: Entire article R&RE, p. 1646, § 1, effective July 1. **L. 2011:** Entire section amended, (SB 11-169), ch. 172, p. 613, § 9, effective July 1.

Editor's note: This section is similar to former § 12-41-109 as it existed prior to 1991.

12-41-107. Licensure by examination. (1) Every applicant for a license by examination shall:

(a) Successfully complete a physical therapy program:

(I) That is accredited by a nationally recognized accrediting agency; or

(II) That the board has determined to be substantially equivalent. The general assembly intends that this determination be liberally construed to ensure qualified applicants seeking licensure under this article the right to take the qualifying examination. The general assembly does not intend for technical barriers to be used to deny such applicants the right to take the examination.

(b) Pass a written examination in accordance with subsection (2) of this section that is:

(I) Approved by the board; and

(II) A national examination accredited by a nationally recognized accrediting agency;

(c) Submit an application in the form and manner designated by the director; and

(d) Pay a fee in an amount determined by the director.

(2) The board may refuse to permit an applicant to take the examination if the application is incomplete, if the applicant is not qualified to sit for the examination, or if the applicant has committed any act which would be grounds for disciplinary action under section 12-41-115.

(3) When the applicant has fulfilled all the requirements of subsection (1) of this section, the board shall issue a license to the applicant; except that the board may deny the license if the applicant has committed an act which would be grounds for disciplinary action under section 12-41-115.

Source: L. 91: Entire article R&RE, p. 1647, § 1, effective July 1. L. 2001: (2)(b) amended, p. 1251, § 2, effective July 1. L. 2011: Entire section amended, (SB 11-169), ch. 172, p. 613, § 10, effective July 1.

Editor's note: This section is similar to former § 12-41-112 as it existed prior to 1991.

12-41-108. Temporary permit. (Repealed)

Source: L. 91: Entire article R&RE, p. 1648, § 1, effective July 1. L. 2001: Entire section repealed, p. 1251, § 3, effective July 1.

Editor's note: This section was similar to former § 12-41-115 as it existed prior to 1991.

12-41-109. Licensure by endorsement. (1) An applicant for licensure by endorsement shall:

(a) Possess a valid license in good standing from another state or territory of the United States;

(b) Submit an application in the form and manner designated by the director; and

(c) Pay a fee in an amount determined by the director.

(2) Upon receipt of all documents required by subsection (1) of this section, the director shall review the application and determine if the applicant is qualified to be licensed by endorsement.

(3) The board shall issue a license if the applicant fulfills the requirements of subsection (1) of this section and meets any one of the following qualifying standards enumerated in paragraphs (a) to (c) of this subsection (3):

(a) The applicant graduated from an accredited program within the past two years and passed an examination substantially equivalent to that specified in section 12-41-107 (2);

(b) The applicant has practiced as a licensed physical therapist for at least two of the five years immediately preceding the date of the application;

(c) The applicant has not practiced as a licensed physical therapist at least two of the last five years immediately preceding the date of the receipt of the application, and:

(I) The applicant passed an examination in another jurisdiction that is substantially equivalent to the examination specified in section 12-41-107 (1) (b), and has demonstrated competency through successful completion of an internship or demonstrated competency as a physical therapist by fulfilling the requirements established by rules of the board.

(II) (Deleted by amendment, L. 2010, (HB 10-1175), ch. 46, p. 175, § 6, effective July 1, 2011.)

(4) (Deleted by amendment, L. 2011, (SB 11-169), ch. 172, p. 614, § 11, effective July 1, 2011.)

(5) The board may deny a license if the applicant has committed an act which would be grounds for disciplinary action under section 12-41-115.

Source: L. 91: Entire article R&RE, p. 1648, § 1, effective July 1. L. 2001: (3)(b) and IP(3)(c) amended, p. 1252, § 4, effective July 1. L. 2010: (3)(c) amended, (HB 10-1175), ch. 46, p. 175, § 6, effective July 1, 2011. L. 2011: (1)(a), (2), IP(3), (3)(c)(I), (4), and (5) amended, (SB 11-169), ch. 172, pp. 614, 615, §§ 11, 12, effective July 1.

Editor's note: This section is similar to former § 12-41-114 as it existed prior to 1991.

12-41-110. Temporary license. (Repealed)

Source: L. 91: Entire article R&RE, p. 1649, § 1, effective July 1. L. 2001: Entire section repealed, p. 1252, § 5, effective July 1.

12-41-111. Licensing of foreign-trained applicants. (1) Every foreign-trained applicant for licensing shall:

(a) Have received education and training in physical therapy substantially equivalent to the education and training required at accredited physical therapy programs in the United States;

(b) Possess an active, valid license in good standing or other authorization to practice physical therapy from an appropriate authority in the country where the foreign-trained applicant is practicing or has practiced;

(c) Pass a written examination approved by the board in accordance with section 12-41-107 (1) (b);

(d) Submit an application in the form and manner designated by the director; and

(e) Pay an application fee in an amount determined by the director.

(2) Upon receipt of all documents required by subsection (1) of this section, the director shall review the application and determine if the applicant is qualified to be licensed.

(3) When the applicant has fulfilled all requirements of subsection (1) of this section, the board shall issue a license to the applicant; except that the board may deny the application if the applicant has committed an act which would be grounds for disciplinary action under section 12-41-115.

Source: L. 91: Entire article R&RE, p. 1650, § 1, effective July 1. L. 2001: (1)(a) amended, p. 1252, § 6, effective July 1. L. 2011: IP(1), (1)(c), (2), and (3) amended, (SB 11-169), ch. 172, p. 615, § 13, effective July 1.

12-41-112. Expiration and renewal of licenses. An applicant for licensure shall pay license, renewal, and reinstatement fees established by the director in the same manner as is authorized in section 24-34-105, C.R.S. A licensee shall renew a license in accordance with a schedule established by the director pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement under section 24-34-105, C.R.S. If a person fails to renew a license pursuant to the schedule established by the director, the license expires. A person whose license has expired is subject to the penalties provided in this article and section 24-34-102 (8), C.R.S.

Source: L. 91: Entire article R&RE, p. 1650, § 1, effective July 1. L. 2001: (2), (4), and (5) amended, p. 1253, § 7, effective July 1. L. 2004: (4) and (5) amended, p. 1843, § 91, effective August 4. L. 2011: Entire section R&RE, (SB 11-169), ch. 172, p. 616, § 14, effective July 1.

Editor's note: This section is similar to former § 12-41-116 as it existed prior to 1991.

12-41-112.5. Inactive license - rules. A physical therapist may request that the board inactivate or activate the physical therapist's license. The board shall promulgate rules governing the activation and inactivation of licenses. Notwithstanding any law to the contrary, the board's rules may limit the applicability of statutory requirements for maintaining professional liability insurance and continuing professional competence for a licensee whose license is currently inactive. The board need not reactivate an inactive license if the physical therapist has committed any act that would be grounds for disciplinary action under section 12-41-115. A physical therapist whose license is currently inactive shall not practice physical therapy.

Source: L. 2011: Entire section added, (SB 11-169), ch. 172, p. 616, § 15, effective July 1.

12-41-113. Special practice authorities and requirements - rules. (1) Supervising persons not licensed as a physical therapist. A physical therapist may supervise up to four individuals at one time who are not physical therapists, including certified nurse aides, to assist in the therapist's clinical practice; except that this limit does not include student physical therapists and student physical therapist assistants supervised by a physical therapist for educational purposes. The board shall promulgate rules governing the required supervision. This subsection (1) does not affect or limit the independent practice or judgment of other professions regulated under this title. For purposes of this subsection (1), a "physical therapist assistant" means a person certified under part 2 of this article.

(2) **Administration of medications.** Physical therapists or physical therapist assistants under the direct supervision of a physical therapist may administer topical and aerosol medications when they are consistent with the scope of physical therapy practice and when any such medication is prescribed by a licensed health care practitioner who is authorized to prescribe such medication. A prescription or order shall be required for each such administration.

(3) **Wound debridement.** A physical therapist is authorized to perform wound debridement under a physician's order when such debridement is consistent with the scope of physical therapy practice. The performance of such wound debridement shall not be deemed to violate the prohibition against performing surgery pursuant to section 12-41-105 (1) (a).

(4) **Physical therapy of animals. (a)** A physical therapist is authorized to perform physical therapy of animals when such physical therapy of animals is consistent with the scope of physical therapy practice. In recognition of the special authority granted by this subsection (4), the performance of physical therapy of animals in accordance with this subsection (4) shall not constitute the practice of veterinary medicine, as defined in section 12-64-103, nor shall it be deemed a violation of section 12-64-104.

(b) In recognition of the emerging field of physical therapy of animals, before commencing physical therapy of an animal, a physical therapist shall obtain veterinary medical clearance of the animal by a veterinarian licensed under article 64 of this title.

Source: L. 91: Entire article R&RE, p. 1651, § 1, effective July 1. **L. 94:** (3) amended, p. 28, § 2, effective March 9. **L. 2001:** Entire section amended, p. 1253, § 8, effective July 1. **L. 2007:** (4) added, p. 561, § 2, effective July 1. **L. 2011:** (1) amended, (SB 11-169), ch. 172, p. 616, § 16, effective July 1.

12-41-114. Scope of article - exclusions. (1) Nothing contained in this article prohibits:

(a) The practice of physical therapy by students enrolled in an accredited physical therapy or physical therapist assistant program and performing under the direction and immediate supervision of a physical therapist currently licensed in this state;

(b) (Deleted by amendment, L. 2001, p. 1254, § 9, effective July 1, 2001.)

(c) The practice of physical therapy in this state by any legally qualified physical therapist from another state or country whose employment requires such physical therapist to accompany and care for a patient temporarily residing in this state, but such physical

therapist shall not provide physical therapy services for any other individuals nor shall such person represent or hold himself out as a physical therapist licensed to practice in this state;

(d) The administration of massage, external baths, or exercise that is not a part of a physical therapy regimen;

(e) Any person registered, certified, or licensed in this state under any other law from engaging in the practice for which such person is registered, certified, or licensed;

(f) The practice of physical therapy in this state by a legally qualified physical therapist from another state or country when providing services in the absence of a physical therapist licensed in this state, so long as the unlicensed physical therapist is acting in accordance with rules established by the board. A person shall not practice without a license under this paragraph (f) for more than four weeks' duration or more than once in any twelve-month period.

(g) The practice of physical therapy in this state by a legally qualified physical therapist from another state or country for the purpose of participating in an educational program of not more than sixteen weeks' duration;

(h) The provision of physical therapy services in this state by an individual from another country who is engaged in a physical therapy related educational program if the program is sponsored by an institution, agency, or individual approved by the board, the program is under the direction and supervision of a physical therapist licensed in this state, and the program does not exceed twelve consecutive months' duration without the specific approval of the board;

(i) The practice of any physical therapist licensed in this state or any other state or territory of the United States who is employed by the United States government or any bureau, division, or agency thereof while within the course and scope of the physical therapist's official duties.

Source: L. 91: Entire article R&RE, p. 1652, § 1, effective July 1. L. 2001: (1)(a) and (1)(b) amended and (1)(i) added, p. 1254, § 9, effective July 1. L. 2011: IP(1), (1)(f), (1)(g), and (1)(h) amended, (SB 11-169), ch. 172, p. 617, § 17, effective July 1.

Editor's note: This section is similar to former § 12-41-123 as it existed prior to 1991.

12-41-114.5. Professional liability insurance required - rules. (1) Except as provided in subsection (2) of this section, a person shall not practice physical therapy unless the person purchases and maintains professional liability insurance of at least one million dollars per claim and at least three million dollars per year for all claims unless the corporation that employs the physical therapist maintains the insurance required by section 12-41-124 if the insurance covers at least one million dollars per claim and at least three million dollars per year.

(2) The board may by rule establish lesser financial responsibility standards for a class of physical therapists whose practice does not require the level of public protection established by subsection (1) of this section. The board shall not establish greater financial responsibility standards than those established in subsection (1) of this section.

(3) This section does not apply to a physical therapist who is a public employee acting within the course and scope of the public employee's duties and who is granted immunity under the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

Source: L. 2011: Entire section added, (SB 11-169), ch. 172, p. 617, § 18, effective July 1.

12-41-114.6. Continuing professional competency - rules. (1) (a) A licensed physical therapist shall maintain continuing professional competency to practice.

(b) The board shall adopt rules establishing a continuing professional competency program that includes, at a minimum, the following elements:

(I) A self-assessment of the knowledge and skills of a physical therapist seeking to renew or reinstate a license;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of activities necessary to ensure at least minimal ability to safely practice the profession; except that a licensed physical therapist need not retake any examination required by section 12-41-107 for initial licensure.

(c) The board shall establish that a licensed physical therapist satisfies the continuing competency requirements of this section if the physical therapist meets the continuing professional competency requirements of one of the following entities:

(I) A state department, including continuing professional competency requirements imposed through a contractual arrangement with a provider;

(II) An accrediting body recognized by the board; or

(III) An entity approved by the board.

(d) (I) After the program is established, a licensed physical therapist shall satisfy the requirements of the program in order to renew or reinstate a license to practice physical therapy.

(II) The requirements of this section apply to individual licensed physical therapists, and nothing in this section requires a person who employs or contracts with a physical therapist to comply with the requirements of this section.

(2) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a licensed physical therapist. A person or the board shall not use the records or documents unless used by the board to determine whether a licensed physical therapist is maintaining continuing professional competency to engage in the profession.

(3) As used in this section, "continuing professional competency" means the ongoing ability of a physical therapist to learn, integrate, and apply the knowledge, skill, and judgment to practice as a physical therapist according to generally accepted standards and professional ethical standards.

Source: L. 2011: Entire section added, (SB 11-169), ch. 172, p. 617, § 18, effective July 1.

12-41-115. Grounds for disciplinary action. (1) The board may take disciplinary action in accordance with section 12-41-116 against a person who has:

(a) Committed any act which does not meet generally accepted standards of physical therapy practice or failed to perform an act necessary to meet generally accepted standards of physical therapy practice;

(b) Engaged in a sexual act with a patient while a patient-physical therapist relationship exists. For the purposes of this paragraph (b), "patient-physical therapist relationship" means that period of time beginning with the initial evaluation through the termination of treatment. For the purposes of this paragraph (b), "sexual act" means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.

(c) Failed to refer a patient to the appropriate licensed health care professional when the services required by the patient are beyond the level of competence of the physical therapist or beyond the scope of physical therapy practice;

(d) Abandoned a patient by any means, including failure to provide a referral to another physical therapist or to another appropriate health care professional when the referral was necessary to meet generally accepted standards of physical therapy care;

(e) Failed to provide adequate or proper supervision when utilizing unlicensed persons in a physical therapy practice;

(f) Failed to make essential entries on patient records or falsified or made incorrect entries of an essential nature on patient records;

(g) Engaged in any of the following activities and practices: Ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies; the administration, without clinical justification, of treatment that is demonstrably unnecessary; or ordering or performing, without clinical justification, any service, X ray, or treatment that

is contrary to recognized standards of the practice of physical therapy as interpreted by the board;

(h) (I) Committed abuse of health insurance as set forth in section 18-13-119 (3), C.R.S.; or

(II) Advertised through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the licensee will perform any act prohibited by section 18-13-119 (3), C.R.S.;

(i) Committed a fraudulent insurance act, as defined in section 10-1-128, C.R.S.;

(j) Offered, given, or received commissions, rebates, or other forms of remuneration for the referral of clients; except that a licensee may pay an independent advertising or marketing agent compensation for advertising or marketing services rendered by an agent on the licensee's behalf, including compensation for referrals of clients identified through such services on a per-client basis;

(k) Falsified information in any application or attempted to obtain or obtained a license by fraud, deception, or misrepresentation;

(l) Engaged in the habitual or excessive use or abuse of alcohol, a habit-forming drug, or a controlled substance as defined in section 18-18-102 (5), C.R.S.;

(m) (I) Failed to notify the board, as required by section 12-41-118.5, of a physical or mental illness or condition that impacts the licensee's ability to perform physical therapy with reasonable skill and safety to patients;

(II) Failed to act within the limitations created by a physical or mental illness or condition that renders the licensee unable to perform physical therapy with reasonable skill and safety to the patient; or

(III) Failed to comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-41-118.5;

(n) Refused to submit to a physical or mental examination when so ordered by the board pursuant to section 12-41-118;

(o) Failed to notify the board in writing of the entry of a final judgment by a court of competent jurisdiction against the licensee for malpractice of physical therapy or a settlement by the licensee in response to charges or allegations of malpractice of physical therapy, which notice must be given within ninety days after the entry of judgment or settlement and, in the case of a judgment, must contain the name of the court, the case number, and the names of all parties to the action;

(p) Violated or aided or abetted a violation of this article, a rule adopted under this article, or a lawful order of the board;

(q) Been convicted of, pled guilty, or pled nolo contendere to any crime related to the licensee's practice of physical therapy or a felony or committed an act specified in section 12-41-121. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea is conclusive evidence of such conviction or plea. In considering the disciplinary action, the board is governed by section 24-5-101, C.R.S.

(r) Fraudulently obtained, furnished, or sold any physical therapy diploma, certificate, license, renewal of license, or record, or aided or abetted any such act;

(s) Advertised, represented, or held himself or herself out, in any manner, as a physical therapist or practiced physical therapy without a license or unless otherwise authorized under this article;

(t) Used in connection with the person's name any designation tending to imply that the person is a physical therapist without being licensed under this article;

(u) Practiced physical therapy during the time the person's license was inactive, expired, suspended, or revoked;

(v) Failed to maintain the insurance required by section 12-41-114.5 or a rule promulgated thereunder;

(w) Failed to respond in an honest, materially responsive, and timely manner to a complaint issued under this article;

(x) Failed to know the contents of this part 1 and any rules promulgated under this part 1; or

(y) Failed to either:

(I) Confirm that a patient is under the care of a physician or other health care professional for the underlying medical condition when providing general wound care within the scope of the physical therapist's practice; or

(II) Refer the patient to a physician or other appropriate health care professional for the treatment of the underlying medical condition when providing general wound care within the scope of the physical therapist's practice.

Source: L. 91: Entire article R&RE, p. 1653, § 1, effective July 1. L. 2001: (1)(k) amended, p. 1254, § 10, effective July 1. L. 2003: (1)(i) amended, p. 622, § 35, effective July 1. L. 2004: (1)(l) amended, p. 1195, § 42, effective August 4. L. 2006: IP(1) amended and (1)(r) to (1)(u) added with relocated provisions, p. 91, § 40, effective August 7. L. 2011: IP(1), (1)(c), (1)(d), (1)(g), (1)(j), (1)(l) to (1)(q), and (1)(u) amended and (1)(v) to (1)(y) added, (SB 11-169), ch. 172, p. 619, § 19, effective July 1. L. 2012: (1)(l) and (1)(m)(III) amended, (HB 12-1311), ch. 281, p. 1615, § 26, effective July 1.

Editor's note: (1) This section is similar to former § 12-41-118 as it existed prior to 1991.

(2) Subsections (1)(r), (1)(s), (1)(t), and (1)(u) are similar to former § 12-41-121 (1)(a), (1)(b), (1)(c), and (1)(d) as they existed prior to 2006.

12-41-115.5. Protection of medical records - licensee's obligations - verification of compliance - noncompliance grounds for discipline - rules. (1) Each licensed physical therapist responsible for patient records shall develop a written plan to ensure the security of patient medical records. The plan must address at least the following:

- (a) The storage and proper disposal of patient medical records;
 - (b) The disposition of patient medical records in the event the licensee dies, retires, or otherwise ceases to practice or provide physical therapy care to patients; and
 - (c) The method by which patients may access or obtain their medical records promptly if any of the events described in paragraph (b) of this subsection (1) occurs.
- (2) Upon initial licensure under this part 1 and upon renewal of a license, the applicant or licensee shall attest to the board that he or she has developed a plan in compliance with this section.

(3) A licensee shall inform each patient in writing of the method by which the patient may access or obtain his or her medical records if an event described in paragraph (b) of subsection (1) of this section occurs.

(4) The board may adopt rules reasonably necessary to implement this section.

Source: L. 2011: Entire section added, (SB 11-169), ch. 172, p. 621, § 20, effective July 1.

12-41-116. Disciplinary actions. (1) (a) The board, in accordance with article 4 of title 24, C.R.S., may issue letters of admonition; deny, refuse to renew, suspend, or revoke any license; place a licensee on probation; or impose public censure or a fine, if the board or the board's designee determines after notice and the opportunity for a hearing that the licensee has committed an act specified in section 12-41-115.

(b) (Deleted by amendment, L. 2011, (SB 11-169), ch. 172, p. 621, § 21, effective July 1, 2011.)

(c) In the case of a deliberate and willful violation of this article or if the public health, safety, and welfare require emergency action, the board may take disciplinary action on an emergency basis under sections 24-4-104 and 24-4-105, C.R.S.

(2) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action but should not be dismissed as being without merit, the board may send a letter of admonition to the licensee.

(b) When the board sends a letter of admonition to a licensee, the board shall notify the licensee of the licensee's right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct described in the letter of admonition.

(c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(3) In any disciplinary order that allows a physical therapist to continue to practice, the board may impose upon the licensee such conditions as the board deems appropriate to ensure that the physical therapist is physically, mentally, and professionally qualified to practice physical therapy in accordance with generally accepted professional standards. Such conditions may include any or all of the following:

(a) Examination of the physical therapist to determine his or her mental or physical condition, as provided in section 12-41-118, or to determine professional qualifications;

(b) Any therapy, training, or education that the board believes necessary to correct deficiencies found either in a proceeding in compliance with section 24-34-106, C.R.S., or through an examination under paragraph (a) of this subsection (3);

(c) A review or supervision of a licensee's practice that the board finds necessary to identify and correct deficiencies therein;

(d) Restrictions upon the nature and scope of practice to ensure that the licensee does not practice beyond the limits of the licensee's capabilities.

(3.5) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, the board may send a confidential letter of concern to the licensee.

(4) The board may take disciplinary action against a physical therapist for failure to comply with any of the conditions imposed by the board under subsection (3) of this section.

(5) A person whose license has expired is subject to the penalties provided in this article and section 24-34-102 (8), C.R.S.

(6) A person whose license to practice physical therapy is revoked or who surrenders his or her license to avoid discipline is not eligible to apply for a license for two years after the license is revoked or surrendered. The two-year waiting period applies to a person whose license to practice physical therapy, or to practice any other health care occupation, is revoked by any other legally qualified board or regulatory entity.

Source: L. 91: Entire article R&RE, p. 1655, § 1, effective July 1. L. 2001: (1)(a) amended, p. 1254, § 11, effective July 1. L. 2004: (2) amended, p. 1844, § 92, effective August 4. L. 2006: (3.5) added, p. 808, § 36, effective July 1. L. 2011: (1), (2)(a), (2)(b), (3), (3.5), and (4) amended and (5) and (6) added, (SB 11-169), ch. 172, p. 621, § 21, effective July 1.

Editor's note: This section is similar to former §§ 12-41-118 and 12-41-120 as they existed prior to 1991.

12-41-117. Disciplinary proceedings - investigations - judicial review. (1) The board may commence a proceeding for the discipline of a licensee when the board has reasonable grounds to believe that a licensee has committed an act enumerated in section 12-41-115.

(2) In any proceeding held under this section, the board may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a licensee from another jurisdiction if the violation that prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action under this article.

(3) (a) The board may investigate potential grounds for disciplinary action upon its own motion or when the board is informed of dismissal of a person licensed under this article if the dismissal was for a matter constituting a violation of this article.

(b) A person who supervises a physical therapist shall report to the board when the physical therapist has been dismissed because of incompetence in physical therapy or failure to comply with this article. A physical therapist who is aware that another physical therapist is violating this article shall report such violation to the board.

(4) (Deleted by amendment, L. 2004, p. 1844, § 93, effective August 4, 2004.)

(5) (a) The board or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board pursuant to this article. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board.

(b) Upon failure of a witness to comply with a subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(6) The board may keep any investigation authorized under this article closed until the results of such investigation are known and either the complaint is dismissed or notice of hearing and charges are served upon the licensee.

(7) (a) The board, the director's staff, a witness or consultant to the board, a witness testifying in a proceeding authorized under this article, and a person who lodges a complaint under this article is immune from liability in a civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, witness, or complainant, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts.

(b) Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this section shall be immune from any liability, civil or criminal, that otherwise might result by reason of such participation.

(8) The board, through the department of regulatory agencies, may employ administrative law judges appointed pursuant to part 10 of article 30 of title 24, C.R.S., on a full-time or part-time basis, to conduct hearings under this article or on any matter within the board's jurisdiction upon such conditions and terms as the board may determine.

(9) Final action of the board may be judicially reviewed by the court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S., and judicial proceedings for the enforcement of an order of the board may be instituted in accordance with section 24-4-106, C.R.S.

(10) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(11) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required license, the board may issue an order to cease and desist such activity. The order must set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (11), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(12) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated this article, then, in addition to any specific powers granted pursuant to this article, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) The board shall promptly notify a person against whom an order to show cause has been issued under paragraph (a) of this subsection (12) of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. The board may serve the notice by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (12) constitutes notice thereof to the person.

(c) (I) The board shall commence a hearing on an order to show cause no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (12). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event is the hearing to commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (12) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (12) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order becomes final as to that person by operation of law. The board shall conduct the hearing in accordance with sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (12), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) is effective when issued and is a final order for purposes of judicial review.

(13) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the board may enter into a stipulation with such person.

(14) If a person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order. Upon receiving the request, the attorney general or district attorney shall bring the suit as requested.

(15) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in subsection (9) of this section.

Source: L. 91: Entire article R&RE, p. 1656, § 1, effective July 1. L. 2004: (4), (5), and (7) amended and (10) added, p. 1844, § 93, effective August 4. L. 2006: (11) to (15) added, p. 808, § 37, effective July 1. L. 2011: (1) to (3), (5), (6), (7)(a), (8) to (10), (11)(a), and (12) to (14) amended, (SB 11-169), ch. 172, p. 623, § 22, effective July 1.

Editor's note: This section is similar to former § 12-41-120 as it existed prior to 1991.

12-41-118. Mental and physical examination of licensees. (1) If the board has reasonable cause to believe that a licensee is unable to practice with reasonable skill and

safety, the board may require the licensee to take a mental or physical examination by a health care provider designated by the board. If the licensee refuses to undergo such a mental or physical examination, unless due to circumstances beyond the licensee's control, the board may suspend such licensee's license until the results of the examination are known and the board has made a determination of the licensee's fitness to practice. The board shall proceed with an order for examination and determination in a timely manner.

(2) An order issued to a licensee under subsection (1) of this section to undergo a mental or physical examination must contain the basis of the board's reasonable cause to believe that the licensee is unable to practice with reasonable skill and safety. For the purposes of a disciplinary proceeding authorized by this article, the licensee is deemed to have waived all objections to the admissibility of the examining health care provider's testimony or examination reports on the ground that they are privileged communications.

(3) The licensee may submit to the board testimony or examination reports from a health care provider chosen by such licensee pertaining to the condition that the board has alleged may preclude the licensee from practicing with reasonable skill and safety. These may be considered by the board in conjunction with, but not in lieu of, testimony and examination reports of the health care provider designated by the board.

(4) A person shall not use the results of any mental or physical examination ordered by the board as evidence in any proceeding other than one before the board. The examination results are not public records and are not available to the public.

Source: L. 91: Entire article R&RE, p. 1658, § 1, effective July 1. L. 2011: Entire section amended, (SB 11-169), ch. 172, p. 626, § 23, effective July 1.

Editor's note: This section is similar to former § 12-41-118.5 as it existed prior to 1991.

12-41-118.5. Examinations - notice - confidential agreements. (1) If a physical therapist suffers from a physical or mental illness or condition rendering the licensee unable to practice physical therapy or practice as a physical therapist with reasonable skill and patient safety, the physical therapist shall notify the board of the illness or condition in a manner and within a period of time determined by the board. The board may require the licensee to submit to an examination or to evaluate the extent of the illness or condition and its impact on the licensee's ability to practice with reasonable skill and safety to patients.

(2) (a) Upon determining that a physical therapist with a physical or mental illness or condition is able to render limited physical therapy with reasonable skill and patient safety, the board may enter into a confidential agreement with the physical therapist in which the physical therapist agrees to limit his or her practice based on the restrictions imposed by the illness or condition, as determined by the board.

(b) The agreement must specify that the licensee is subject to periodic reevaluations or monitoring as determined appropriate by the board.

(c) The parties may modify or dissolve the agreement as necessary based on the results of a reevaluation or of monitoring.

(d) By entering into an agreement with the board under this subsection (2) to limit his or her practice, the licensee is not engaging in unprofessional conduct. The agreement is an administrative action and does not constitute a restriction or discipline by the board. However, if the licensee fails to comply with the terms of an agreement entered into pursuant to this subsection (2), the failure constitutes grounds for disciplinary action under section 12-41-115 (1) (m) and the licensee is subject to discipline in accordance with section 12-41-116.

(3) This section does not apply to a licensee subject to discipline under section 12-41-115 (1) (l).

Source: L. 2011: Entire section added, (SB 11-169), ch. 172, p. 627, § 24, effective July 1.

12-41-119. Professional review committees - immunity. (1) A professional review committee may be established pursuant to this section to investigate the quality of care

being given by a person licensed under this article. It shall include in its membership at least three persons licensed under this article, but such committee may be authorized to act only by:

- (a) The board;
 - (b) A society or an association of physical therapists whose membership includes not less than one-third of the persons licensed pursuant to this article and residing in this state if the licensee whose services are the subject of review is a member of such society or association; or
 - (c) A hospital licensed pursuant to part 1 of article 3 of title 25, C.R.S., or certified pursuant to section 25-1.5-103 (1) (a) (II), C.R.S.; except that the professional review committee shall include in its membership at least a two-thirds majority of persons licensed under this article. Such review committee may function under the quality management provisions of section 25-3-109, C.R.S.
- (2) Any professional review committee established pursuant to subsection (1) of this section shall report to the board any adverse findings that would constitute a possible violation of this article.
- (3) The board, a member of a professional review committee authorized by the board, a member of the board's or committee's staff, a person acting as a witness or consultant to the board or committee, a witness testifying in a proceeding authorized under this article, and a person who lodges a complaint pursuant to this article is immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board or committee member, staff, consultant, or witness if the individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article is immune from any civil or criminal liability that may result from such participation.

Source: L. 91: Entire article R&RE, p. 1659, § 1, effective July 1. L. 2003: (1)(c) amended, p. 703, § 19, effective July 1. L. 2004: (3) amended, p. 1845, § 94, effective August 4. L. 2011: (1)(a), (2), and (3) amended, (SB 11-169), ch. 172, p. 627, § 25, effective July 1.

Editor's note: This section is similar to former § 12-41-121 as it existed prior to 1991.

12-41-120. Reports by insurance companies. (1) (a) Each insurance company licensed to do business in this state and engaged in the writing of malpractice insurance for physical therapists shall send to the board information about any malpractice claim that involves a physical therapist and is settled or in which judgment is rendered against the insured.

(b) In addition, the insurance company shall submit supplementary reports containing the disposition of the claim to the board within ninety days after settlement or judgment.

(2) Regardless of the disposition of any claim, the insurance company shall provide such information as the board finds reasonably necessary to conduct its own investigation and hearing.

Source: L. 91: Entire article R&RE, p. 1659, § 1, effective July 1. L. 2011: Entire section amended, (SB 11-169), ch. 172, p. 628, § 26, effective July 1.

Editor's note: This section is similar to former § 12-41-125 as it existed prior to 1991.

12-41-121. Unauthorized practice - penalties.

(1) Repealed.

(2) Any person who practices or offers or attempts to practice physical therapy without an active license issued under this article commits a class 2 misdemeanor and shall be

punished as provided in section 18-1.3-501, C.R.S., for the first offense, and for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(3) and (4) (Deleted by amendment, L. 2006, p. 91, § 41, effective August 7, 2006.)

Source: L. 91: Entire article R&RE, p. 1660, § 1, effective July 1. L. 2002: (2) amended, p. 1480, § 84, effective October 1. L. 2006: (1) repealed and (2) to (4) amended, p. 91, §§ 42, 41, effective August 7.

Editor's note: (1) This section is similar to former § 12-41-124 as it existed prior to 1991.

(2) Subsections (1)(a), (1)(b), (1)(c), and (1)(d) were relocated to § 12-41-115 (1)(r), (1)(s), (1)(t), and (1)(u) in 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-41-122. Violation - fines. (1) Notwithstanding section 12-41-121, the board may assess a fine for a violation of this article or any rule adopted under this article.

(2) Such fine shall not be greater than one thousand dollars and shall be transmitted to the state treasurer, who shall credit the same to the general fund.

(3) All fines shall be imposed in accordance with the provisions of section 24-4-105, C.R.S., but shall not be considered a substitute or waiver of the criminal penalties.

Source: L. 91: Entire article R&RE, p. 1661, § 1, effective July 1. L. 2011: (1) amended, (SB 11-169), ch. 172, p. 628, § 27, effective July 1.

12-41-123. Injunctive proceedings. The board may, in the name of the people of Colorado, through the attorney general of Colorado, apply for an injunction to a court to enjoin a person from committing an act declared to be a misdemeanor by this article. If it is established that the defendant has been or is committing an act declared to be a misdemeanor by this article, the court shall enter a decree perpetually enjoining the defendant from further committing the act. If a person violates an injunction issued under this section, the court may try and punish the offender for contempt of court. An injunction proceeding is in addition to, and not in lieu of, all penalties and other remedies provided in this article.

Source: L. 91: Entire article R&RE, p. 1661, § 1, effective July 1. L. 2011: Entire section amended, (SB 11-169), ch. 172, p. 628, § 28, effective July 1.

Editor's note: This section is similar to former § 12-41-126 as it existed prior to 1991.

12-41-124. Professional service corporations, limited liability companies, and registered limited liability partnerships for the practice of physical therapy - definitions.

(1) Physical therapists may form professional service corporations for the practice of physical therapy under the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., if such corporations are organized and operated in accordance with this section. The articles of incorporation of such corporations must contain provisions complying with the following requirements:

(a) The name of the corporation shall contain the words "professional company" or "professional corporation" or abbreviations thereof.

(b) The corporation must be organized solely for the purposes of conducting the practice of physical therapy only through persons licensed by the board to practice physical therapy.

(c) The corporation may exercise the powers and privileges conferred upon corporations by the laws of Colorado only in furtherance of and subject to its corporate purpose.

(d) (I) Except as provided in subparagraph (II) of this paragraph (d), all shareholders of the corporation must be persons licensed by the board to practice physical therapy and

who at all times own their shares in their own right. With the exception of illness, accident, or time spent in the armed services, on vacations, or on leaves of absence not to exceed one year, the individuals must be actively engaged in the practice of physical therapy in the offices of the corporation.

(II) If a person licensed to practice physical therapy who was a shareholder of the corporation dies, an unlicensed heir to the deceased shareholder may become a shareholder of the corporation for up to two years. Unless the heir is the only shareholder of the corporation, the heir who becomes a shareholder is a nonvoting shareholder. If the heir of the deceased shareholder ceases to be a shareholder, the owner who received the stocks from the shareholder shall dispose of the shares in accordance with the provisions required by paragraph (e) of this subsection (1). An heir who is not licensed under this article shall not exercise any authority over professional or clinical matters.

(e) Provisions shall be made requiring any shareholder who ceases to be or for any reason is ineligible to be a shareholder to dispose of all such shares forthwith, either to the corporation or to any person having the qualifications described in paragraph (d) of this subsection (1).

(f) The president shall be a shareholder and a director, and, to the extent possible, all other directors and officers shall be persons having the qualifications described in paragraph (d) of this subsection (1). Lay directors and officers shall not exercise any authority whatsoever over professional matters.

(g) The articles of incorporation must provide, and all shareholders of the corporation shall agree, that all shareholders of the corporation are jointly and severally liable for all acts, errors, and omissions of the employees of the corporation or that all shareholders of the corporation are jointly and severally liable for all acts, errors, and omissions of the employees of the corporation except when the shareholders maintain professional liability insurance that meets the standards of section 12-14-114.5 or when the corporation maintains professional liability insurance that meets the following minimum standards:

(I) The insurer shall insure the corporation against liability imposed upon the corporation by law for damages resulting from any claim made against the corporation arising out of the performance of professional services for others by those officers and employees of the corporation who are licensed by the board to practice physical therapy.

(II) The policies must insure the corporation against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all nonprofessional employees.

(III) The insurance policy must provide for an amount for each claim of at least one hundred thousand dollars multiplied by the number of persons licensed to practice physical therapy employed by the corporation. The policy must provide for an aggregate top limit of liability per year for all claims of three hundred thousand dollars also multiplied by the number of persons licensed to practice physical therapy employed by the corporation, but no firm is required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate top limit of liability for all claims during the year of nine hundred thousand dollars.

(IV) The policy may provide that it does not apply to:

(A) A dishonest, fraudulent, criminal, or malicious act or omission of the insured corporation or any stockholder or employee thereof;

(B) The conduct of any business enterprise, not including the practice of physical therapy, in which the insured corporation under this section is not permitted to engage but that nevertheless may be owned by the insured corporation, in which the insured corporation may be a partner, or that may be controlled, operated, or managed by the insured corporation in its own or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, when not resulting from breach of professional duty, bodily injury to, or sickness, disease, or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof; and

(V) The policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(2) The corporation shall do nothing that, if done by a person licensed to practice physical therapy and employed by the corporation, would constitute any ground for disciplinary action, as set forth in section 12-41-115. Any violation by the corporation of

this section is grounds for the board to terminate or suspend its right to practice physical therapy.

(3) Nothing in this section diminishes or changes the obligation of each person licensed to practice physical therapy employed by the corporation to practice in accordance with the standards of professional conduct under this article and rules adopted under this article. Physical therapists who by act or omission cause the corporation to act or fail to act in a way that violates the standards of professional conduct, including any provision of this section, is personally responsible for the violation and subject to discipline for the violation.

(4) A professional service corporation may adopt a pension, profit sharing (whether cash or deferred), health and accident insurance, or welfare plan for all or part of its employees, including lay employees, if such plan does not require or result in the sharing of specific or identifiable fees with lay employees and if any payments made to lay employees or into any such plan on behalf of lay employees are based upon their compensation or length of service, or both, rather than the amount of fees or income received.

(5) (a) Except as provided in this section, corporations shall not practice physical therapy.

(b) The corporate practice of physical therapy does not include physical therapists employed by a certified or licensed hospital, licensed skilled nursing facility, certified home health agency, licensed hospice, certified comprehensive outpatient rehabilitation facility, certified rehabilitation agency, authorized health maintenance organization, accredited educational entity, organization providing care for the elderly under section 25.5-5-412, C.R.S., or other entity wholly owned and operated by a governmental unit or agency if:

(I) The relationship created by the employment does not affect the ability of the physical therapist to exercise his or her independent judgment in the practice of the profession;

(II) The physical therapist's independent judgment in the practice of the profession is in fact unaffected by the relationship;

(III) The policies of the entity employing the physical therapist contain a procedure by which complaints by a physical therapist alleging a violation of this paragraph (b) may be heard and resolved;

(IV) The physical therapist is not required to exclusively refer any patient to a particular provider or supplier; except that nothing in this subparagraph (IV) shall invalidate the policy provisions of a contract between a physical therapist and his or her intermediary or the managed care provisions of a health coverage plan; and

(V) The physical therapist is not required to take any other action he or she determines not to be in the patient's best interest.

(c) The provisions of paragraph (b) of this subsection (5) shall apply to professional service corporations, limited liability companies, and registered limited liability partnerships formed for the practice of physical therapy in accordance with this section regardless of the date of formation of the entity.

(d) A physical therapist employed by an entity described in paragraph (b) of this subsection (5) shall be an employee of the entity for purposes of liability for all acts, errors, and omissions of the employee.

(6) As used in this section, unless the context otherwise requires:

(a) "Articles of incorporation" includes operating agreements of limited liability companies and partnership agreements of registered limited liability partnerships.

(a.5) "Carrier" shall have the same meaning as set forth in section 10-16-102 (8), C.R.S.

(b) "Corporation" includes a limited liability company organized under the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S., and a limited liability partnership registered under section 7-60-144 or 7-64-1002, C.R.S.

(c) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(d) "Employees" includes employees, members, and managers of a limited liability company and employees and partners of a registered limited liability partnership.

(d.3) "Health benefit plan" shall have the same meaning as set forth in section 10-16-102 (21), C.R.S.

(d.5) "President" includes all managers, if any, of a limited liability company and all partners in a registered limited liability partnership.

(e) "Share" includes a member's rights in a limited liability company and a partner's rights in a registered limited liability partnership.

(f) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

Source: **L. 91:** Entire article R&RE, p. 1661, § 1, effective July 1. **L. 93:** IP(1) amended, p. 863, § 35, effective July 1, 1994. **L. 95:** (6) added, p. 814, § 35, effective May 24. **L. 97:** (6)(b) amended, p. 919, § 15, effective January 1, 1998. **L. 2001:** (1)(g)(II) amended and (6)(d.5) added, p. 1255, §§ 12, 13, effective July 1. **L. 2005:** (5) amended and (6)(a.5) and (6)(d.3) added, pp. 336, 337, §§ 1, 2, effective April 22. **L. 2011:** IP(1), (1)(b), (1)(d), (1)(g), (2), (3), and IP(5)(b) amended, (SB 11-169), ch. 172, p. 629, § 29, effective July 1.

Editor's note: This section is similar to former § 12-41-130 as it existed prior to 1991.

ANNOTATION

Law reviews. For article, "Operating a Personal Service Cooperation", see 17 Colo. Law. 2011 (1988).

12-41-125. Powers and duties of director - reports - publications - rules. (Repealed)

Source: **L. 91:** Entire article R&RE, p. 1664, § 1, effective July 1. **L. 97:** (2)(g) repealed, p. 1480, § 29, effective June 3. **L. 2001:** (2)(e) repealed, p. 1255, § 14, effective July 1. **L. 2004:** (2)(c) amended, p. 1846, § 95, effective August 4. **L. 2007:** (2)(b) amended, p. 562, § 3, effective July 1. **L. 2011:** Entire section repealed, (SB 11-169), ch. 172, p. 631, § 30, effective July 1.

Editor's note: This section is similar to former § 12-41-108 as it existed prior to 1991.

12-41-126. Advisory committee. (Repealed)

Source: **L. 91:** Entire article R&RE, p. 1665, § 1, effective July 1. **L. 2001:** Entire section amended, p. 1256, § 15, effective July 1. **L. 2011:** Entire section repealed, (SB 11-169), ch. 172, p. 631, § 31, effective July 1.

12-41-127. Limitation on authority. The authority granted the board by this article does not authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

Source: **L. 91:** Entire article R&RE, p. 1665, § 1, effective July 1. **L. 2011:** Entire section amended, (SB 11-169), ch. 172, p. 631, § 32, effective July 1.

Editor's note: This section is similar to former § 12-41-108.5 as it existed prior to 1991.

12-41-128. Fees and expenses. All fees collected under this article shall be determined, collected, and appropriated in the same manner as set forth in section 24-34-105, C.R.S.

Source: **L. 91:** Entire article R&RE, p. 1665, § 1, effective July 1.

12-41-129. Physical therapists - registered prior to July 1, 1991. (Repealed)

Source: L. 91: Entire article R&RE, p. 1666, § 1, effective July 1. L. 2001: Entire section repealed, p. 1256, § 16, effective July 1.

Editor's note: This section was similar to former § 12-41-131 as it existed prior to 1991.

12-41-130. Repeal of part. (1) This part 1 is repealed, effective September 1, 2018.
(2) (a) The licensing functions of the board as set forth in this part 1 are terminated September 1, 2018.
(b) Prior to such termination, the licensing functions shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 91: Entire article R&RE, p. 1666, § 1, effective July 1. L. 2001: (1) and (2)(a) amended, p. 1256, § 17, effective July 1. L. 2011: (1) and (2)(a) amended, (SB 11-169), ch. 172, p. 610, § 3, effective July 1.

Editor's note: This section is similar to former § 12-41-132 as it existed prior to 1991.

PART 2**PHYSICAL THERAPIST ASSISTANTS**

12-41-201. Additional board authority - rules. (1) In addition to all other powers and duties given to the board by law, the board may:

- (a) Certify physical therapist assistants to practice;
- (b) Evaluate the qualifications of applicants for certification, issue and renew the certifications authorized under this part 2, and take the disciplinary actions authorized under this part 2;
- (c) Conduct hearings upon charges for discipline of a certified physical therapist assistant and cause the prosecution and enjoinder of all persons violating this part 2;
- (d) Administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board;
- (e) Appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board; and
- (f) Establish fines under section 12-41-122.

(2) Upon failure of a witness to comply with a subpoena or process, the district court of the county in which the subpoenaed person resides or conducts business, upon application by the board with notice to the subpoenaed person, may issue to the person an order requiring that person to appear before the board; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. The court may punish a failure to obey its order as a contempt of court.

(3) The board may promulgate rules necessary to implement, administer, and enforce this part 2.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 631, § 34, effective July 1.

12-41-202. Use of titles restricted. A person certified as a physical therapist assistant may use the title "physical therapist assistant" or the letters "P.T.A." or any other generally accepted terms, letters, or figures that indicate that the person is a physical therapist

assistant. No other person shall use the terms “physical therapist assistant”, “certified physical therapist assistant”, or any letters or words that indicate that the person is a physical therapist assistant.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 631, § 34, effective July 1.

12-41-203. Limitations on authority. (1) Nothing in this part 2 authorizes a physical therapist assistant to perform any of the following acts:

(a) Practice of medicine, surgery, or any other form of healing except as authorized by this part 2; or

(b) Use of roentgen rays and radioactive materials for therapeutic purposes, use of electricity for surgical purposes, or diagnosis of disease.

(2) A physical therapist assistant shall not practice physical therapy unless the assistant works under the supervision of a licensed physical therapist.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 631, § 34, effective July 1.

12-41-204. Certification required. Effective June 1, 2012, except as otherwise provided by this part 2, a person who practices as a physical therapist assistant or who represents oneself as being able to practice as a physical therapist assistant in this state must possess a valid certification issued by the board under this part 2 and rules adopted under this part 2.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 633, § 34, effective July 1.

12-41-205. Certification by examination - repeal. (1) Every applicant for a certification by examination shall:

(a) (I) Have successfully completed a physical therapist assistant program accredited by the commission on accreditation in physical therapy education or any comparable organization as determined by the board; or

(II) Qualify to take the physical therapy examination established under section 12-41-107;

(b) Pass a written examination that is:

(I) Approved by the board; and

(II) A national examination accredited by a nationally recognized accrediting agency;

(c) Submit an application in the form and manner designated by the director; and

(d) Pay a fee in an amount determined by the director.

(2) The board may refuse to permit an applicant to take the examination if the application is incomplete or indicates that the applicant is not qualified to sit for the examination, or if the applicant has committed any act that would be grounds for disciplinary action under section 12-41-210.

(3) When the applicant has fulfilled all the requirements of subsection (1) of this section, the board shall issue a certification to the applicant; except that the board may deny certification if the applicant has committed an act that would be grounds for disciplinary action under section 12-41-210.

(4) (a) In lieu of qualifying under subsection (1) of this section, a person may qualify as a physical therapist assistant if the person has at least five years of experience practicing as a physical therapist assistant or is otherwise qualified as determined by the board.

(b) This subsection (4) is repealed, effective June 1, 2013.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 633, § 34, effective July 1.

12-41-206. Certification by endorsement. (1) An applicant for certification by endorsement shall:

- (a) Possess a valid license, certification, or registration in good standing from another state or territory of the United States;
- (b) Submit an application in the form and manner designated by the director; and
- (c) Pay a fee in an amount determined by the director.

(2) Upon receipt of all documents required by subsection (1) of this section, the director shall review the application and make a determination of the applicant's qualification to be certified by endorsement.

(3) The board shall issue a certification if the applicant fulfills the requirements of subsection (1) of this section and meets any one of the following qualifying standards:

(a) The applicant graduated from an accredited program within the past two years and passed an examination substantially equivalent to the examination specified in section 12-41-205 (1) (b);

(b) The applicant has practiced as a licensed, certified, or registered physical therapist assistant for at least two of the five years immediately preceding the date of the application; or

(c) The applicant has passed an examination in another jurisdiction that is substantially equivalent to the examination specified in section 12-41-205 (1) (b), and has demonstrated competency through successful completion of an internship or demonstrated competency as a physical therapist assistant by fulfilling the requirements established by rules of the board.

(4) The board may deny certification if the applicant has committed an act that would be grounds for disciplinary action under section 12-41-210.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 634, § 34, effective July 1.

12-41-207. Certification of foreign-trained applicants. (1) Every foreign-trained applicant for certification shall:

(a) Have received education and training as a physical therapist assistant that is substantially equivalent to the education and training required by accredited physical therapist assistant programs in the United States;

(b) Possess an active, valid license, certification, or registration in good standing or other authorization to practice as a physical therapist assistant from an appropriate authority in the country where the foreign-trained applicant is practicing or has practiced;

(c) Pass a written examination approved by the board in accordance with section 12-41-205 (1) (b);

(d) Submit an application in the form and manner designated by the director; and

(e) Pay an application fee in an amount determined by the director.

(2) Upon receipt of all documents and the fee required by subsection (1) of this section, the director shall review the application and determine if the applicant is qualified to be certified.

(3) When the applicant has fulfilled all the requirements of subsection (1) of this section, the board shall issue a certification to the applicant; except that the board may deny the application if the applicant has committed an act that would be grounds for disciplinary action under section 12-41-210.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 634, § 34, effective July 1.

12-41-208. Expiration and renewal of certification. An applicant for certification shall pay certification, renewal, and reinstatement fees established by the director in the same manner as is authorized in section 24-34-105, C.R.S. A certified physical therapist assistant shall renew a certification in accordance with a schedule established by the director pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement under section 24-34-105, C.R.S. If a person fails to

renew a certification pursuant to the schedule established by the director, the certification expires. A person whose certification has expired is subject to the penalties provided in this part 2 and section 24-34-102 (8), C.R.S.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 635, § 34, effective July 1.

12-41-209. Scope of part 2 - exclusions. (1) This part 2 does not prohibit:

(a) Practice as a physical therapist assistant in this state by a legally qualified physical therapist assistant from another state or country whose employment requires the physical therapist assistant to accompany and care for a patient temporarily residing in this state, but the physical therapist assistant shall not provide physical therapy services for another individual nor shall the person represent or hold himself or herself out as a physical therapist assistant certified to practice in this state;

(b) The administration of massage, external baths, or exercise that is not a part of a physical therapy regimen;

(c) A person registered, certified, or licensed in this state under any other law from engaging in the practice for which the person is registered, certified, or licensed;

(d) Practice as a physical therapist assistant in this state by a legally qualified physical therapist assistant from another state or country for the purpose of participating in an educational program of not more than sixteen weeks' duration; or

(e) The practice of a physical therapist assistant licensed, certified, or registered in this or any other state or territory of the United States who is employed by the United States government or a bureau, division, or agency thereof while within the course and scope of the physical therapist assistant's duties.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 635, § 34, effective July 1.

12-41-210. Grounds for disciplinary action. (1) The board may take disciplinary action in accordance with section 12-41-211 against a person who has:

(a) Committed an act that does not meet generally accepted standards of physical therapist assistant practice or failed to perform an act necessary to meet generally accepted standards of physical therapist assistant practice;

(b) Engaged in sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S., with a patient during the period of time beginning with the initial evaluation through the termination of treatment;

(c) Abandoned a patient by any means;

(d) Failed to make essential entries on patient records or falsified or made incorrect entries of an essential nature on patient records;

(e) (I) Committed abuse of health insurance as set forth in section 18-13-119, C.R.S.; or

(II) Advertised through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the certified physical therapist assistant will perform an act prohibited by section 18-13-119, C.R.S.;

(f) Committed a fraudulent insurance act, as defined in section 10-1-128, C.R.S.;

(g) Falsified information in any application or attempted to obtain or obtained a certification by fraud, deception, or misrepresentation;

(h) Engaged in the habitual or excessive use or abuse of alcohol, a habit-forming drug, or a controlled substance as defined in section 18-18-102 (5), C.R.S.;

(i) (I) Failed to notify the board, as required by section 12-41-214, of a physical or mental illness or condition that impacts the certified physical therapist assistant's ability to perform physical therapy with reasonable skill and safety to patients;

(II) Failed to act within the limitations created by a physical or mental illness or condition that renders the certified physical therapist assistant unable to perform physical therapy with reasonable skill and safety to the patient; or

(III) Failed to comply with the limitations agreed to under a confidential agreement entered into under section 12-41-214;

(j) Refused to submit to a physical or mental examination when so ordered by the board under section 12-41-213;

(k) Failed to notify the board in writing of the entry of a final judgment by a court of competent jurisdiction against the certified physical therapist assistant for malpractice or a settlement by the certified physical therapist assistant in response to charges or allegations of malpractice, which notice must be given within ninety days after the entry of judgment or settlement and, in the case of a judgment, must contain the name of the court, the case number, and the names of all parties to the action;

(l) Violated or aided or abetted a violation of this part 2, a rule adopted under this part 2, or a lawful order of the board;

(m) Been convicted of, pled guilty, or pled nolo contendere to a crime related to the certified physical therapist assistant's practice or a felony or committed an act specified in section 12-41-216. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea is conclusive evidence of the conviction or plea. In considering the disciplinary action, the board is governed by section 24-5-101, C.R.S.

(n) Fraudulently obtained, furnished, or sold a physical therapist assistant diploma, certificate, renewal of certificate, or record, or aided or abetted any such act;

(o) Represented, or held himself or herself out as, in any manner, a physical therapist assistant or practiced as a physical therapist assistant without a certification, unless otherwise authorized under this part 2;

(p) Used in connection with the person's name a designation implying that the person is a physical therapist assistant without being certified under this part 2;

(q) Practiced as a physical therapist assistant during the time the person's certification was expired, suspended, or revoked; or

(r) Failed to respond in an honest, materially responsive, and timely manner to a complaint issued under this part 2.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 636, § 34, effective July 1. L. 2012: (1)(h) amended, (HB 12-1311), ch. 281, p. 1615, § 27, effective July 1.

12-41-211. Disciplinary actions. (1) (a) The board, in accordance with article 4 of title 24, C.R.S., may issue letters of admonition; deny, refuse to renew, suspend, or revoke a certification; place a certified physical therapist assistant on probation; or impose public censure or a fine, if the board or the board's designee determines after notice and the opportunity for a hearing that the certified physical therapist assistant has committed an act specified in section 12-41-210.

(b) In the case of a deliberate and willful violation of this part 2 or if the public health, safety, and welfare require emergency action, the board may take disciplinary action on an emergency basis under sections 24-4-104 and 24-4-105, C.R.S.

(2) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action but should not be dismissed as being without merit, the board may send a letter of admonition to the certified physical therapist assistant.

(b) When the board sends a letter of admonition to a certified physical therapist assistant, the board shall notify the certified physical therapist assistant of his or her right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct described in the letter of admonition.

(c) If the request for adjudication is timely made, the letter of admonition is vacated and the matter must be processed by means of formal disciplinary proceedings.

(3) In a disciplinary order that allows a certified physical therapist assistant to continue to practice, the board may impose upon the certified physical therapist assistant conditions that the board deems appropriate to ensure that the certified physical therapist assistant is physically, mentally, and professionally qualified to practice in accordance with generally accepted professional standards. The conditions may include the following:

(a) Examination of the certified physical therapist assistant to determine his or her mental or physical condition, as provided in section 12-41-213, or to determine professional qualifications;

(b) Any therapy, training, or education that the board believes necessary to correct deficiencies found either in a proceeding in compliance with section 24-34-106, C.R.S., or through an examination under paragraph (a) of this subsection (3);

(c) A review or supervision of a certified physical therapist assistant's practice that the board finds necessary to identify and correct deficiencies therein; or

(d) Restrictions upon the nature and scope of practice to ensure that the certified physical therapist assistant does not practice beyond the limits of the certified physical therapist assistant's capabilities.

(4) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the certified physical therapist assistant that could lead to serious consequences if not corrected, the board may send a confidential letter of concern to the certified physical therapist assistant.

(5) The board may take disciplinary action against a certified physical therapist assistant for failure to comply with any of the conditions imposed by the board under subsection (3) of this section.

(6) A person whose certification has expired is subject to the penalties provided in this part 2 and section 24-34-102 (8), C.R.S.

(7) A physical therapist assistant whose certification is revoked or who surrenders his or her certification to avoid discipline is not eligible to apply for a certification for two years after the certification is revoked or surrendered. The two-year waiting period applies to a person whose certification as a physical therapist assistant is revoked by any other legally qualified board or regulatory entity.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 638, § 34, effective July 1.

12-41-212. Disciplinary proceedings - investigations - judicial review. (1) The board may commence a proceeding for the discipline of a physical therapist assistant when the board has reasonable grounds to believe that a physical therapist assistant has committed an act enumerated in section 12-41-210.

(2) In a proceeding held under this section, the board may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a physical therapist assistant from another jurisdiction if the violation that prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action under this part 2.

(3) (a) The board may investigate potential grounds for disciplinary action upon its own motion or when the board is informed of dismissal of a person certified under this part 2 if the dismissal was for a matter constituting a violation of this part 2.

(b) A person who supervises a physical therapist assistant shall report to the board when the physical therapist assistant has been dismissed because of incompetence or failure to comply with this part 2. A certified physical therapist assistant who is aware that another person is violating this part 2 shall report the violation to the board.

(4) (a) The board or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board under this part 2. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board.

(b) Upon failure of a witness to comply with a subpoena or process, the district court of the county in which the subpoenaed person or certified physical therapist assistant resides or conducts business, upon application by the board with notice to the subpoenaed person or certified physical therapist assistant, may issue an order requiring that person or certified physical therapist assistant to appear before the board; to produce the relevant papers,

books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(5) The board may keep any investigation authorized under this part 2 closed until the results of the investigation are known and either the complaint is dismissed or notice of hearing and charges are served upon the certified physical therapist assistant.

(6) (a) The board, the director's staff, a witness or consultant to the board, a witness testifying in a proceeding authorized under this part 2, or a person who lodges a complaint under this part 2 is immune from liability in a civil action brought against him or her for acts occurring while acting in his or her capacity as a board member, staff member, consultant, witness, or complainant if the individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted with the reasonable belief that the action taken was warranted by the facts.

(b) A person making a complaint or report in good faith or participating in any investigative or administrative proceeding pursuant to this section is immune from any liability, civil or criminal, that otherwise might result by reason of the participation.

(7) The board, through the department of regulatory agencies, may employ administrative law judges appointed pursuant to part 10 of article 30 of title 24, C.R.S., on a full-time or part-time basis, to conduct hearings under this part 2 or on any matter within the board's jurisdiction upon the conditions and terms as the board may determine.

(8) Final action of the board may be judicially reviewed by the court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S., and judicial proceedings for the enforcement of an order of the board may be instituted in accordance with section 24-4-106, C.R.S.

(9) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the board shall not resolve the complaint by a deferred settlement, action, judgment, or prosecution.

(10) (a) If it appears to the board, based upon credible evidence as presented in a written complaint, that a certified physical therapist assistant is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required certification, the board may issue an order to cease and desist the activity. The order must set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or uncertified practices immediately cease.

(b) Within ten days after service of the order to cease and desist under paragraph (a) of this subsection (10), the respondent may request a hearing on the question of whether acts or practices in violation of this part 2 have occurred. The hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(11) (a) If it appears to the board, based upon credible evidence as presented in a written complaint, that a person has violated this part 2, then, in addition to any specific powers granted under this part 2, the board may issue to the person an order to show cause as to why the board should not issue a final order directing the person to cease and desist from the unlawful act or uncertified practice.

(b) The board shall promptly notify a person against whom an order to show cause has been issued under paragraph (a) of this subsection (11) of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. The board may serve the notice by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon the person against whom the order is issued. Personal service or mailing of an order or document pursuant to this subsection (11) constitutes notice thereof to the person.

(c) (I) The board shall commence a hearing on an order to show cause no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (11). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event is

the hearing to commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (11) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon the person under paragraph (b) of this subsection (11) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order becomes final as to that person by operation of law. The board shall conduct the hearing in accordance with sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required certification, or has or is about to engage in acts or practices constituting violations of this part 2, the board may issue a final cease-and-desist order, directing the person to cease and desist from further unlawful acts or uncertified practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (11), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued under subparagraph (III) of this paragraph (c) is effective when issued and is a final order for purposes of judicial review.

(12) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any uncertified act or practice, any act or practice constituting a violation of this part 2, a rule promulgated under this part 2, an order issued under this part 2, or an act or practice constituting grounds for administrative sanction under this part 2, the board may enter into a stipulation with the person.

(13) If a person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order. Upon receiving the request, the attorney general or district attorney shall bring the suit as requested.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 639, § 34, effective July 1.

12-41-213. Mental and physical examination of certified physical therapist assistants. (1) If the board has reasonable cause to believe that a certified physical therapist assistant is unable to practice with reasonable skill and safety, the board may require the certified physical therapist assistant to take a mental or physical examination by a health care provider designated by the board. If the certified physical therapist assistant refuses to undergo the mental or physical examination, unless due to circumstances beyond the certified physical therapist assistant's control, the board may suspend the certified physical therapist assistant's certification until the results of the examination are known and the board has made a determination of the certified physical therapist assistant's fitness to practice. The board shall proceed with an order for examination and determination in a timely manner.

(2) An order issued to a certified physical therapist assistant under subsection (1) of this section to undergo a mental or physical examination must contain the basis of the board's reasonable cause to believe that the certified physical therapist assistant is unable to practice with reasonable skill and safety. For the purposes of a disciplinary proceeding authorized by this part 2, the certified physical therapist assistant is deemed to have waived all objections to the admissibility of the examining health care provider's testimony or examination reports on the ground that they are privileged communications.

(3) The certified physical therapist assistant may submit to the board testimony or examination reports from a health care provider chosen by the certified physical therapist assistant pertaining to the condition that the board has alleged may preclude the certified physical therapist assistant from practicing with reasonable skill and safety. The board may

consider such testimony or examination reports in conjunction with, but not in lieu of, testimony and examination reports of the health care provider designated by the board.

(4) A person shall not use the results of any mental or physical examination ordered by the board as evidence in any proceeding other than one before the board. The examination results are not public records and are not available to the public.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 642, § 34, effective July 1.

12-41-214. Examinations - notice - confidential agreements. (1) If a certified physical therapist assistant suffers from a physical or mental illness or condition rendering the certified physical therapist assistant unable to practice with reasonable skill and patient safety, the certified physical therapist assistant shall notify the board of the illness or condition in a manner and within a period of time determined by the board. The board may require the certified physical therapist assistant to submit to an examination, or the board may evaluate the extent of the illness or condition and its impact on the certified physical therapist assistant's ability to practice with reasonable skill and safety to patients.

(2) (a) Upon determining that a certified physical therapist assistant with a physical or mental illness or condition is able to render limited physical therapy with reasonable skill and patient safety, the board may enter into a confidential agreement with the certified physical therapist assistant in which the certified physical therapist assistant agrees to limit his or her practice based on the restrictions imposed by the illness or condition, as determined by the board.

(b) The agreement must specify that the certified physical therapist assistant is subject to periodic reevaluations or monitoring as determined appropriate by the board.

(c) The parties may modify or dissolve the agreement as necessary based on the results of a reevaluation or of monitoring.

(d) By entering into an agreement with the board under this subsection (2) to limit his or her practice, the certified physical therapist assistant is not engaging in unprofessional conduct. The agreement is an administrative action and does not constitute a restriction or discipline by the board. However, if the certified physical therapist assistant fails to comply with the terms of an agreement entered into pursuant to this subsection (2), the failure constitutes grounds for disciplinary action under section 12-41-210 (1) (i) and the certified physical therapist assistant is subject to discipline in accordance with section 12-41-211.

(3) This section does not apply to a physical therapist assistant subject to discipline under section 12-41-210 (1) (h).

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 643, § 34, effective July 1.

12-41-215. Reports by insurance companies. (1) (a) Each insurance company licensed to do business in this state and engaged in the writing of malpractice insurance for physical therapist assistants shall send to the board information about any malpractice claim that involves a physical therapist assistant and is settled or in which judgment is rendered against the insured.

(b) In addition, the insurance company shall submit supplementary reports containing the disposition of the claim to the board within ninety days after settlement or judgment.

(2) Regardless of the disposition of any claim, the insurance company shall provide such information as the board finds reasonably necessary to conduct its own investigation and hearing.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 644, § 34, effective July 1.

12-41-216. Unauthorized practice - penalties. Any person who violates section 12-41-202 or 12-41-203 without an active certification issued under this part 2 commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 644, § 34, effective July 1.

- 12-41-217. Violation - fines.** (1) Notwithstanding section 12-41-216, the board may assess a fine for a violation of this part 2 or a rule adopted under this part 2.
- (2) The fine shall not be greater than one thousand dollars and shall be transmitted to the state treasurer, who shall credit the same to the general fund.
- (3) All fines must be imposed in accordance with section 24-4-105, C.R.S., but are not a substitute or waiver of a criminal penalty.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 644, § 34, effective July 1.

12-41-218. Injunctive proceedings. The board may, in the name of the people of the state of Colorado, through the attorney general of Colorado, apply for an injunction to a court to enjoin a person from committing an act declared to be a misdemeanor by this part 2. If it is established that the defendant has been or is committing an act declared to be a misdemeanor by this part 2, the court shall enter a decree perpetually enjoining the defendant from further committing the act. If a person violates an injunction issued under this section, the court may try and punish the offender for contempt of court. An injunction proceeding is in addition to, and not in lieu of, all penalties and other remedies provided in this part 2.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 644, § 34, effective July 1.

12-41-219. Limitation on authority. The authority granted to the board by this part 2 does not authorize the board to arbitrate or adjudicate fee disputes between physical therapist assistants or between a physical therapist assistant and another party.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 645, § 34, effective July 1.

12-41-220. Fees and expenses. All fees collected under this part 2 shall be determined, collected, and appropriated in the same manner as set forth in section 24-34-105, C.R.S.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 645, § 34, effective July 1.

12-41-221. Repeal of part. This part 2 is repealed, effective September 1, 2018. Prior to the repeal, the functions of the board of physical therapy in regulating physical therapist assistants under this part 2 must be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 2011: Entire part added, (SB 11-169), ch. 172, p. 645, § 34, effective July 1.

ARTICLE 41.5

Respiratory Therapy Practice Act

12-41.5-101.	Short title.	12-41.5-107.	tiveness - fee.
12-41.5-102.	Legislative declaration.	12-41.5-108.	Renewal of license.
12-41.5-103.	Definitions.	12-41.5-109.	Fees.
12-41.5-104.	Use of titles restricted.	12-41.5-110.	Grounds for action - disciplinary proceedings.
12-41.5-105.	Limitations on authority.		Exceptions.
12-41.5-106.	License - reciprocity - effec-		

12-41.5-111.	Practice of medicine prohibited.	12-41.5-113.	Rule-making authority.
		12-41.5-114.	Severability.
12-41.5-112.	Unauthorized practice - penalties.	12-41.5-115.	Repeal of article - termination of functions.

12-41.5-101. Short title. This article shall be known and may be cited as the “Respiratory Therapy Practice Act”.

Source: L. 2000: Entire article added, p. 1306, § 1, effective July 1.

12-41.5-102. Legislative declaration. The general assembly hereby finds, determines, and declares that the practice of respiratory therapy in the state of Colorado affects the public health, safety, and welfare of its citizens and must be subject to regulation and control to protect the public from the unqualified practice of respiratory therapy and from unprofessional conduct. The general assembly further recognizes the practice of respiratory therapy to be a dynamic and changing art and science that is continually evolving to include new ideas and ever more sophisticated techniques in patient care.

Source: L. 2000: Entire article added, p. 1306, § 1, effective July 1.

12-41.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Director” means the director of the division of professions and occupations in the department of regulatory agencies.

(2) “Division” means the division of professions and occupations in the department of regulatory agencies created in section 24-34-102, C.R.S.

(3) “Licensee” means a respiratory therapist licensed pursuant to this article.

(4) “Medical director” means a licensed physician who holds such title in any inpatient or outpatient facility, department, or home care agency, and who is responsible for the quality, safety, and appropriateness of the respiratory therapy provided.

(5) “Respiratory therapist” means a person who is licensed to practice respiratory therapy pursuant to this article.

(6) “Respiratory therapy” means providing therapy, management, rehabilitation, support services for diagnostic evaluation, and care of patients with deficiencies and abnormalities which affect the pulmonary system under the overall direction of a medical director. Respiratory therapy includes the following:

(a) Direct and indirect pulmonary care services that are safe, aseptic, preventive, and restorative to the patient;

(b) The teaching or instruction of the techniques and skill of respiratory care whether or not in a formal educational setting;

(c) Direct and indirect respiratory care services including but not limited to the administration of pharmacological, diagnostic, and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, and pulmonary rehabilitative or diagnostic regimen prescribed by a physician or advanced practice nurse;

(d) Observation and monitoring of signs, symptoms, reactions, general behavior, and general physical response to respiratory care treatment and diagnostic testing for:

(I) The determination of whether such signs, symptoms, reactions, behavior, or general response exhibit abnormal characteristics; or

(II) The implementation based on observed abnormalities of appropriate reporting, referral, or respiratory care protocols or changes in treatment regimen pursuant to a prescription by a physician or advanced practice nurse or the initiation of emergency procedures;

(e) The diagnostic and therapeutic use of the following in accordance with the prescription of a physician or advanced practice nurse: Administration of medical gases, exclusive of general anesthesia; aerosols; humidification; environmental control systems and biomedical therapy; pharmacologic agents related to respiratory care procedures; mechanical or physiological ventilatory support; bronchopulmonary hygiene; respiratory

protocol and evaluation; cardiopulmonary resuscitation; maintenance of the natural airways; insertion and maintenance of artificial airways; diagnostic and testing techniques required for implementation of respiratory care protocols; collection of specimens from the respiratory tract; or analysis of blood gases and respiratory secretions and participation in cardiopulmonary research; and

(f) The transcription and implementation of the written and verbal orders of a physician pertaining to the practice of respiratory care.

Source: L. 2000: Entire article added, p. 1306, § 1, effective July 1.

12-41.5-104. Use of titles restricted. A respiratory therapist, but no other person, may use the title “licensed respiratory therapist” or the letters “L.R.T.”

Source: L. 2000: Entire article added, p. 1308, § 1, effective July 1.

12-41.5-105. Limitations on authority. Nothing in this article shall be construed as authorizing a respiratory therapist to perform the practice of medicine, surgery, or any other form of healing except as authorized by the provisions of this article.

Source: L. 2000: Entire article added, p. 1308, § 1, effective July 1.

12-41.5-106. License - reciprocity - effectiveness - fee. (1) An applicant for a license to practice respiratory therapy shall submit to the director written evidence that he or she is credentialed with the national board for respiratory care as a certified or registered respiratory therapist and shall pay a fee as determined by the director. The director shall have on file the standards of practice for examination and accreditation by the national board for respiratory care, and such standards shall be available to the public.

(2) The director shall issue a license to practice respiratory therapy to an applicant who otherwise meets the qualifications set forth in this article and who submits satisfactory proof and certifies under penalty of perjury that the applicant is either:

(a) Currently in possession of an unrestricted license in good standing to practice respiratory therapy under the laws of another state or territory of the United States or foreign country, if the qualifications of the applicant are deemed by the director to be substantially equivalent to those required by this state, and whether the applicant has ever had a disciplinary action taken in regard to the applicant’s license to practice respiratory therapy in another state;

(b) Holding credentials conferred by the national board for respiratory care, which credentials have not been suspended or revoked; or

(c) Functioning in the capacity of a respiratory therapist as of July 1, 2000, and has successfully passed, no later than July 1, 2001, the certification or registration examination of the national board for respiratory care.

Source: L. 2000: Entire article added, p. 1308, § 1, effective July 1.

12-41.5-107. Renewal of license. (1) At least sixty calendar days prior to the expiration of a license, the director shall notify the licensee of the pending expiration. The director shall make an expiration notice and a renewal form available to the licensee. Before the expiration date, the licensee shall complete the renewal form and return it to the division with the renewal fee.

(2) Upon receipt of the completed renewal form and the renewal fee, the director shall issue a license for the current renewal period pursuant to a schedule established by the director, and such renewal or reinstatement shall be granted pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations,

such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(3) (Deleted by amendment, L. 2004, p. 1846, § 96, effective August 4, 2004.)

Source: L. 2000: Entire article added, p. 1309, § 1, effective July 1. **L. 2004:** (2) and (3) amended, p. 1846, § 96, effective August 4.

12-41.5-108. Fees. All fees collected under this article shall be determined, collected, and appropriated in the same manner as set forth in section 24-34-105, C.R.S.

Source: L. 2000: Entire article added, p. 1309, § 1, effective July 1.

12-41.5-109. Grounds for action - disciplinary proceedings. (1) The director may take disciplinary action against a licensee if the director finds that such person has represented himself or herself to be a licensed respiratory therapist after the expiration or suspension of his or her license.

(2) The director has the power to revoke, suspend, deny, or refuse to renew a license, place on probation a licensee, or issue a letter of admonition to a licensee in accordance with subsections (3), (4), (5), and (6) of this section upon proof that such person:

(a) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(b) (I) Has been convicted of or has entered and had accepted by a court a plea of guilty or nolo contendere to:

(A) A felony pursuant to section 18-1.3-401, C.R.S.; or

(B) Any crime as defined in title 18, C.R.S., that relates to such person's employment as a respiratory therapist.

(II) A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be prima facie evidence of such conviction. In conjunction with any disciplinary proceeding pertaining to this paragraph (b), the director shall be governed by section 24-5-101, C.R.S.

(c) Has willfully or negligently acted in a manner inconsistent with the health or safety of persons under his or her care;

(d) Has had a license to practice respiratory therapy or any other health care occupation suspended, revoked, or otherwise subjected to discipline in any jurisdiction. A certified copy of the order of suspension, revocation, or discipline shall be prima facie evidence of such suspension, revocation, or discipline.

(e) Has violated this article or has aided or knowingly permitted any person to violate this article;

(f) Practiced respiratory therapy in a manner which failed to meet generally accepted standards for respiratory therapists;

(g) Has negligently or willfully violated any order or rule of the director pertaining to the practice or licensure of respiratory therapy;

(h) Is an excessive or habitual user or abuser of alcohol or habit-forming drugs or is a habitual user of a controlled substance, as defined in section 18-18-102 (5), C.R.S., or other drugs having similar effects; except that the director has the discretion not to discipline the license holder if he or she is participating in good faith in a program approved by the director designed to end such use or abuse;

(i) Has a physical or mental disability that renders him or her unable to practice respiratory therapy with reasonable skill and safety and that may endanger the health or safety of persons under his or her care;

(j) Has committed:

(I) A fraudulent insurance act as defined in section 10-1-128, C.R.S.;

(II) An abuse of health insurance, as set forth in section 18-13-119, C.R.S., or advertised through any medium that he or she will perform an act prohibited by section 18-13-119 (3), C.R.S.;

(k) Has engaged in any of the following activities or practices:

(I) Willful and repeated ordering and performance, without justification, of demonstrably unnecessary laboratory tests or studies;

(II) Administering treatment that is demonstrably unnecessary, without clinical justification;

(III) Failing to obtain consultations or perform referrals when failing to do so is inconsistent with the standard of care for the profession; or

(IV) Ordering or performing, without clinical justification, a service, procedure, or treatment that is contrary to recognized standards of the practice of respiratory therapy as interpreted by the director;

(l) Has practiced respiratory therapy without possessing a valid license issued by the director in accordance with this article and any rules adopted under this article;

(m) Has used in connection with his or her name any designation that implies that he or she is a certified, registered, or licensed respiratory therapist, unless the person is licensed pursuant to this article;

(n) Has practiced respiratory therapy as a licensed respiratory therapist during the time that his or her license was suspended, revoked, or expired;

(o) Has sold, fraudulently obtained, or furnished a license to practice as a licensed respiratory therapist, or has aided or abetted such activity;

(p) Has failed to notify the director of the suspension, probation, or revocation of any of the person's past or currently held licenses, certificates, or registrations required to practice respiratory therapy in this or any other jurisdiction; or

(q) Has knowingly employed any person who is not licensed in the practice of respiratory therapy in the capacity of a respiratory therapist.

(2.5) The director shall revoke, suspend, deny, or refuse to renew a license, place a licensee on probation, or issue a cease-and-desist order or letter of admonition to a licensee in accordance with subsections (3), (4), (5), and (6) of this section upon proof that the person:

(a) Has falsified or repeatedly made incorrect essential entries or repeatedly failed to make essential entries on patient records;

(b) Has practiced outside of or beyond the person's area of training, experience, or competence.

(3) Except as otherwise provided in subsection (2) of this section, the director need not find that the actions that are grounds for discipline were willful but may consider whether such actions were willful when determining the nature of disciplinary sanctions to be imposed.

(4) A disciplinary proceeding may be commenced when the director has reasonable grounds to believe that a licensee has committed acts that may violate this section.

(5) Disciplinary proceedings shall be conducted pursuant to article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to such article by the director or by an administrative law judge, at the director's discretion. The director has the authority to exercise all powers and duties conferred by this article during such disciplinary proceedings.

(5.5) (a) The director may request the attorney general to seek an injunction, in any court of competent jurisdiction, to enjoin any person from committing any act prohibited by this article. When seeking an injunction under this paragraph (a), the attorney general shall not be required to allege or prove the inadequacy of any remedy at law or that substantial or irreparable damage is likely to result from a continued violation of this article.

(b) (I) In accordance with the provisions of article 4 of title 24, C.R.S., and this article, the director is authorized to investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director.

(II) The director or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the director.

(III) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the director: to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(6) If the director finds the charges proved and orders that discipline be imposed, the director may require, as a condition of reinstatement, that the licensee take such therapy or courses of training or education as may be needed to correct any deficiency found.

(7) A final action of the director may be judicially reviewed by the court of appeals in accordance with section 24-4-106 (11), C.R.S., and judicial proceedings for the enforcement of an order of the director may be instituted in accordance with section 24-4-106, C.R.S.

(8) (a) The director, the director's staff, any person acting as a witness or consultant to the director, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts.

(b) A person who in good faith makes a complaint or report or participates in an investigative or administrative proceeding pursuant to this article shall be immune from liability, civil or criminal, that otherwise might result from such participation.

(9) An employer of a respiratory therapist shall report to the director any disciplinary action taken against such therapist or the resignation of such therapist in lieu of disciplinary action for conduct that violates this article.

(10) (a) Investigations, examinations, hearings, meetings, and other proceedings of the director conducted pursuant to this section shall be exempt from any law that requires:

(I) Such proceedings to be conducted publicly; or

(II) The minutes or records of the director, with respect to action taken pursuant to this section, to be open to the public.

(b) Paragraph (a) of this subsection (10) shall not apply after the director has made a decision to proceed with a disciplinary action and has served by first-class mail a notice of formal complaint on the licensee.

(11) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(b) When a letter of admonition is sent by the director, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(11.5) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, the complaint should be dismissed, but the director has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.

(12) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(13) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required license, the director may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (13), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(14) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the director may issue to such person an order to show cause as to why the director should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (14) shall be promptly notified by the director of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order issued. Personal service or mailing of an order or document pursuant to this subsection (14) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (14). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (14) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (14) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the director reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (14), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(15) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the director may enter into a stipulation with such person.

(16) If any person fails to comply with a final cease-and-desist order or a stipulation, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring,

suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(17) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in subsection (7) of this section.

Source: **L. 2000:** Entire article added, p. 1309, § 1, effective July 1. **L. 2001:** (5.5) added, p. 253, § 1, effective March 30. **L. 2002:** (2)(b)(I)(A) amended, p. 1480, § 85, effective October 1. **L. 2003:** (2)(j)(I) amended, p. 622, § 36, effective July 1. **L. 2004:** (5.5)(b) and (8) amended and (11) and (12) added, p. 1847, § 97, effective August 4. **L. 2005:** (2)(h) amended and (2.5) added, p. 243, § 1, effective July 1. **L. 2006:** IP(2) amended and (11.5) and (13) to (17) added, p. 810, § 38, effective July 1; (2)(l) to (2)(q) added with relocated provisions, p. 91, § 43, effective August 7. **L. 2012:** (2)(h) amended, (HB 12-1311), ch. 281, p. 1615, § 28, effective July 1.

Editor's note: Subsections (2)(l), (2)(m), (2)(n), (2)(o), (2)(p), and (2)(q) are similar to former §§ 12-41.5-112 (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), and (1)(f) as they existed prior to 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2)(b)(I)(A), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-41.5-110. Exceptions.

(1) Repealed.

(2) This article does not prohibit:

(a) (I) Any practice of respiratory therapy that is an integral part of a program of study by students enrolled in an accredited respiratory therapy program. Students enrolled in respiratory therapy education programs shall be identified as "student respiratory therapists" and shall only provide respiratory therapy under direct supervision of a respiratory therapist on the premises who is available for prompt consultation or treatment.

(II) The practice of respiratory therapy by pulmonary function technology students or polysomnographic technology students that is an integral part of a program of study that leads to certification or registration for their respective disciplines. Students enrolled in such programs shall be identified as "student pulmonary functions technologists" or "student polysomnographic technologists" and shall practice only under the direct supervision of a respiratory therapist or physician or under the supervision of an individual exempted from the provisions of this article pursuant to paragraph (g) of this subsection (2).

(III) The practice of respiratory therapy by polysomnographic technologists who are not registered by or do not hold credentials from a nationally recognized organization, but such polysomnographic technologists shall only practice under the supervision of a respiratory therapist, a physician, or an individual exempted from the provisions of this article pursuant to paragraph (g) of this subsection (2).

(b) Self-therapy by a patient or gratuitous therapy by a friend or family member who does not represent himself or herself to be a respiratory therapist;

(c) Any service provided during an emergency that may be included in the definition of the practice of respiratory therapy;

(d) Respiratory therapy services rendered in the course of assigned duties of persons serving in the military or persons working in federal facilities;

(e) Respiratory therapy services rendered in the course of assigned duties of persons delivering oxygen supplies, including the inspection and maintenance of associated apparatus by a person who does not represent himself or herself as a respiratory therapist;

(f) Any person registered, certified, or licensed in this state under this title from engaging in the practice for which such person is registered, certified, or licensed;

(g) The practice of procedures that fall within the definition of respiratory therapy by certified pulmonary function technologists, registered pulmonary function technologists, registered polysomnographic technologists, or others who hold credentials from a nationally recognized organization as determined by the director, including, but not limited to, the national board for respiratory care; except that the scope of practice of a registered

polysomnographic technologist shall not exceed oxygen titration with pulse oximetry and noninvasive positive pressure ventilation titration;

(h) The instruction or training of persons to administer emergency oxygen during an aquatic emergency, when such instruction or training is provided by an individual who has been certified to conduct such instruction or training by a nationally recognized certifying agency; or

(i) The practice by an unlicensed person of procedures that fall within the definition of respiratory therapy but that do not require the unlicensed person to perform an assessment, to perform an invasive procedure as defined by the director, or to alter care beyond the scope of approved protocols, so long as the unlicensed person is under supervision as determined appropriate by the respiratory therapist and after such respiratory therapist has considered all of the following:

- (I) The health status and mental and physical stability of the individual receiving care;
- (II) The complexity of the procedures;
- (III) The training and competence of the unlicensed person;
- (IV) The proximity and availability of the respiratory therapist when the procedures are performed;
- (V) The degree of supervision required for the unlicensed person;
- (VI) The length and number of times that the procedure may be performed; and
- (VII) The predictability of the outcome of the procedure.

Source: **L. 2000:** Entire article added, p. 1311, § 1, effective July 1. **L. 2001:** (1) repealed, (2)(a), (2)(g), and (2)(h) amended, and (2)(i) added, p. 254, §§ 2, 3, effective March 30. **L. 2005:** (2)(a)(II) and (2)(g) amended and (2)(a)(III) added, p. 244, §§ 2, 3, effective July 1.

12-41.5-111. Practice of medicine prohibited. Subject to section 12-36-106 (3) (m), nothing in this article shall be construed to permit the practice of medicine as defined in section 12-36-106.

Source: **L. 2000:** Entire article added, p. 1312, § 1, effective July 1.

12-41.5-112. Unauthorized practice - penalties.

(1) Repealed.

(2) A person who practices or offers or attempts to practice respiratory therapy without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: **L. 2000:** Entire article added, p. 1312, § 1, effective July 1. **L. 2002:** (2) amended, p. 1481, § 86, effective October 1. **L. 2006:** IP(1) and (1)(a) to (1)(h) repealed and (2) amended, p. 92, §§ 46, 45, 44, effective August 7.

Editor's note: Subsections (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), and (1)(f) were relocated to § 12-41.5-109 (2)(l), (2)(m), (2)(n), (2)(o), (2)(p), and (2)(q) in 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-41.5-113. Rule-making authority. The director shall promulgate such rules as are necessary or convenient for the administration of this article.

Source: **L. 2000:** Entire article added, p. 1313, § 1, effective July 1.

12-41.5-114. Severability. If any provision of this article is held to be invalid, such invalidity shall not affect other provisions of this article that can be given effect without such invalid provision.

Source: L. 2000: Entire article added, p. 1313, § 1, effective July 1.

12-41.5-115. Repeal of article - termination of functions. (1) This article is repealed, effective July 1, 2015.

(2) (a) The licensure functions of the director as set forth in this article are repealed, effective July 1, 2015.

(b) Prior to such repeal, such licensure functions shall be reviewed pursuant to section 24-34-104, C.R.S.

Source: L. 2000: Entire article added, p. 1313, § 1, effective July 1. **L. 2005:** (1) and (2)(a) amended, p. 244, § 4, effective July 1.

ARTICLE 42

Psychiatric Technicians

12-42-101.	Legislative declaration.	12-42-114.	Withholding or denial of license - hearing.
12-42-102.	Definitions.	12-42-115.	Mental or physical examination of licensees - review of medical records. (Repealed)
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12-42-111.	Accredited psychiatric technician educational program.	12-42-120.	Professional nursing and the practice of a psychiatric technician.
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12-42-101. Legislative declaration. It is declared to be the policy of the state of Colorado that, in order to safeguard life, health, property, and the public welfare of the people of the state of Colorado, and in order to protect the people of the state of Colorado against unauthorized, unqualified, and improper application of interpersonal psychiatric nursing relationships, it is necessary that a proper regulatory authority be established, and adequately provided for. Any person who practices as a psychiatric technician without qualifying for proper registration, and without submitting to the regulations provided in this article, endangers the public health thereby.

Source: L. 67: p. 236, § 1. **C.R.S. 1963:** § 97-3-1.

12-42-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Accredited psychiatric technician education program" means a course of training conducted by a school for the training of psychiatric technicians carrying out the basic curriculum prescribed by this article and accredited by the board.

(2) "Board" means the state board of nursing.

(3) "Person" includes an individual, firm, partnership, association, or corporation.

(4) The practice as a "psychiatric technician" means the performance for compensation

of selected acts requiring interpersonal and technical skills and includes the administering of selected treatments and selected medications prescribed by a licensed physician or dentist, in the care of and in the observation and recognition of symptoms and reactions of a patient with a mental illness or developmental disability under the direction of a licensed physician and the supervision of a registered professional nurse. The selected acts in the care of a patient with a mental illness or developmental disability shall not require the substantial specialized skill, judgment, and knowledge required in professional nursing.

Source: L. 67: p. 236, § 2. C.R.S. 1963: § 97-3-2. L. 76: (4) amended, p. 425, § 1, effective April 22. L. 79: (4) amended, p. 551, § 1, effective July 1. L. 94: (4) amended, p. 2638, § 80, effective July 1. L. 95: (4) amended, p. 291, § 2, effective July 1. L. 2006: (4) amended, p. 1394, § 31, effective August 7.

12-42-103. State board of nursing - repeal of article - review of licensing and regulation functions. (1) The licensing and regulation of psychiatric technicians shall be under the control of the board.

(2) (a) This article is repealed, effective July 1, 2019.

(b) Prior to such repeal, the licensure and regulation functions of the state board of nursing shall be reviewed as provided in section 24-34-104, C.R.S.

Source: L. 67: p. 237, § 3. C.R.S. 1963: § 97-3-3. L. 90: Entire section amended, p. 332, § 14, effective April 3. L. 91: Entire section amended, p. 683, § 31, effective April 20. L. 95: Entire section amended, p. 292, § 3, effective July 1. L. 2004: (2)(a) amended, p. 348, § 11, effective July 1. L. 2009: (2)(a) amended, (HB 09-1341), ch. 265, p. 1213, § 3, effective July 1.

Cross references: For powers of the state board of nursing, see § 12-38-108.

12-42-104. Application for license. (1) Every applicant for license as a psychiatric technician shall file a written application on forms provided by the board.

(2) Every applicant shall accompany his application with a license fee established pursuant to section 24-34-105, C.R.S., together with a statement of whether or not he has been convicted of a felony or a misdemeanor involving moral turpitude.

(3) Every person licensed under this article shall be known as a licensed psychiatric technician and may place the letters “L.P.T.” after his name. Said term or said abbreviation shall not be used to identify anyone not licensed under this article. The terms “psychiatric technician”, “psychiatric aide”, “trained psychiatric technician”, or “graduate psychiatric technician” shall for the purposes of this article be deemed synonymous with the term “psychiatric technician”, and none of said terms shall be used to identify anyone not licensed under this article.

Source: L. 67: p. 237, § 4. C.R.S. 1963: § 97-3-4. L. 73: p. 528, § 60. L. 79: (2) amended, p. 1655, § 100, effective July 19.

12-42-105. License by examination. (1) Every applicant for license by examination shall submit written evidence, verified by oath, and satisfactory to the board that said applicant:

(a) Has not committed an act which would be grounds for disciplinary action against a licensee under this article;

(b) Has completed a four-year high school course or the equivalent thereof; and

(c) Has completed the required accredited psychiatric technician educational program and holds a diploma from a state accredited program.

Source: L. 67: p. 237, § 5. C.R.S. 1963: § 97-3-5. L. 73: p. 528, § 61. L. 85: (1)(a) R&RE, p. 526, § 4, effective July 1.

12-42-106. Examinations. (1) All applicants, unless licensed by endorsement, shall be required to pass a written examination.

(2) Examinations shall be held within the state, at least once a year, at such times and places as the board shall determine.

Source: L. 67: p. 237, § 6. C.R.S. 1963: § 97-3-6. L. 77: IP(1) amended, p. 278, § 17, effective June 29. L. 79: (1)(b) amended, p. 551, § 2, effective July 1. L. 95: (1) amended, p. 292, § 4, effective July 1.

12-42-107. Issuance of license after examination. The board shall issue a license to each applicant who passes the examination and who is not otherwise disqualified to receive a license under the provisions of this article.

Source: L. 67: p. 237, § 7. C.R.S. 1963: § 97-3-7.

12-42-108. License by waiver and examination. (Repealed)

Source: L. 67: p. 237, § 8. C.R.S. 1963: § 97-3-8. L. 73: p. 528, § 62. L. 75: Entire section repealed, p. 209, § 18, effective July 16. L. 79: Entire section RC&RE, p. 552, § 3, effective July 1; (1)(c) amended, p. 1663, § 129, effective July 19. L. 85: (1)(a) R&RE, p. 526, § 5, effective July 1. L. 94: (1)(b) amended, p. 2638, § 81, effective July 1. L. 95: Entire section repealed, p. 292, § 5, effective July 1.

12-42-109. License by endorsement. The board may issue a license without examination to an applicant who is licensed or otherwise registered as a psychiatric technician by another state or a territory of the United States if the requirements for license or registration in such state or territory are substantially equal to the requirements in this article; but in no event shall an applicant be required to meet qualifications higher than those in force in this state at the time of his application for license in this state. Every applicant under this section shall state under oath that he has not committed an act which would be grounds for disciplinary action under this article and that he has completed a four-year high school course of study or the equivalent thereof.

Source: L. 67: p. 238, § 9. C.R.S. 1963: § 97-3-9. L. 77: Entire section amended, p. 643, § 7, effective March 16. L. 85: Entire section amended, p. 526, § 6, effective July 1.

12-42-110. Disposition of fees. All fees collected by the board under the provisions of this article shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S.

Source: L. 67: p. 238, § 10. C.R.S. 1963: § 97-3-10. L. 73: p. 1375, § 36. L. 79: Entire section amended, p. 1655, § 101, effective July 19. L. 2004: Entire section amended, p. 1848, § 98, effective August 4.

12-42-111. Accredited psychiatric technician educational program. (1) (a) Any institution within the state of Colorado desiring to conduct an accredited preservice psychiatric technician educational program may apply to the board and submit evidence that it is prepared to carry out a psychiatric technician curriculum that contains theoretical content and clinical practice to prepare the psychiatric technician student to care for clients with developmental disabilities or mental illness in institutional and community settings.

(b) Content in a psychiatric technician educational program shall include but shall not be limited to:

(I) Fundamental nursing principles and skills;

(II) Growth and developmental and other physical and behavioral skills;

(III) Mental retardation theory and rehabilitation nursing principles and skills if the technician is to be licensed to care for clients with developmental disabilities; and

(IV) Psychopathology and psychiatric nursing principles and skills if the technician is to be licensed to care for clients with mental illness.

(2) A survey of the institution and its entire psychiatric technician educational program shall be made by the executive secretary or other authorized board employee. Such survey may be conducted in conjunction with an authorized consultant appointed by the board. The persons making such survey shall submit a written report of the survey to the board. One or more board members may participate in any such survey.

(3) If the requirements of this article for an accredited psychiatric technician educational program are met, the institution shall be accredited as a psychiatric technician educational program for psychiatric technicians for work with patients with mental illness or developmental disabilities, for so long as such institution meets the requirements of this article.

(4) The board shall examine, from time to time, the accredited psychiatric technician educational programs of all institutions in the state having such programs. Such examinations shall be made by the executive secretary or other authorized representative of the board, and the results thereof shall be submitted to the board in the form of written reports. If the board determines that an institution having an accredited psychiatric technician educational program is not maintaining the standards required by this article, notice thereof in writing specifying the defect shall be served on such institution by certified mail, postage prepaid, return receipt requested. If the institution receiving such notice fails within one year after mailing of such notice to correct the conditions complained of therein, its authority to conduct an accredited psychiatric technician educational program shall be revoked by the board. An institution shall have the right, at any time before the expiration of one year from the date it receives such notice, to demand and be granted a hearing before the board. In case of such demand, no action shall be taken by the board until after the hearing.

Source: L. 67: p. 238, § 11. C.R.S. 1963: § 97-3-11. L. 79: (1)(b) and (3) amended, p. 552, § 4 and, (4) amended, p. 439, § 21, effective July 1. L. 95: (1) amended, p. 293, § 6, effective July 1. L. 2006: (3) amended, p. 1394, § 32, effective August 7.

12-42-112. Renewal of license. (1) To renew a license issued pursuant to this article, a licensee shall submit an application for renewal pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies, and the license shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(2) (Deleted by amendment, L. 2004, p. 1848, § 99, effective August 4, 2004.)

(3) A person who is not engaged as a psychiatric technician in the state shall not be required to pay a renewal fee for so long as he does not so practice, but shall notify the board of his inactive status in writing. Prior to resumption of the practice as a psychiatric technician such person shall be required to notify the board and remit a renewal fee for the current annual period. After a five-year period in an inactive status, such license may be renewed only by complying with the provisions in this article relating to the issuance of an original license.

Source: L. 67: p. 239, § 12. C.R.S. 1963: § 97-3-12. L. 79: (1) and (2) amended, p. 1655, § 102, effective July 19. L. 85: (1) amended, p. 526, § 7, effective July 1. L. 95: (1) amended, p. 294, § 7, effective July 1. L. 2004: (1) and (2) amended, p. 1848, § 99, effective August 4.

12-42-113. Grounds for discipline. (1) "Grounds for discipline", as used in this article, means any action by any person who:

(a) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(b) (I) Has been convicted of a felony or any crime that would constitute a violation of this article.

(II) (A) For purposes of this paragraph (b), a conviction includes a plea of guilty or nolo contendere or the imposition of a sentence that is deferred prior to final sentencing or dismissal with prejudice.

(B) A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be prima facie evidence of such conviction.

(III) Repealed.

(c) Has willfully or negligently acted in a manner inconsistent with the health or safety of persons under his care;

(d) Has had a license to practice as a psychiatric technician or any other health care occupation suspended or revoked in any jurisdiction. A certified copy of the order of suspension or revocation shall be prima facie evidence of such suspension or revocation.

(e) Has violated any provision of this article or has aided or knowingly permitted any person to violate any provision of this article;

(f) Has negligently or willfully practiced as a psychiatric technician in a manner which fails to meet generally accepted standards for such practice;

(g) Has negligently or willfully violated any order, rule, or regulation of the board pertaining to practice or licensure as a psychiatric technician;

(h) Has falsified or in a negligent manner made incorrect entries or failed to make essential entries on patient records;

(i) Is addicted to or dependent on alcohol or habit-forming drugs, is a habitual user of controlled substances, as defined in section 18-18-102 (5), C.R.S., or other drugs having similar effects, or is diverting controlled substances, as defined in section 18-18-102 (5), C.R.S., or other drugs having similar effects from the licensee's place of employment; except that the board has the discretion not to discipline the licensee if such licensee is participating in good faith in a program approved by the board designed to end such addiction or dependency;

(j) Has a physical or mental disability which renders him unable to practice as a psychiatric technician with reasonable skill and safety to the patients and which may endanger the health or safety of persons under his care;

(k) Has violated the confidentiality of information or knowledge as prescribed by law concerning any patient;

(l) Has engaged in any conduct which would constitute a crime as defined in title 18, C.R.S., and which conduct relates to such person's employment as a psychiatric technician;

(m) Willfully fails to respond in a materially factual and timely manner to a complaint issued pursuant to section 12-38-116.5 (3);

(n) Fraudulently obtains, sells, transfers, or furnishes any psychiatric technician diploma, license, renewal of license, or record, or aids or abets another in such activity;

(o) Advertises, represents, or holds himself or herself out in any manner as a psychiatric technician or practices as a psychiatric technician without having a license to practice as a psychiatric technician issued under this article;

(p) Uses in connection with his or her name any designation tending to imply that he or she is a licensed psychiatric technician without having a license issued under this article; or

(q) Practices as a psychiatric technician during the time his or her license is suspended or revoked.

(2) to (6) Repealed.

Source: L. 67: p. 239, § 13. C.R.S. 1963: § 97-3-13. L. 73: p. 528, § 63. L. 85: Entire section R&RE, p. 527, § 8, effective July 1. L. 95: IP(1), (1)(b), and (1)(i) amended and (6) added, p. 295, § 8, effective July 1. L. 99: IP(1) amended, (1)(b)(III) and (2) to (6)

repealed, and (1)(m) added, pp. 244, 247, §§ 9, 12, effective July 1. **L. 2006:** (1)(n) to (1)(q) added with relocated provisions, p. 92, § 47, effective August 7. **L. 2012:** (1)(i) amended, (HB 12-1311), ch. 281, p. 1616, § 29, effective July 1.

Editor's note: Subsections (1)(n), (1)(o), (1)(p), and (1)(q) are similar to former § 12-42-119 (1)(a), (1)(b), (1)(c), and (1)(d) as they existed prior to 2006.

Cross references: (1) For an alternative disciplinary action for persons licensed pursuant to this article, see § 24-34-106.

(2) For the legislative declaration contained in the 1999 act amending the introductory portion to subsection (1), repealing subsections (1)(b)(III) and (2) to (6), and enacting subsection (1)(m), see section 1 of chapter 84, Session Laws of Colorado 1999.

12-42-114. Withholding or denial of license - hearing. (1) The board is empowered to determine summarily whether an applicant for a license to practice as a psychiatric technician possesses the qualifications required by this article or whether there is probable cause to believe that an applicant has done any of the acts set forth in section 12-42-113 as grounds for discipline. As used in this section, "applicant" does not include a renewal applicant.

(2) If the board determines that an applicant does not possess the qualifications required by this article or that probable cause exists to believe that an applicant has done any of the acts set forth in section 12-42-113, the board may withhold or deny the applicant a license. In such instance, the provisions of section 24-4-104 (9), C.R.S., shall apply, and the board shall provide such applicant with a statement in writing setting forth the basis of the board's determination that the applicant does not possess the qualifications required by this article or the factual basis for probable cause that the applicant has done any of the acts set forth in section 12-42-113.

(3) If the applicant requests a hearing pursuant to the provisions of section 24-4-104 (9), C.R.S., and fails to appear without good cause at such hearing, the board may affirm its prior action of withholding or denial without conducting a hearing.

(4) Following a hearing, the board shall affirm, modify, or reverse its prior action in accordance with its findings at such hearing.

(5) No action shall lie against the board for the withholding or denial of a license without a hearing in accordance with the provisions of this section if the board acted reasonably and in good faith.

(6) At such hearing, the applicant shall have the burden of proof to show that he possesses the qualifications required for licensure under this article. The board shall have the burden of proof to show commission of acts set forth in section 12-42-113.

Source: **L. 67:** p. 240, § 14. **C.R.S. 1963:** § 97-3-14. **L. 77:** (4) added, p. 666, § 11, effective July 1. **L. 85:** Entire section R&RE, p. 528, § 9, effective July 1.

12-42-115. Mental or physical examination of licensees - review of medical records. (Repealed)

Source: **L. 67:** p. 241, § 15. **C.R.S. 1963:** § 97-3-15. **L. 85:** Entire section R&RE, p. 529, § 10, effective July 1. **L. 95:** (2)(a) amended and (2)(e) added, p. 295, § 9, effective July 1. **L. 99:** Entire section repealed, p. 247, § 13, effective July 1.

Cross references: For the legislative declaration contained in the 1999 act repealing this section, see section 1 of chapter 84, Session Laws of Colorado 1999.

12-42-115.3. Disciplinary proceedings. Disciplinary proceedings under this article shall be conducted pursuant to section 12-38-116.5.

Source: **L. 85:** Entire section added, p. 530, § 11, effective July 1. **L. 87:** (1) and (4) amended, p. 949, § 44, effective March 13. **L. 95:** (6) amended, p. 296, § 10, effective July 1. **L. 99:** Entire section amended, p. 248, § 14, effective July 1.

Cross references: For the legislative declaration contained in the 1999 act amending this section, see section 1 of chapter 84, Session Laws of Colorado 1999.

12-42-115.5. Immunity in professional review. (1) If a professional review committee is established pursuant to section 12-38-109 to investigate the quality of care being given by a person licensed pursuant to this article, it shall include in its membership at least three persons licensed in the same category as the licensee under review, but such committee may be authorized to act only by the board.

(2) Any member of the board or of a professional review committee, any member of the board's or committee's staff, any person acting as a witness or consultant to the board or committee, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board or committee member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 85: Entire section added, p. 531, § 11, effective July 1. L. 2004: (2) amended, p. 1849, § 100, effective August 4.

12-42-115.7. Surrender of license. (1) Prior to the initiation of an investigation or hearing, any licensee may surrender his license to practice as a psychiatric technician.

(2) Following the initiation of an investigation or hearing and upon a finding that to do so would be in the public interest, the board may allow a licensee to surrender his license to practice.

(3) The board shall not issue a license to a former licensee whose license has been surrendered unless the licensee meets all of the requirements of this article for a new applicant, including the passing of an examination.

(4) The surrender of a license in accordance with this section removes all rights and privileges to practice as a psychiatric technician, including renewal of a license.

Source: L. 85: Entire section added, p. 531, § 11, effective July 1.

12-42-115.9. Judicial review. The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the board. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

Source: L. 85: Entire section added, p. 532, § 11, effective July 1.

Cross references: For judicial review of decisions and determinations by state agencies, see § 24-4-106.

12-42-116. Exclusions. (1) This article shall not be construed to affect or apply to the gratuitous care of a person with a mental illness by friends or members of the family or to any person taking care of a person with a mental illness for hire who does not represent himself or herself or hold himself or herself out to the public as a trained or licensed psychiatric technician; but no one for hire shall hold himself or herself out as or perform the full duties of a psychiatric technician who is not a psychiatric technician licensed under the provisions of this article.

(2) This article shall not be construed to prohibit the practice as a psychiatric technician by students enrolled in an accredited psychiatric technician educational program or by

graduates of such accredited psychiatric technician educational program pending the results of the first licensing examination scheduled by the board following their graduation.

(3) Furthermore, this article shall not be construed to prohibit:

(a) Practical nursing; subsidiary workers in hospitals or similarly related institutions from assisting in the nursing care of patients where adequate medical and nursing supervision is provided;

(b) Subsidiary workers in the offices of persons licensed to practice medicine or dentistry in this state from assisting in the care of patients under the personal and responsible supervision and direction of such persons; or

(c) The practice of any legally qualified psychiatric technician of this state or another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of his official duties.

Source: L. 67: p. 241, § 16. C.R.S. 1963: § 97-3-16. L. 2006: (1) amended, p. 1395, § 33, effective August 7.

12-42-117. Religious exclusions. No provision of this article shall be construed as applying to any sanitarium, nursing home, or rest home conducted in accordance with the practice of the tenets of any religious denomination in which persons of good faith rely solely upon spiritual means or prayer in the free exercise of religion to prevent or cure disease.

Source: L. 67: p. 242, § 17. C.R.S. 1963: § 97-3-17.

12-42-118. Unauthorized practice. The practice as a psychiatric technician by any person who has not been issued a license under the provisions of this article, or whose license has been suspended or revoked, or has expired, is hereby declared to be inimical to the general public welfare and to constitute a public nuisance.

Source: L. 67: p. 242, § 18. C.R.S. 1963: § 97-3-18.

12-42-119. Unauthorized practice - penalties.

(1) Repealed.

(2) Any person who practices or offers or attempts to practice as a psychiatric technician without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(3) (Deleted by amendment, L. 2006, p. 93, § 48, effective August 7, 2006.)

Source: L. 67: p. 242, § 19. C.R.S. 1963: § 97-3-19. L. 85: IP(1) and (2) amended, p. 409, § 17, July 1. L. 2002: (2) amended, p. 1481, § 87, October 1. L. 2006: IP(1) and (1)(a) to (1)(e) repealed and (2) and (3) amended, p. 93, §§ 50, 49, 48, effective August 7.

Editor's note: Subsections (1)(a), (1)(b), (1)(c), and (1)(d) were relocated to § 12-42-113 (1)(n), (1)(o), (1)(p), and (1)(q) in 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-42-120. Professional nursing and the practice of a psychiatric technician. Nothing in this article shall be construed as conferring any authority to practice medicine or professional nursing or to undertake the treatment or care of disease, pain, injury, deformity, or physical or mental condition in violation of the law of this state.

Source: L. 67: p. 242, § 20. C.R.S. 1963: § 97-3-20.

12-42-121. Other groups. Nothing in this article shall be construed to enlarge or detract from the rights, powers, and duties of any other licensed business, occupation, or profession.

Source: L. 67: p. 242, § 21. C.R.S. 1963: § 97-3-21.

ARTICLE 42.5

Pharmacists, Pharmacy Businesses, and Pharmaceuticals

Editor's note: This article was added with relocations in 2012. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

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PART 1

GENERAL PROVISIONS

12-42.5-101. Public interest. The practice of pharmacy is a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest. It is a matter of public interest and concern that the practice of pharmacy, as defined in this article, merits and receives the confidence of the public, and that only qualified persons be permitted to practice pharmacy in this state. This article is liberally construed to carry out these objects and purposes. Pursuant to these standards and obligations, the state board of pharmacy may adopt rules of professional conduct in accordance with article 4 of title 24, C.R.S.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1531, § 1, effective July 1.

Editor’s note: This section is similar to former § 12-22-101 as it existed prior to 2012.

ANNOTATION

Pharmacist charged with high standard of professional care. In protecting the welfare of the public, a pharmacist is charged with a high standard of professional care within the area of his licensed expertise. *Fink v. State Bd. of Pharmacy*, 32 Colo. App. 445, 515 P.2d 477 (1973) (decided under former law).

12-42.5-102. Definitions. As used in this article, unless the context otherwise requires or the term is otherwise defined in another part of this article:

- (1) “Administer” means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion, or any other method.
- (2) “Advertise” means to publish or display information about prescription prices or drugs in any medium.
- (3) “Anabolic steroid” has the same meaning as set forth in section 18-18-102 (3), C.R.S.
- (3.5) “Authorized distributor of record” means a wholesaler with whom a manufacturer has established an ongoing relationship to distribute the manufacturer’s prescription drug. For purposes of this subsection (3.5), an ongoing relationship is deemed to exist between a wholesaler and a manufacturer when the wholesaler, including any affiliated group of the wholesaler as defined in section 1504 of the federal “Internal Revenue Code of 1986”, complies with the following:
 - (a) The wholesaler has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; and
 - (b) The wholesaler is listed on the manufacturer’s current list of authorized distributors of record, which list is updated by the manufacturer on no less than a monthly basis.
- (4) “Board” means the state board of pharmacy.

(5) "Bureau" means the drug enforcement administration, or its successor agency, of the United States department of justice.

(6) "Casual sale" means a transfer, delivery, or distribution to a corporation, individual, or other entity, other than a consumer, entitled to possess prescription drugs; except that the amount of drugs transferred, delivered, or distributed in such manner by any registered prescription drug outlet or hospital other outlet shall not exceed ten percent of the total number of dosage units of drugs dispensed and distributed on an annual basis by such outlet.

(6.5) "Chain pharmacy warehouse" means a physical location for prescription drugs that serves as a central warehouse and performs intracompany sales or transfers of prescription drugs to a group of chain pharmacies or other chain pharmacy warehouses that are under common ownership or control. Notwithstanding any other provision of this article, a chain pharmacy warehouse receiving distributions on behalf of, or making distributions to, an intracompany pharmacy need not be an authorized distributor of record to be part of the normal distribution channel.

(7) (a) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device:

(I) As the result of a practitioner's prescription drug order, chart order, or initiative, based on the relationship between the practitioner, patient, and pharmacist in the course of professional practice; or

(II) For the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing.

(b) "Compounding" also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

(8) "Controlled substance" shall have the same meaning as in section 18-18-102 (5), C.R.S.

(9) "Delivery" means the actual, constructive, or attempted transfer of a drug or device from one person to another, whether or not for consideration.

(10) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, or similar or related article that is required under federal law to bear the label, **"Caution: federal law requires dispensing by or on the order of a physician."** "Device" also includes any component part of, or accessory or attachment to, any such article, whether or not the component part, accessory, or attachment is separately so labeled.

(11) "Dispense" means to interpret, evaluate, and implement a prescription drug order or chart order, including the preparation of a drug or device for a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to or use by a patient.

(12) "Distribution" means the transfer of a drug or device other than by administering or dispensing.

(13) (a) "Drug" means:

(I) Substances recognized as drugs in the official compendia;

(II) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals;

(III) Substances, other than food, intended to affect the structure or any function of the body of individuals or animals; and

(IV) Substances intended for use as a component of any substance specified in subparagraph (I), (II), or (III) of this paragraph (a).

(b) "Drug" does not include devices or their components, parts, or accessories.

(14) "Generic drug type" means the chemical or generic name, as determined by the United States adopted names (USAN) and accepted by the federal food and drug administration (FDA), of those drug products having exactly the same active chemical ingredients in exactly the same strength and quantity.

(15) "Hospital" means a general hospital or specialty hospital having a license or certificate of compliance issued by the department of public health and environment.

(16) "Hospital satellite pharmacy" means a satellite that registers pursuant to section 12-42.5-117 (10) for the purpose of administration of drugs to patients while being treated in the facility.

(17) "Intern" means a person who is:

(a) (I) Enrolled in a professional degree program of a school or college of pharmacy that has been approved by the board;

(II) Currently licensed by the board to engage in the practice of pharmacy; and

(III) Satisfactorily progressing toward meeting the requirements for licensure as a pharmacist;

(b) Licensed as a pharmacist in Colorado or another state or territory of the United States and in good standing and making the clinical rotations of the nontraditional pharmacy program at the university of Colorado or a substantially equivalent program as determined by the board;

(c) A graduate of an approved professional degree program of a school or college of pharmacy or a graduate who has established education equivalency by obtaining a board-approved foreign pharmacy graduate certification and who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist; or

(d) A qualified applicant awaiting examination for licensure as a pharmacist or meeting board requirements for licensure.

(18) "Labeling" means the process of preparing and affixing a label to any drug container, exclusive, however, of the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law or regulation.

(19) "Location" means the physical confines of an individual building or at the same address.

(19.5) "Long-term care facility" means a nursing facility, as defined in section 25.5-4-103 (14), C.R.S., that is licensed pursuant to section 25-1.5-103, C.R.S.

(20) "Manufacture" means to cultivate, grow, or prepare by other process drugs for sale to wholesalers or other persons entitled to purchase drugs other than the ultimate user, but "manufacture" does not include the compounding and dispensing of a prescription drug pursuant to a prescription order.

(20.5) "Manufacturer's exclusive distributor" means a person who contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and who takes title to the manufacturer's prescription drug but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug. To be considered part of the normal distribution channel, as defined in section 12-42.5-301 (6), a manufacturer's exclusive distributor shall be an authorized distributor of record.

(21) "Nonprescription drug" means a drug that may be sold without a prescription and that is labeled for use by the consumer in accordance with the requirements of the law and rules of this state and the federal government.

(22) "Nuclear pharmacy" means a specialized pharmacy that deals with the preparation and delivery of radioactive material as defined in section 25-11-101, C.R.S.

(23) "Official compendia" means the official United States pharmacopeia, national formulary, homeopathic pharmacopoeia of the United States, or any supplements thereto.

(24) "Order" means:

(a) A prescription order that is any order, other than a chart order, authorizing the dispensing of a single drug or device that is written, mechanically produced, computer generated and signed by the practitioner, transmitted electronically or by facsimile, or produced by other means of communication by a practitioner to a licensed pharmacy or pharmacist and that includes the name or identification of the patient, the date, the symptom or purpose for which the drug is being prescribed, if included by the practitioner at the patient's authorization, and sufficient information for compounding, dispensing, and labeling; or

(b) A chart order, which is an order for inpatient drugs or medications that are to be dispensed by a pharmacist, or by a pharmacy intern under the direct supervision of a pharmacist, and administered by an authorized person only during the patient's stay in a hospital, medical clinic operated by a hospital, ambulatory surgical center, hospice, or long-term care facility. The chart order shall contain the name of the patient and the

medicine ordered and such directions as the practitioner may prescribe concerning strength, dosage, frequency, and route of administration.

(25) "Other outlet" means:

(a) A hospital that does not operate a registered pharmacy, rural health clinic, federally qualified health center, as defined in section 1861 (aa) (4) of the federal "Social Security Act", 42 U.S.C. sec. 1395x (aa) (4), family planning clinic, school, jail, county or district public health agency, community health clinic, university, or college that:

(I) Has facilities in this state registered pursuant to this article; and

(II) Engages in the compounding, dispensing, and delivery of drugs or devices; or

(b) An ambulatory surgical center licensed pursuant to part 1 of article 3 of title 25, C.R.S., a medical clinic operated by a hospital, or a hospice licensed pursuant to part 1 of article 3 of title 25, C.R.S., that:

(I) Has facilities in this state registered pursuant to this article; and

(II) Engages in the compounding, dispensing, and delivery of drugs or devices for administration to patients while being treated in the facility.

(26) "Patient counseling" means the oral communication by a pharmacist or intern of information to the patient or caregiver in order to improve therapy by ensuring proper use of drugs and devices.

(27) "Pharmaceutical care" means the provision of drug therapy and other pharmaceutical patient care services by a pharmacist intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process. In addition to the preparation, dispensing, and distribution of medications, "pharmaceutical care" may include assessment and evaluation of the patient's medication-related needs and development and communication of a therapeutic plan with defined outcomes in consultation with the patient and the patient's other health care professionals to attain the desired outcome. This function includes efforts to prevent, detect, and resolve medication-related problems for individual patients. "Pharmaceutical care" does not include prescriptive authority; except that a pharmacist may prescribe only over-the-counter medications to a recipient under the "Colorado Medical Assistance Act" as authorized pursuant to section 25.5-5-322, C.R.S.

(28) "Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy.

(29) "Pharmacist manager" means an individual, licensed in this state as a pharmacist, who has direct control of the pharmaceutical affairs of a prescription drug outlet, and who is not the manager of any other prescription drug outlet.

(29.5) "Pharmacy buying cooperative warehouse" means a permanent physical location that acts as a central warehouse for prescription drugs and from which sales of prescription drugs are made to an exclusive group of pharmacies that are members or member owners of the buying cooperative operating the warehouse.

(30) "Pharmacy technician" means an unlicensed person who performs those functions set forth in paragraph (b) of subsection (31) of this section under the supervision of a pharmacist.

(31) "Practice of pharmacy" means:

(a) The interpretation, evaluation, implementation, and dispensing of orders; participation in drug and device selection, drug administration, drug regimen reviews, and drug or drug-related research; provision of patient counseling; and the provision of those acts or services necessary to provide pharmaceutical care in all areas of patient care; and

(b) (I) The preparation, mixing, assembling, packaging, labeling, or delivery of a drug or device;

(II) Proper and safe storage of drugs or devices; and

(III) The maintenance of proper records for such drugs and devices.

(32) "Practitioner" means a person authorized by law to prescribe any drug or device, acting within the scope of such authority.

(33) "Prescription" means the finished product of the dispensing of a prescription order in an appropriately labeled and suitable container.

(34) "Prescription drug" means a drug that:

(a) Is required by any applicable federal or state law or rule to be dispensed only pursuant to an order;

(b) Is restricted by any applicable federal or state law or rule to use by practitioners only; or

(c) Prior to being dispensed or delivered, is required under federal law to be labeled with one of the following statements:

(I) "Rx only"; or

(II) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian."

(35) "Prescription drug outlet" or "pharmacy" means any pharmacy outlet registered pursuant to this article where prescriptions are compounded and dispensed. "Prescription drug outlet" includes, without limitation, a compounding prescription drug outlet registered pursuant to section 12-42.5-117 (9) or specialized prescription drug outlet registered pursuant to section 12-42.5-117 (11).

(36) "Refill" means the compounding and dispensing of any drug pursuant to a previously executed order.

(36.3) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding repackaging or labeling completed by the pharmacist responsible for dispensing product to the patient.

(36.5) "Repackager" means a person who repackages prescription drugs.

(37) "Sample" means any prescription drug given free of charge to any practitioner for any reason except for a bona fide research program.

(38) "Satellite" means an area outside the prescription drug outlet where pharmaceutical care and services are provided and that is in the same location.

(39) "Supervision" means that a licensed pharmacist is on the location and readily available to consult with and assist unlicensed personnel performing tasks described in paragraph (b) of subsection (31) of this section.

(40) "Therapeutically equivalent" or "equivalent" means those compounds containing the identical active chemical ingredients of identical strength, quantity, and dosage form and of the same generic drug type, which, when administered in the same amounts, will provide the same therapeutic effect as evidenced by the control of a symptom or disease.

(41) "Ultimate user" means a person who lawfully possesses a prescription drug for his or her own use, for the use of a member of the person's household, or for use in administering to an animal owned by the person or a member of his or her household.

(42) (a) "Wholesale distribution" means distribution of prescription drugs to persons or entities other than a consumer or patient.

(b) "Wholesale distribution" does not include:

(I) Intracompany sales or transfers of prescription drugs, including a transaction or transfer between a division, subsidiary, parent, or affiliated or related company under common ownership or control of an entity;

(II) The sale, purchase, distribution, trade, or transfer of a prescription drug or offer to sell, purchase, distribute, trade, or transfer a prescription drug for emergency medical reasons or during a state or national declaration of emergency;

(III) The sale or transfer of a drug for medical reasons by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

(IV) The distribution of prescription drug samples by a manufacturer's representative;

(V) Drug returns, when conducted by a hospital, health care entity, or charitable institution in accordance with 21 CFR 203.23;

(VI) The sale of minimal quantities of prescription drugs by retail pharmacies to licensed practitioners for office use;

(VII) A retail pharmacy's delivery of prescription drugs to a patient or patient's agent pursuant to the lawful order of a licensed practitioner;

(VIII) The sale, transfer, merger, or consolidation of all or part of the business of a pharmacy or pharmacies from or with another pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets;

(IX) The direct sale, purchase, distribution, trade, or transfer of a prescription drug from a manufacturer to an authorized distributor of record to one additional authorized

distributor of record but only if an authorized distributor of record that purchases a prescription drug from an authorized distributor of record that purchased the prescription drug directly from the manufacturer:

(A) Provides the supplying authorized distributor of record with a verifiable statement that the product is unavailable from the manufacturer; and

(B) Receives a verifiable statement from the supplying authorized distributor of record that the product was purchased directly from the manufacturer;

(X) The delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs where the common carrier does not store, warehouse, or take legal ownership of the prescription drug;

(XI) The sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned, or recalled prescription drugs to the original manufacturer or to a third-party returns processor;

(XII) The sale or transfer of compounded drugs compounded by a retail pharmacy as defined in subsection (7) of this section and as authorized by section 12-42.5-119 (6) (b);

(XIII) The transfer of prescription drugs within Colorado purchased with public funds by the department of public health and environment, created in section 25-1-102, C.R.S., or a district or county public health agency, created pursuant to section 25-1-506, C.R.S., and procured by a physician licensed in Colorado who is either the executive director or the chief medical officer appointed pursuant to section 25-1-105, C.R.S., or a public health director or medical officer of a county or district public health agency selected pursuant to section 25-1-508 (5) (c) (I), C.R.S. The transfers may only be made to the department of public health and environment pursuant to the Colorado medical license of the executive director or chief medical officer, a district or county public health agency pursuant to the Colorado medical license of the public health director or medical officer, or a physician licensed in Colorado.

(43) "Wholesaler" means a person engaged in the wholesale distribution of prescription drugs to persons, other than consumers, who are entitled to possess prescription drugs, including: Repackagers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses; manufacturers' exclusive distributors; authorized distributors of record; drug wholesalers or distributors; independent wholesale drug traders; pharmacy buying cooperative warehouses; retail pharmacies that conduct wholesale distribution; and chain pharmacy warehouses that conduct wholesale distribution.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1532, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 2012. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

"Dispense" under this section does not require delivery to person named on prescription. Commerce City Drug v. State Bd. of Pharmacy, 32 Colo. App. 216, 511 P.2d 935 (1973).

Dispensing occurs when the druggist transfers possession of a drug. Commerce City Drug v. State Bd. of Pharmacy, 32 Colo. App. 216, 511 P.2d 935 (1973).

Use or method of consumption of a dispensed drug is not limited or defined by this statute. Commerce City Drug v. State Bd. of Pharmacy, 32 Colo. App. 216, 511 P.2d 935 (1973).

Applied in People v. Coto, 199 Colo. 508, 611 P.2d 969 (1980); People v. Wellington, 633 P.2d 1390 (Colo. 1981).

12-42.5-103. State board of pharmacy - creation - subject to termination - repeal of parts. (1) The responsibility for enforcement of this article is vested in the state board of pharmacy, which is hereby created. The board has all of the duties, powers, and authority specifically granted by and necessary to the enforcement of this article, as well as other duties, powers, and authority as may be granted by statute from time to time. Except as otherwise provided to the contrary, the board shall exercise all its duties, powers, and authority in accordance with the “State Administrative Procedure Act”, article 4 of title 24, C.R.S.

(2) The board shall exercise its powers and perform its duties and functions specified by this article under the department of regulatory agencies and the executive director of the department as if the same were transferred to the department by a **type 1** transfer, as is defined in the “Administrative Organization Act of 1968”, article 1 of title 24, C.R.S.

(3) (a) Section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state, unless extended as provided in that section, applies to the state board of pharmacy created by this section.

(b) Parts 1 to 3 of this article are repealed, effective September 1, 2021. Prior to the repeal, the department of regulatory agencies shall review the board and the regulation of the practice of pharmacy pursuant to parts 1 to 3 of this article as provided in section 24-34-104, C.R.S.

Source: L. 2012: Entire article added with relocations; (HB 12-1311), ch. 281, p. 1540, § 1, effective July 1.

Editor’s note: This section is similar to former § 12-22-103 as it existed prior to 2012.

ANNOTATION

Under the act of 1887, it was held that the governor may appoint a state board of pharmacy by his own act, and without the advice and consent of the senate, the power to appoint

being expressly conferred and such advice and consent not being required. In re Question Propounded by Governor, 12 Colo. 399, 21 P. 488 (1888) (decided prior to earliest source).

12-42.5-104. Membership of board - removal - compensation - meetings.

(1) (a) The board is composed of five licensed pharmacists, each having at least five years’ experience in this state and actively engaged in the practice of pharmacy in this state, and two nonpharmacists who have no financial interest in the practice of pharmacy.

(b) The governor shall make all appointments to the board in accordance with this section.

(c) For purposes of achieving a balance in the membership on the board, the governor shall consider:

(I) Whether the appointee’s home is in:

(A) An urban or rural location; and

(B) An area already represented geographically by another appointee on the board; and

(II) The type of practice of the appointee so that various types of practices are represented on the board.

(d) (I) The term of office of each member is four years.

(II) In the case of an appointment to fill a vacancy, the appointee shall complete the unexpired term of the former board member.

(III) No member of the board may serve more than two consecutive full terms.

(e) No more than four members of the board shall be members of the same major political party.

(f) The governor shall appoint the pharmacist members in a manner to ensure that the term of one member expires July 1 of each year.

(2) The governor may remove any board member for misconduct, incompetence, or neglect of duty.

(3) Each member of the board shall receive the compensation provided for in section 24-34-102 (13), C.R.S.

(4) The board shall hold meetings at least once every four months at the times and places fixed by the board. At one meeting, the board shall elect a president and a vice-president. A majority of the members of the board constitutes a quorum for the conduct of business, and, except as otherwise provided in this part 1, all actions of the board must be by a majority of a quorum. The board shall give full and timely notice of all meetings of the board pursuant to any requirements of state laws. All board meetings and hearings are open to the public; except that the board may conduct any portion of its meetings in executive session closed to the public, as may be permitted by law.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1541, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 2012. For a detailed comparison, see the comparative tables located in the back of the index.

12-42.5-105. Rules. The board shall make, adopt, amend, or repeal rules in accordance with article 4 of title 24, C.R.S., that the board deems necessary for the proper administration and enforcement of the responsibilities and duties delegated to the board by this article, including those relating to nuclear pharmacies.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1542, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-108 as it existed prior to 2012.

12-42.5-106. Powers and duties. (1) The board shall:

- (a) Inspect, or direct inspectors who are licensed pharmacists to inspect, all outlets and investigate violations of this article;
- (b) Prescribe forms and receive applications for licensure and registration and grant, renew, reactivate, and reinstate licenses and registrations;
- (c) Deny, suspend, or revoke licenses or registrations;
- (d) Apply to the courts for and obtain in accordance with the Colorado rules of civil procedure restraining orders and injunctions to enjoin violations of the laws that the board is empowered to enforce;
- (e) Administer examinations to, and determine the qualifications and fitness of, applicants for licensure or registration;
- (f) Keep a record of:
 - (I) All licenses, registrations, and license and registration renewals, reactivations, and reinstatements for a reasonable period;
 - (II) All suspensions, revocations, and any other disciplinary actions; and
 - (III) Its own proceedings;
- (g) Collect all fees prescribed by this article;
- (h) Fine registrants when consistent with the provisions of this article and the rules adopted pursuant to this article;
 - (i) (I) Conduct investigations, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties of the board.
 - (II) (A) The board or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter before the board.
 - (B) The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence, make findings, and report the findings to the board.
 - (III) Upon failure of any witness to comply with a subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board with notice to the subpoenaed person or licensee, may issue

to the person or licensee an order requiring that person or licensee to appear before the board; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. The court may hold the person or licensee in contempt of court for failure to obey the order of the court.

(j) Review and approve or reject applications for participation in the pharmacy peer health assistance diversion program pursuant to part 2 of this article and perform any other functions that were performed by the rehabilitation evaluation committee prior to its repeal.

(2) The board has other duties, powers, and authority as may be necessary to enforce this article and the rules adopted pursuant to this article.

(3) The board may:

(a) Adopt a seal to be used only in the manner the board prescribes;

(b) Promulgate rules governing the compounding of pharmaceutical products, which rules must address the following:

(I) Training and qualifications;

(II) Quality control;

(III) Internal operating procedures;

(IV) Procurement of compounding materials;

(V) Formulation, documentation, and testing requirements;

(VI) Equipment standards;

(VII) Facility standards; and

(VIII) A recall system.

(4) (a) (I) Whenever a duly authorized agent of the board finds or has probable cause to believe that, in any registered outlet, any drug, nonprescription drug, or device is adulterated or misbranded within the meaning of the "Colorado Food and Drug Act", part 4 of article 5 of title 25, C.R.S., the agent shall affix to the article a tag or other appropriate marking giving notice:

(A) That the article is, or is suspected of being, adulterated or misbranded;

(B) That the article has been detained or embargoed; and

(C) Warning all persons not to remove or dispose of the article by sale or otherwise until the board, its agent, or the court gives provision for removal or disposal.

(II) No person shall remove or dispose of an embargoed article by sale or otherwise without the permission of the board or its agent or, after summary proceedings have been instituted, without permission from the court.

(b) If the board or the court removes the embargo, neither the board nor the state is liable for damages because of the embargo if the court finds that there was probable cause for the embargo.

(c) When an agent finds that an article detained or embargoed under paragraph (a) of this subsection (4) is adulterated or misbranded, the agent shall petition the judge of the district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. When the agent finds that an article so detained or embargoed is not adulterated or misbranded, he or she shall remove the tag or other marking.

(d) (I) If the court finds that a detained or embargoed article is adulterated or misbranded, except as provided in subparagraph (II) of this paragraph (d), the court shall order the article, after entry of the decree, to be destroyed at the expense of the owner of the article under the supervision of the agent. The owner of the article or the owner's agent shall bear all court costs and fees, storage, and other proper expense.

(II) When the owner can correct the adulteration or misbranding by proper labeling or processing of the article, after entry of the decree and after the owner has paid the costs, fees, and expenses and has posted a good and sufficient bond, conditioned that the article be properly labeled or processed, the court may direct, by order, that the article be delivered to the owner for proper labeling or processing under the supervision of an agent. The owner shall pay the expense of the agent's supervision. The bond must be returned to the owner of the article once the board represents to the court that the article is no longer in violation of the embargo and that the owner has paid the expenses of supervision.

(e) It is the duty of the attorney general or the district attorney to whom the board reports any violation of this subsection (4) to institute appropriate proceedings in the proper

courts without delay and to prosecute the matter in the manner required by law. Nothing in this paragraph (e) requires the board to report violations when the board believes the public interest will be adequately served in the circumstances by a suitable written notice or warning.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1542, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-110 as it existed prior to 2012.

ANNOTATION

Annotator's note. Since § 12-42.5-106 is similar to § 12-22-104 as it existed prior to the 1979 repeal and reenactment of former article 22 of this title, a relevant case construing that provision has been included in the annotations to this section.

Regulation of pharmacists and sale of drugs authorized by police power. The state has authority under the police power for the protection of the public health and welfare to regulate the practice of pharmacy and the sale of drugs, and to delegate to an administrative agency the power and authority to adopt rules and regulations and provide for their enforcement. *Moore v. District Court*, 184 Colo. 63, 518 P.2d 948 (1974).

Constitutionality of board's exercise of powers presumed valid. As an administrative agency statutorily created and endowed with specific enumerated powers and duties delegated pursuant to the police power of the state, the board's exercise of those powers within the scope of its authority is entitled to a presumption of validity and constitutionality. *Moore v. District Court*, 184 Colo. 63, 518 P.2d 948 (1974).

Presumption not lightly cast aside. The presumption of validity of the rules regularly promulgated by the board is not to be lightly cast aside by mere allegations in a complaint of unconstitutionality. *Moore v. District Court*, 184 Colo. 63, 518 P.2d 948 (1974).

Burden is upon party challenging constitutionality of board's rules to establish by a clear and convincing showing beyond a reasonable doubt the asserted invalidity. *Moore v. District Court*, 184 Colo. 63, 518 P.2d 948 (1974).

Board not required to issue notice before announcing final decision following changes in penalty. Changes, made by the state board of pharmacy in a hearing officer's penalty for pharmacist's violation of § 12-22-124, rendered without notice to the appellant or without any further hearings following a hearing officer's initial decision and order, were quasi-judicial in nature and thus neither § 12-22-124 nor due process principles required that the board issue any notice prior to announcing its final decision. *Mitchell v. Klapper*, 626 P.2d 1163 (Colo. App. 1980) (decided under law in effect prior to the 1976 repeal of former sect; 12-22-114 (3)(c)).

12-42.5-107. Drugs, devices, and other materials. (1) The board is responsible for the control and regulation of drugs, including the following:

- (a) The regulation of the sale at retail and the dispensing of drugs;
 - (b) The specification of minimum professional and technical equipment, environment, supplies, and procedures for the compounding or dispensing of medications and drugs;
 - (c) The control of the purity and quality of drugs.
- (2) The board is responsible for the control and regulation of the sale of devices at retail.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1545, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-112 as it existed prior to 2012.

12-42.5-108. Publications. The board shall issue its publications that are circulated in quantity outside the executive branch in accordance with section 24-1-136, C.R.S. The board shall circulate its publications to all registered prescription drug outlets that will be directly affected by the publications.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1545, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-113 as it existed prior to 2012.

12-42.5-109. Reporting - malpractice claims. (1) Each insurance company licensed to do business in this state and engaged in the writing of malpractice insurance for licensed pharmacists and pharmacies, and each pharmacist or pharmacy that self-insures, shall send to the board, in the form prescribed by the board, information relating to each malpractice claim against a licensed pharmacist that is settled or in which judgment is rendered against the insured.

(2) The insurance company or self-insured pharmacist or pharmacy shall provide information relating to each malpractice claim as is deemed necessary by the board to conduct a further investigation and hearing.

(3) Information relating to each malpractice claim provided by insurance companies or self-insured pharmacists or pharmacies is exempt from the provisions of any law requiring that the proceedings of the board be conducted publicly or that the minutes or records of the board be open to public inspection unless the board takes final disciplinary action. The board may use the information in any formal hearing involving a licensee or registrant.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1545, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-113.5 as it existed prior to 2012.

12-42.5-110. Fees. (1) The director of the division of professions and occupations shall determine, and the board shall collect, fees pursuant to section 24-34-105, C.R.S., for the following licenses and registrations:

(a) For certifying to another state the grades of a person who has taken the pharmacist examination in this state;

(b) For the initial licensure, upon examination, as a pharmacist, as provided in section 12-42.5-112 (4);

(c) For the initial licensure, without examination and upon presentation of evidence of licensure in another state, as a pharmacist, as provided in section 12-42.5-112 (8);

(d) For the renewal of a license as a licensed pharmacist, as provided in section 12-42.5-114 (1);

(e) For reinstatement as a licensed pharmacist, as provided in section 12-42.5-114 (2);

(f) For the transfer of a prescription drug outlet registration to a new owner, as provided in section 12-42.5-116 (2);

(g) For the transfer of a manager's name, as provided in section 12-42.5-116 (1);

(h) For the issuance of a duplicate certificate to a licensed pharmacist;

(i) For the initial licensure as a pharmacy intern;

(j) For the issuance of a duplicate license of a pharmacy intern;

(k) For the transfer of a prescription drug outlet registration to a new location, as provided in section 12-42.5-116 (2);

(l) For reissuing a prescription drug outlet registration in a new store name, without change of owner or manager, as provided in section 12-42.5-116 (2);

(m) For the initial registration or the renewal of the registration of a prescription drug outlet, as provided in section 12-42.5-116 (2);

(n) For the initial certificate evidencing licensure for all pharmacists;

(o) For the initial and renewal registration of all other outlets under section 12-42.5-117 not covered in this section;

(p) For the initial and renewal registration of all nonresident prescription drug outlets under section 12-42.5-130;

(q) For the initial and renewal registration of humane societies and animal control agencies pursuant to section 12-42.5-117 (12).

(2) Any pharmacist licensed in Colorado for fifty years or more as a pharmacist is exempt from the payment of fees under this article and is allowed to practice as a licensed pharmacist.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1546, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-114 as it existed prior to 2012.

12-42.5-111. Approval of schools. (1) A school or college of pharmacy that is approved by the board as a school or college of pharmacy from which graduation is required in order for the graduate of the school or college of pharmacy to apply for a license as a pharmacist must meet the requirements set forth by the board.

(2) The board may utilize the facilities, reports, requirements, and recommendations of any recognized accrediting organization in determining the requirements for a school or college of pharmacy.

(3) The board shall maintain a list of approved schools or colleges.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1547, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-115 as it existed prior to 2012.

12-42.5-112. Licensure or registrations - applicability - applications - licensure requirements - rules. (1) This article applies to all persons in this state engaged in the practice of pharmacy and to all outlets in this state engaged in the manufacture, dispensing, production, sale, and distribution of drugs, devices, and other materials used in the treatment of injury, illness, and disease.

(2) (a) Every applicant for a license under this article must read and write the English language, or if the applicant is a partnership, each member of the partnership must read and write the English language. If the applicant is a Colorado corporation, the corporation must be in good standing, and if the applicant is a foreign corporation, it must be qualified to do business in this state.

(b) The board shall issue the appropriate registration to each manufacturer and wholesaler that meets the requirements of this article unless the board determines that the issuance of the registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(I) Maintenance of effective controls against diversion of controlled substances into illegitimate medical, scientific, or industrial channels;

(II) Compliance with applicable state and local laws;

(III) Any conviction of the applicant under any federal or state law relating to a controlled substance;

(IV) Past experience in the manufacture or distribution of controlled substances and the existence in the applicant's establishment of effective controls against diversion;

(V) Any false or fraudulent information in an application filed under this part 1;

(VI) Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense a controlled substance as authorized by federal law; and

(VII) Any other factors relevant to and consistent with the public peace, health, and safety.

(3) Every applicant for a license or registration under this article shall make written application in the manner and form prescribed by the board, setting forth the applicant's name and address, the applicant's qualifications for the license or registration, and other information required by the board. The applicant shall submit with the application the required fee, and, if the applicant is required to take an examination, the applicant shall appear for examination at the time and place fixed by the board.

(4) (a) (I) An applicant who has graduated from a school or college of pharmacy approved by the board may take an examination before the board.

(II) The examination must be designed fairly to test the applicant's knowledge of pharmacy and other related subjects and must be in a form approved by the board. The examination cannot be administered orally.

(III) An applicant for licensure by examination shall have completed an internship as prescribed by the board.

(b) A person who produces evidence satisfactory to the board that the person has graduated and obtained a degree from a school of pharmacy outside the United States and has passed a foreign graduate equivalency test given or approved by the board may apply to take the examination set forth in paragraph (a) of this subsection (4).

(5) Every applicant for licensure as a pharmacist, whether by examination, transfer of license, reactivation, or reinstatement, shall take a jurisprudence examination approved by the board that tests such applicant's knowledge of the laws of this state.

(6) No applicant shall exercise the privileges of licensure or registration until the board grants the license or registration.

(7) The board may require any applicant for licensure to display written or oral competency in English. The board may utilize a standardized test to determine language proficiency.

(8) A person licensed by examination and in good standing in another state may apply for a license transfer. The board shall designate a clearinghouse for license transfer applicants, and a person applying for a license transfer shall apply through the clearinghouse designated by the board.

(9) The board shall adopt rules as necessary to ensure that any person who manufactures drugs and any wholesaler of drugs possesses the minimum qualifications required for wholesale drug distributors pursuant to the federal "Prescription Drug Marketing Act of 1987", 21 U.S.C. sec. 353, as amended.

(10) A person whose license has been revoked shall not reapply for licensure earlier than two years after the effective date of the revocation.

(11) Issuance of a license or registration under this section and section 12-42.5-117 does not entitle a licensee or registered facility or outlet to wholesale, manufacture, distribute, dispense, or professionally use controlled substances beyond the scope of his or her federal registration.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1547, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 2012. For a detailed comparison, see the comparative tables located in the back of the index.

12-42.5-113. Exemptions from licensure - hospital residency programs - home renal dialysis - research companies. (1) The board is authorized to approve hospital residency programs in the practice of pharmacy. Persons accepted into an approved hospital residency program who are licensed to practice pharmacy in another state are exempt from the licensing requirements of this article so long as their practice is limited to participation in the residency program.

(2) This article does not apply to the sale or delivery of a dialysis solution if all of the following conditions are met:

(a) The sale or delivery is made directly by the manufacturer to a person with chronic kidney failure or to the designee of the person;

(b) The sale or delivery is for the purpose of self-administration by the person pursuant to an order by a physician lawfully practicing in this state; and

(c) The solution is sold or delivered in original packages, properly labeled, and unadulterated in accordance with the requirements of the "Colorado Food and Drug Act", part 4 of article 5 of title 25, C.R.S., and the "Federal Food, Drug, and Cosmetic Act".

(3) A manufacturer that must obtain a prescription drug or device solely for use in its research, development, or testing procedures and that does not further distribute the drug or device may apply to the board for a waiver of registration pursuant to this subsection (3). The board may grant a waiver if the manufacturer submits to the board the name of the drug or device it requires and an affidavit certifying that the drug or device will only be used for necessary research, development, or testing procedures and will not be further distributed. A waiver granted pursuant to this subsection (3) does not apply to a controlled substance, as defined in section 18-18-102 (5), C.R.S., or in federal law.

(4) An employee of a facility, as defined in section 25-1.5-301, C.R.S., who is administering and monitoring medications to persons under the care or jurisdiction of the facility pursuant to part 3 of article 1.5 of title 25, C.R.S., need not be licensed by the board to lawfully possess controlled substances under this article.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1549, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-22-116.5 and 12-22-304 (5) as they existed prior to 2012.

12-42.5-114. Expiration and renewal of licenses or registrations. (1) All licenses and registrations expire pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and must be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license or registration pursuant to the schedule established by the director of the division of professions and occupations, the license or registration expires. Any person whose license or registration expires is subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(2) A pharmacist who fails to renew his or her license on or before the applicable renewal time may have his or her license reinstated for the remainder of the current renewal period by filing a proper application, satisfying the board that the pharmacist is fully qualified to practice, and paying the reinstatement fee as provided in section 12-42.5-110 (1) (e) and all delinquent fees.

(3) Except for good cause shown, the board shall not grant a license to a pharmacy intern more than two years after the applicant has ceased to be an enrolled student in a college or school of pharmacy approved by the board.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1550, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-118 as it existed prior to 2012.

12-42.5-115. Continuing education. (1) Except as permitted in subsections (2) and (3) of this section, the board shall not renew, reinstate, or reactivate the license of any pharmacist until the pharmacist presents evidence that he or she has completed twenty-four hours of approved continuing pharmaceutical education within the preceding two years. Subject to subsection (9) of this section, the evidence may be provided by checking a sign-off box on the license renewal application.

(2) (a) The board may renew the license of a pharmacist who presents acceptable evidence that the pharmacist was unable to comply with subsection (1) of this section.

(b) The board may grant a six-month compliance extension to pharmacists who are unable to comply with subsection (1) of this section.

(3) The board may renew the license for the first renewal period following the issuance of the original license without requiring a pharmacist to complete any continuing pharma-

ceutical education if the pharmacist obtains a license within one year after the completion of the pharmacist's pharmaceutical education.

(4) To qualify for continuing education credit, a program of continuing pharmaceutical education must be currently approved by the accreditation council on pharmaceutical education or an equivalent accrediting body as determined by the board.

(5) Each program of continuing pharmaceutical education must consist of at least one continuing education unit, which is one hour of participation in an organized continuing educational experience, including postgraduate studies, institutes, seminars, lectures, conferences, workshops, correspondence courses, cassette programs, programmed learning courses, audiovisual programs, internet programs, and any other form of presentation that is accredited.

(6) Any aspect of the practice of pharmacy may be the subject of a program of continuing pharmaceutical education, including pharmaceuticals, compounding, pharmacology, pharmaceutical chemistry, biochemistry, physiology, microbiology, pharmacy administration, and professional practice management.

(7) A program of continuing pharmaceutical education may include the following:

(a) A definite stated objective;

(b) Presentation in an organized manner; and

(c) A method of program evaluation that is suitable to the type of program being presented.

(8) A program of continuing pharmaceutical education must meet the requirements as established by the accrediting body.

(9) The board may annually audit up to five percent of the pharmacists licensed and residing in Colorado to determine compliance with this section.

(10) If a licensed pharmacist fails to obtain the twenty-four hours of approved continuing pharmaceutical education, the pharmacist's license becomes inactive. An inactive licensee is not required to comply with any continuing pharmaceutical education requirement so long as the licensee remains inactive, but the licensee must continue to pay applicable fees, including renewal fees. The board shall note "inactive status" on the face of any license it issues to a licensee while the licensee remains inactive. Should an inactive pharmacist wish to resume the practice of pharmacy after being placed on an inactive list, the pharmacist shall file an application to activate his or her license, pay the license renewal fee, and, subject to subsections (2) and (3) of this section, meet the twenty-four-hour continuing education requirement. If a licensed pharmacist engages in the practice of pharmacy while on inactive status, that conduct may be grounds for license revocation under this article.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1551, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-118.5 as it existed prior to 2012.

12-42.5-116. Prescription drug outlet under charge of pharmacist. (1) (a) A prescription drug outlet must be under the direct charge of a pharmacist manager. A proprietor who is not a pharmacist shall comply with this requirement and shall provide a manager who is a pharmacist.

(b) The registration of any prescription drug outlet becomes void if the pharmacist manager in whose name the prescription drug outlet registration was issued ceases to be engaged as the manager. The owner shall close the prescription drug outlet unless the owner:

(I) Employs a new pharmacist manager; and

(II) Within thirty days after termination of the former manager's employment:

(A) Applies to transfer the registration to the new pharmacist manager; and

(B) Pays the registration transfer fee.

(c) At the time the pharmacist manager in whose name the registration was obtained ceases to be employed as the pharmacist manager, he or she shall immediately report to the board the fact that he or she is no longer manager of the prescription drug outlet. The

pharmacist manager is responsible as the manager until the cessation of employment is reported. The proprietor of the prescription drug outlet shall also notify the board of the termination of managership.

(2) A prescription drug outlet shall not commence business until it applies to the board for a registration and receives from the board a registration showing the name of the proprietor and the name of the manager. Upon transfer of the ownership of a prescription drug outlet, the new proprietor shall submit to the board an application to transfer the registration of the prescription drug outlet, and, upon approval of the transfer by the board, the board shall transfer the registration to the new proprietor. Upon the change of name or location of a prescription drug outlet, the registrant shall submit an application to change the name or location and the applicable fee, and, upon approval of the application, the board shall issue a new registration showing the new name or new location.

(3) (a) A prescription drug outlet operated by the state of Colorado or any political subdivision of the state is not required to be registered but, in lieu of a registration, must apply to the board, on a form approved by the board, for a certificate of compliance. The board shall determine whether the prescription drug outlet is operated in accordance with the laws of this state and the rules of the board. If the board determines that the prescription drug outlet is operated in accordance with state laws and board rules, except for the holding of a prescription drug outlet registration, the board shall issue a certificate of compliance, which certificate expires and may be renewed in accordance with section 24-34-102 (8), C.R.S. Once the board issues the certificate of compliance, the prescription drug outlet has the rights and privileges of, and is treated in all respects as, a registered prescription drug outlet. The provisions of this article with respect to the denial, suspension, or revocation of a prescription drug outlet registration apply to a certificate of compliance.

(b) An outlet as recognized in section 12-42.5-117 (1) (d) need not be under the direct charge of a pharmacist, but a licensed pharmacist shall either initially interpret all prescription orders compounded or dispensed from the outlet or provide written protocols for compounding and dispensing by unlicensed persons. An outlet qualifying for registration under this paragraph (b) may also apply to the board for a waiver of the requirements concerning physical space, equipment, inventory, or business hours as necessary and consistent with the outlet's limited public welfare purpose. In determining the granting or denial of a waiver application, the board shall ensure that the public interest criteria set forth in section 12-42.5-101 are satisfied. All other provisions of this article, except as specifically waived by the board, apply to the outlet.

(4) Every outlet and every pharmacist and pharmacy intern regularly practicing shall conspicuously display the registration and license, respectively, within the premises of the place of practice or outlet.

(5) The pharmacist responsible for the prescription order or chart order may delegate certain specific tasks described in section 12-42.5-102 (31) (b) to a person who is not a pharmacist or pharmacy intern but who is an unlicensed assistant under the pharmacist's supervision if, in the pharmacist's professional judgment, the delegation is appropriate; except that the pharmacist shall not make the delegation if the delegation jeopardizes the public health, safety, or welfare, is prohibited by rule of the board, or violates section 12-42.5-126 (1).

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1552, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-119 as it existed prior to 2012.

12-42.5-117. Registration of facilities - rules. (1) All outlets with facilities in this state shall register with the board in one of the following classifications:

- (a) Prescription drug outlet;
- (b) Wholesale drug outlet;
- (c) Manufacturing drug outlet;

(d) Any other outlet, as may be authorized by this article or that meets the definition of outlet as set forth in section 12-42.5-102 (25).

(2) The board shall establish, by rule, criteria, consistent with section 12-42.5-112 and with the public interest as set forth in section 12-42.5-101, that an outlet that has employees or personnel engaged in the practice of pharmacy must meet to qualify for registration in each classification.

(3) The board shall specify by rule the registration procedures applicants must follow, including the specifications for application for registration and the information needed.

(4) Registrations issued by the board pursuant to this section are transferable or assignable only pursuant to this article and rules established by the board.

(5) It is lawful for a person to sell and distribute nonprescription drugs. Any person engaged in the sale and distribution of nonprescription drugs is not improperly engaged in the practice of pharmacy, and the board shall not promulgate any rule pursuant to this article that permits the sale of nonprescription drugs only by a licensed pharmacist or only under the supervision of a licensed pharmacist or that would otherwise apply to or interfere with the sale and distribution of nonprescription drugs.

(6) The board shall accept the licensure or certification of nursing care facilities and intermediate care facilities required by the department of public health and environment as sufficient registration under this section.

(7) A separate registration is required under this section for any area outside the outlet that is not a satellite where pharmaceutical care and services are provided and for any area outside the outlet that is under different ownership from the outlet.

(8) No hospital outlet filling inpatient chart orders shall sell or otherwise transfer any portion of its prescription drug inventory to another registered outlet for sale or dispensing at retail. This subsection (8) does not limit any transfer of prescription drugs for the hospital's own use or limit the ability of a hospital outlet to engage in a casual sale.

(9) (a) Subject to paragraph (b) of this subsection (9), a prescription drug outlet may register as a compounding prescription drug outlet.

(b) The board shall not register a facility as a compounding prescription drug outlet unless:

(I) The facility has been accredited by a board-approved compounding accreditation entity to be within acceptable parameters to compound more than ten percent of the facility's total sales; and

(II) Ownership of the facility is vested solely in a pharmacist.

(c) To be approved by the board to accredit a compounding prescription drug outlet, a compounding accreditation entity shall be, at a minimum, a scientific organization with expertise in compounding medications.

(10) (a) On or after January 1, 2013, a satellite shall register as a hospital satellite pharmacy if the satellite:

(I) Is located in a facility that is under the same management and control as the building or site where the prescription drug outlet is located; and

(II) Has a different address than the prescription drug outlet.

(b) The board shall adopt rules as necessary to implement this subsection (10). At a minimum, the rules must set forth the manner in which a satellite is to apply for a hospital satellite pharmacy registration and the limits on the distance of satellites from the main prescription drug outlet.

(11) On or after January 1, 2013, a prescription drug outlet may register as a specialized prescription drug outlet if it engages in the compounding, dispensing, and delivery of drugs and devices to, or the provision of pharmaceutical care to residents of, a long-term care facility. The board shall adopt rules as necessary to implement this subsection (11).

(12) (a) A humane society that is duly registered with the secretary of state and has been in existence and in business for at least five years in this state as a nonprofit corporation, or an animal control agency that is operated by a unit of government, shall register with the board.

(b) The board may issue a limited license to a humane society or animal control agency to perform the activities described in section 12-42.5-118 (17).

(c) The board shall adopt rules as necessary to ensure strict compliance with this subsection (12) and section 12-42.5-118 (17) and, in conjunction with the state board of

veterinary medicine, shall develop criteria for training individuals in the administration of the drug or combination of drugs.

(d) Nothing in this subsection (12) applies to a licensed veterinarian.

(13) A facility or outlet applying for a registration under this section shall have adequate and proper facilities for the handling and storage of controlled substances and shall maintain proper control over the controlled substances to ensure the controlled substances are not illegally dispensed or distributed.

(14) The board shall not issue a registration under this section to a manufacturer or distributor of marijuana or marijuana concentrate, as those terms are defined in section 27-80-203 (15) and (16), C.R.S., respectively.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1554, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 2012. For a detailed comparison, see the comparative tables located in the back of the index.

12-42.5-118. Compounding - dispensing - sale of drugs and devices - rules.

(1) Except as otherwise provided in this section or part 2 of article 80 of title 27, C.R.S., no drug, controlled substance, or device shall be sold, compounded, dispensed, given, received, or held in possession unless it is sold, compounded, dispensed, given, or received in accordance with this section.

(2) Except as provided in subsection (7) of this section, a manufacturer of drugs may sell or give any drug to:

- (a) Any wholesaler of drugs;
- (b) A licensed hospital;
- (c) An other outlet;
- (d) A registered prescription drug outlet; or
- (e) Any practitioner authorized by law to prescribe the drugs.

(3) (a) A wholesaler may sell or give any drug or device to:

- (I) Another wholesaler of drugs or devices;
- (II) Any licensed hospital;
- (III) A registered prescription drug outlet;
- (IV) An other outlet; or
- (V) Any practitioner authorized by law to prescribe the drugs or devices.

(b) A wholesaler may sell or deliver to a person responsible for the control of an animal a drug intended for veterinary use for that animal only if a licensed veterinarian has issued, prior to such sale or delivery, a written prescription order for the drug in the course of an existing, valid veterinarian-client-patient relationship as defined in section 12-64-103 (15.5); except that, if the prescription order is for a drug that is not a controlled substance or is a controlled substance listed on schedule III, IV, or V, the licensed veterinarian may issue an oral prescription order for that drug. If the licensed veterinarian issues an oral prescription order for a controlled substance listed on schedule III, IV, or V, the licensed veterinarian shall provide a written prescription to the wholesaler within three business days after issuing the oral order.

(4) Only a registered prescription drug outlet or other outlet registered pursuant to section 12-42.5-117 (1) (d) may compound or dispense a prescription. Initial interpretation and final evaluation, as defined by the board, may be conducted at a location other than a registered prescription drug outlet or other outlet registered pursuant to this article in accordance with rules adopted by the board.

(5) (a) A registered prescription drug or licensed hospital other outlet may:

(I) Make a casual sale or loan of or give a drug to another registered outlet or to a wholesaler of drugs;

(II) Sell or give a drug to a practitioner authorized by law to prescribe the drug;

(III) Supply an emergency kit or starter dose, as defined by the board by rule, to:

(A) Any facility approved by the board for receipt of an emergency kit;

(B) Any home health agency licensed by the department of public health and environment and approved by the board for receipt of an emergency kit; and

(C) Any licensed hospice approved by the board for receipt of an emergency kit in compliance with subsection (12) of this section.

(b) In the case of a county or district public health agency that operates registered other outlets, one registered other outlet may make a casual sale of a drug to another registered other outlet if:

(I) The drug is sold in the original sealed container in which it was originally received from the wholesaler;

(II) A casual sale is not made to a registered other outlet that is not owned or operated by that county or district public health agency; and

(III) The amount sold does not exceed the ten percent limit established by section 12-42.5-102 (6).

(c) Pursuant to section 17-1-113.1, C.R.S., the department of corrections may transfer, deliver, or distribute to a corporation, individual, or other entity entitled to possess prescription drugs, other than a consumer, prescription drugs in an amount that is less than, equal to, or in excess of five percent of the total number of dosage units of drugs dispensed and distributed on an annual basis.

(6) (a) A practitioner may personally compound and dispense for any patient under the practitioner's care any drug that the practitioner is authorized to prescribe and that the practitioner deems desirable or necessary in the treatment of any condition being treated by the practitioner, and the practitioner is exempt from all provisions of this article except section 12-42.5-126.

(b) The board shall promulgate rules authorizing a pharmacist to compound drugs for office use by a practitioner. The rules must limit the amount of drugs a pharmacist may compound to no more than ten percent of the total number of drug dosage units dispensed and distributed on an annual basis by the outlet.

(c) Nothing in this section prohibits an optometrist licensed pursuant to article 40 of this title or a physician licensed pursuant to article 36 of this title from charging a fee for prescribing, adjusting, fitting, adapting, or dispensing ophthalmic devices, such as contact lenses, that are classified by the federal food and drug administration as a drug, as long as the activity is within the scope of practice of the optometrist pursuant to article 40 of this title or the scope of practice of the physician pursuant to article 36 of this title.

(7) Distribution of any sample may be made only upon written receipt from a practitioner, and the receipt must be given specifically for each drug or drug strength received.

(8) It is lawful for the vendor of any drug or device to repurchase the drug or device from the vendee to correct an error, to retire an outdated article, or for other good reason, under rules the board may adopt to protect consumers of drugs and devices against the possibility of obtaining unsafe or contaminated drugs or devices.

(9) A duly authorized agent or employee of an outlet registered by the board is not deemed to be in possession of a drug or device in violation of this section if he or she is in possession of the drug or device for the sole purpose of carrying out the authority granted by this section to his or her principal or employer.

(10) Any hospital employee or agent authorized by law to administer or dispense medications may dispense a twenty-four-hour supply of drugs on the specific order of a practitioner to a registered emergency room patient.

(11) The original, duplicate, or electronic or mechanical facsimile of a chart order by the physician or lawfully designated agent constitutes a valid authorization to a pharmacist or pharmacy intern to dispense to a hospitalized patient for administration the amounts of the drugs as will enable an authorized person to administer to the patient the drug ordered by the practitioner. The practitioner is responsible for verifying the accuracy of any chart order he or she transmitted to anyone other than a pharmacist or pharmacist intern within forty-eight hours of the transmittal.

(12) Any facility approved by the board, any home health agency certified by the department of public health and environment and approved by the board, and any licensed

hospice approved by the board may maintain emergency drugs provided and owned by a prescription drug outlet, consisting of drugs and quantities as established by the board.

(13) An intern under the direct and immediate supervision of a pharmacist may engage in the practice of pharmacy. An intern, as defined in section 12-42.5-102 (17) (a), engaged in the practice of pharmacy within the curriculum of a school or college of pharmacy in accordance with section 12-42.5-102 (17) (a), may be supervised by a manufacturer registered pursuant to section 12-42.5-112 or by another regulated individual as provided for in rules adopted by the board.

(14) A manufacturer or wholesaler of prescription drugs shall not sell or give any prescription drug, as provided in subsections (2) and (3) of this section, to a licensed hospital or registered outlet or to any practitioner unless the prescription drug stock container bears a label containing the name and place of business of the manufacturer of the finished dosage form of the drug and, if different from the manufacturer, the name and place of business of the packer or distributor.

(15) (a) A compounding prescription drug outlet registered pursuant to section 12-42.5-117 (9) may dispense and distribute compounded drugs without limitation to practitioners or to prescription drug outlets under common ownership with the pharmacist who owns the compounding prescription drug outlet.

(b) The following may distribute compounded and prepackaged medications, without limitation, to pharmacies under common ownership of the entity:

(I) A prescription drug outlet owned and operated by a hospital that is accredited by the joint commission on accreditation of healthcare organizations or a successor organization; and

(II) A prescription drug outlet operated by a health maintenance organization, as defined in section 10-16-102, C.R.S.

(c) (I) A prescription drug outlet shall not compound drugs that are commercially available except as provided in subparagraph (II) of this paragraph (c).

(II) A pharmacist may compound a commercially available drug if the compounded drug is significantly different from the commercially available drug or if use of the compounded drug is in the best medical interest of the patient, based upon the practitioner's drug order, including the removal of a dye that causes an allergic reaction. If the pharmacist compounds a drug in lieu of a commercially available product, the pharmacist shall notify the patient of that fact.

(16) A prescription drug outlet may allow a licensed pharmacist to remove immunizations and vaccines from the prescription drug outlet for the purpose of administration by a licensed pharmacist, or an intern under the supervision of a pharmacist certified in immunization, pursuant to rules promulgated by the board. The board shall promulgate rules regarding the storage, transportation, and record-keeping of immunizations and vaccines that are administered off-site.

(17) (a) A humane society or animal control agency that is registered with the board pursuant to section 12-42.5-117 (12) is authorized to:

(I) Purchase, possess, and administer sodium pentobarbital, or sodium pentobarbital in combination with other prescription drugs that are medically recognized for euthanasia, to euthanize injured, sick, homeless, or unwanted pets and animals; and

(II) Purchase, possess, and administer drugs commonly used for the chemical capture of animals for control purposes or to sedate or immobilize pet animals immediately prior to euthanasia.

(b) A society or agency registered pursuant to section 12-42.5-117 (12) shall not permit a person to administer scheduled controlled substances, sodium pentobarbital, or sodium pentobarbital in combination with other noncontrolled prescription drugs that are medically recognized for euthanasia unless the person has demonstrated adequate knowledge of the potential hazards and proper techniques to be used in administering the drug or combination of drugs.

(18) Persons registered as required under this part 1, or otherwise licensed or registered as required by federal law, may possess, manufacture, distribute, dispense, or administer controlled substances only to the extent authorized by their registrations or federal registrations or licenses and in conformity with this article and with article 18 of title 18, C.R.S.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1557, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-22-121 and 12-22-304 (3)(b) and (4) as they existed prior to 2012.

12-42.5-119. Limited authority to delegate activities constituting practice of pharmacy to pharmacy interns or pharmacy technicians. (1) A pharmacist may supervise up to three persons who are either pharmacy interns or pharmacy technicians, of whom no more than two may be pharmacy interns. If three pharmacy technicians are on duty, at least one must be certified by a nationally recognized certification board, possess a degree from an accredited pharmacy technician training program, or have completed five hundred hours of experiential training in duties described in section 12-42.5-102 (31) (b) at the pharmacy as certified by the pharmacist manager.

(2) The pharmacy shall retain documentation verifying the training for review by the pharmacist responsible for the final check on prescriptions filled by the pharmacy technician and shall make the documentation available for inspection by the board.

(3) The supervision ratio specified in subsection (1) of this section does not include other ancillary personnel who may be in the prescription drug outlet but who are not performing duties described in section 12-42.5-102 (31) (b) that are delegated to the interns or pharmacy technicians.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1561, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-121.7 as it existed prior to 2012.

12-42.5-120. Prescription required - exception. (1) Except as provided in section 18-18-414, C.R.S., and subsection (2) of this section, an order is required prior to dispensing any prescription drug. Orders shall be readily retrievable within the appropriate statute of limitations.

(2) A pharmacist may refill a prescription order for any prescription drug without the practitioner's authorization when all reasonable efforts to contact the practitioner have failed and when, in the pharmacist's professional judgment, continuation of the medication is necessary for the patient's health, safety, and welfare. The prescription refill may only be in an amount sufficient to maintain the patient until the practitioner can be contacted, but in no event may a refill under this subsection (2) continue medication beyond seventy-two hours. However, if the practitioner states on the prescription that no emergency filling of the prescription is permitted, then the pharmacist shall not issue any medication that is not authorized by the prescription. Neither a prescription drug outlet nor a pharmacist is liable as a result of refusing to refill a prescription pursuant to this subsection (2).

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1562, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-122 as it existed prior to 2012.

12-42.5-121. Labeling. (1) A prescription drug dispensed pursuant to an order must be labeled as follows:

(a) Drugs compounded and dispensed pursuant to a chart order for a patient in a hospital must bear a label containing the name of the outlet, the name and location of the patient, the identification of the drug, and, when applicable, any suitable control numbers, the expiration date, any warnings, and any precautionary statements.

(b) (I) If the prescription is for an anabolic steroid, the purpose for which the anabolic steroid is being prescribed must appear on the label.

(II) If the prescription is for any drug other than an anabolic steroid, the symptom or purpose for which the drug is being prescribed must appear on the label, if, after being advised by the practitioner, the patient or the patient's authorized representative so requests. If the practitioner does not provide the symptom or purpose for which a drug is being prescribed, the pharmacist may fill the prescription order without contacting the practitioner, patient, or patient's representative, unless the prescription is for an anabolic steroid.

(2) Except as otherwise required by law, any drug dispensed pursuant to a prescription order must bear a label prepared and placed on or securely attached to the medicine container stating at least the name and address of the prescription drug outlet, the serial number and the date of the prescription or of its dispensing, the name of the drug dispensed unless otherwise requested by the practitioner, the name of the practitioner, the name of the patient, and, if stated in the prescription, the directions for use and cautionary statements, if any, contained in the prescription.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1562, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-123 as it existed prior to 2012.

12-42.5-122. Substitution of prescribed drugs authorized - when - conditions.

(1) A pharmacist filling a prescription order for a specific drug by brand or proprietary name may substitute an equivalent drug product if the substituted drug product is the same generic drug type and, in the pharmacist's professional judgment, the substituted drug product is therapeutically equivalent, is interchangeable with the prescribed drug, and is permitted to be moved in interstate commerce. A pharmacist making a substitution shall assume the same responsibility for selecting the dispensed drug product as he or she would incur in filling a prescription for a drug product prescribed by a generic name; except that the pharmacist is charged with notice and knowledge of the federal food and drug administration list of approved drug substances and manufacturers that is published periodically.

(2) (a) If, in the opinion of the practitioner, it is in the best interest of the patient that the pharmacist not substitute an equivalent drug for the specific drug he or she prescribed, the practitioner may convey this information to the pharmacist in any of the following manners:

(I) Initialing by hand or electronically a preprinted box that states "dispense as written" or "DAW";

(II) Signing by hand or electronically a preprinted box stating "do not substitute" or "dispense as written"; or

(III) Orally, if the practitioner communicates the prescription orally to the pharmacist.

(b) The practitioner shall not transmit by facsimile his or her handwritten signature, nor preprint his or her initials, to indicate "dispense as written".

(3) If a pharmacist makes a substitution, the pharmacist shall communicate the substitution to the purchaser in writing and orally, label the container with the name of the drug dispensed, and indicate on the file copy of the prescription both the name of the prescribed drug and the name of the drug dispensed in lieu of the prescribed drug. The pharmacist is not required to communicate a substitution to institutionalized patients.

(4) Except as provided in subsection (5) of this section, the pharmacist shall not substitute a drug product as provided in this section unless the drug product substituted costs the purchaser less than the drug product prescribed. The prescription shall be priced as if it had been prescribed generically.

(5) If a prescription drug outlet does not have in stock the prescribed drug product and the only equivalent drug product in stock is higher priced, the pharmacist, with the consent of the purchaser, may substitute the higher priced drug product. This subsection (5) applies only to a prescription drug outlet located in a town, as defined in section 31-1-101 (13), C.R.S.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1563, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-124 as it existed prior to 2012.

12-42.5-123. Unprofessional conduct - grounds for discipline. (1) The board may suspend, revoke, refuse to renew, or otherwise discipline any license or registration issued by it, after a hearing held in accordance with the provisions of this section, upon proof that the licensee or registrant:

(a) Is guilty of misrepresentation, fraud, or deceit in procuring, attempting to procure, or renewing a license or registration;

(b) Is guilty of the commission of a felony or has had accepted by a court a plea of guilty or nolo contendere to a felony or has received a deferred judgment and sentence for a felony;

(c) Has violated:

(I) Any of the provisions of this article, including commission of an act declared unlawful in section 12-42.5-126;

(II) The lawful rules of the board; or

(III) Any state or federal law pertaining to drugs;

(d) Is unfit or incompetent by reason of negligence or habits, or for any other cause, to practice pharmacy;

(e) Is addicted to, dependent on, or engages in the habitual or excessive use or abuse of intoxicating liquors, a habit-forming drug, or a controlled substance, as defined in section 18-18-102 (5), C.R.S.;

(f) Knowingly permits a person not licensed as a pharmacist or pharmacy intern to engage in the practice of pharmacy;

(g) Has had his or her license to practice pharmacy in another state revoked or suspended, or is otherwise disciplined or has committed acts in any other state that would subject him or her to disciplinary action in this state;

(h) Has engaged in advertising that is misleading, deceptive, or false;

(i) Has dispensed a schedule III, IV, or V controlled substance order as listed in sections 18-18-205 to 18-18-207, C.R.S., more than six months after the date of issue of the order;

(j) Has engaged in the practice of pharmacy while on inactive status;

(k) Has failed to meet generally accepted standards of pharmacy practice;

(l) Fails or has failed to permit the board or its agents to conduct a lawful inspection;

(m) Has violated any lawful board order;

(n) Has committed any fraudulent insurance act as defined in section 10-1-128, C.R.S.;

(o) Has willfully deceived or attempted to deceive the board or its agents with regard to any matter under investigation by the board;

(p) Has failed to notify the board of any criminal conviction or deferred judgment within thirty days after the conviction or judgment;

(q) Has failed to notify the board of any discipline against his or her license in another state within thirty days after the discipline;

(r) (I) Has failed to notify the board of a physical or mental illness or condition that affects the person's ability to treat clients with reasonable skill and safety or that may endanger the health or safety of persons under his or her care;

(II) Has failed to act within the limitations created by a physical or mental illness or condition that renders the person unable to practice pharmacy with reasonable skill and safety or that may endanger the health or safety of persons under his or her care; or

(III) Has failed to comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-42.5-134;

(s) Has had his or her federal registration to manufacture, distribute, or dispense a controlled substance suspended or revoked.

(2) In considering the conviction of a crime, the board is governed by section 24-5-101, C.R.S.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1564, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-22-125 and 12-22-308 (1)(c) as they existed prior to 2012.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Hearing to revoke or suspend professional license is a disciplinary, not criminal proceeding. Commerce City Drug v. State Bd. of Pharmacy, 32 Colo. App. 216, 511 P.2d 935 (1973).

Administrative and procedural requirements in suspension of pharmacy license were fulfilled where the record discloses that the complaint gave licensee adequate notice of the nature of the charge and the alleged violation, and licensee was given a full hearing and opportunity to defend. Commerce City Drug v. State Bd. of Pharmacy, 32 Colo. App. 216, 511 P.2d 935 (1973).

Effect of merger of pharmacies on suspension proceedings. Where two pharmacies merged and the board had initiated a license suspension proceeding against the nonsurviving pharmacy before the merger, before the board could have taken any action against the license of the surviving pharmacy, a separate and distinct license from the nonsurviving pharmacy, there must have been a violation alleged against the surviving pharmacy, and the board must comply with the pertinent provisions of the drugs and druggist statute pertaining to the pro-

cedure for suspension of a pharmacy license. Alcott Pharmacy, Inc. v. State Bd. of Pharmacy, 35 Colo. App. 248, 531 P.2d 987 (1975).

Whether the person named on a drug prescription was or was not a patient of the prescribing physician was not material in action brought by the state board of pharmacy to suspend a pharmacy license on the ground that the licensee had dispensed a different drug or brand of drug in place of the drug or brand ordered or prescribed. Commerce City Drug v. State Bd. of Pharmacy, 32 Colo. App. 216, 511 P.2d 935 (1973).

Order suspending license ambiguous. Order of the board suspending pharmacy license for 14 days, seven days to run concurrent, the remaining seven days to be held in abeyance for three years to commence 60 days after service of the decision, taken as a whole was ambiguous as to when the suspension should take effect. Commerce City Drug v. State Bd. of Pharmacy, 32 Colo. App. 216, 511 P.2d 935 (1973).

Board may consider circumstances surrounding applicant's criminal conduct in determining whether to reinstate license. The applicant's rehabilitation alone does not mandate licensure. Colo. State Bd. of Pharmacy v. Priem, 2012 COA 5, 272 P.3d 1136.

12-42.5-124. Disciplinary actions. (1) (a) The board may deny or discipline an applicant, licensee, or registrant when the board determines that the applicant, licensee, or registrant has engaged in activities that are grounds for discipline.

(b) The board may suspend or revoke a registration issued pursuant to section 12-42.5-117 (12) upon determination that the person administering a drug or combination of drugs to an animal has not demonstrated adequate knowledge required by sections 12-42.5-117 (12) and 12-42.5-118 (17).

(2) (a) Proceedings for the denial, suspension, or revocation of a license or registration and any judicial review of a suspension or revocation must be conducted in accordance with article 4 of title 24, C.R.S., and the board or, at the board's discretion, an administrative law judge, shall conduct the hearing and opportunity for review.

(b) Upon finding that grounds for discipline pursuant to section 12-42.5-123 exist, the board may impose one or more of the following penalties on a person who holds or is seeking a new or renewal license or registration:

(I) Suspension of the offender's license or registration for a period to be determined by the board;

(II) Revocation of the offender's license or registration;

(III) Restriction of the offender's license or registration to prohibit the offender from performing certain acts or from practicing pharmacy in a particular manner for a period to be determined by the board;

(IV) Refusal to renew the offender's license or registration;

(V) Placement of the offender on probation and supervision by the board for a period to be determined by the board;

(VI) Suspension of the registration of the outlet that is owned by or employs the offender for a period to be determined by the board.

(c) The board may limit revocation or suspension of a registration to the particular controlled substance which was the basis for revocation or suspension.

(d) If the board suspends or revokes a registration, the board may place all controlled substances owned or possessed by the registrant at the time of the suspension or on the effective date of the revocation order under seal. The board may not dispose of substances under seal until the time for making an appeal has elapsed or until all appeals have been concluded, unless a court orders otherwise or orders the sale of any perishable controlled substances and the deposit of the proceeds with the court. When a revocation becomes final, all controlled substances may be forfeited to the state.

(e) The board shall promptly notify the bureau and the appropriate professional licensing agency, if any, of all charges and the final disposition of the charges and of all forfeitures of a controlled substance.

(3) The board may also include in any disciplinary order that allows the licensee or registrant to continue to practice conditions that the board deems appropriate to assure that the licensee or registrant is physically, mentally, morally, and otherwise qualified to practice pharmacy in accordance with the generally accepted professional standards of practice, including any or all of the following:

(a) Requiring the licensee or registrant to submit to examinations that the board may order to determine the licensee's physical or mental condition or professional qualifications;

(b) Requiring the licensee to take therapy courses of training or education that the board deems necessary to correct deficiencies found either in the hearing or by examinations required pursuant to paragraph (a) of this subsection (3);

(c) Requiring the review or supervision of the licensee's practice to determine the quality of and correct deficiencies in his or her practice; and

(d) Imposing restrictions upon the nature of the licensee's practice to assure that he or she does not practice beyond the limits of his or her capabilities.

(4) Upon failure of the licensee or registrant to comply with any conditions imposed by the board pursuant to subsection (3) of this section, unless due to conditions beyond the licensee's or registrant's control, the board may order suspension of the license or registration in this state until the licensee or registrant complies with the conditions.

(5) (a) (I) Except as provided in subparagraph (II) of this paragraph (a), in addition to any other penalty the board may impose pursuant to this section, the board may fine any registrant violating this article or any rules promulgated pursuant to this article not less than five hundred dollars and not more than five thousand dollars for each violation.

(II) In addition to any other penalty the board may impose pursuant to this section, the board may fine a registrant violating part 4 of this article not less than five hundred dollars and not more than one thousand dollars for the first time the board imposes a fine, not more than two thousand dollars for the second time the board imposes a fine, and not more than five thousand dollars for a third or subsequent time the board imposes a fine. If a registrant violates an agreement to refrain from committing subsequent violations of part 4 of this article, the board may impose a fine of not more than one thousand dollars for each violation of the agreement.

(b) The board shall transmit any moneys collected as administrative fines pursuant to this subsection (5) to the state treasurer for credit to the general fund.

(6) (a) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but should not be dismissed as being without merit, the board may send a letter of admonition by certified mail to the licensee or registrant against whom the complaint was made or who was the subject of investigation and, in the case of a complaint, may send a copy of the letter of admonition to the person making the complaint.

(b) When the board sends a letter of admonition to a licensee or registrant complained against, the board shall include in the letter a statement advising the licensee or registrant that the licensee or registrant has the right to request in writing, within twenty days after receipt of the letter, that the board initiate formal disciplinary proceedings to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the licensee or registrant timely requests adjudication, the letter of admonition is vacated, and the board shall process the matter by means of formal disciplinary proceedings.

(7) (a) When a complaint or an investigation discloses an instance of conduct that does not warrant formal action by the board but the board determines that the conduct could warrant action if continued, the board may send a confidential letter of concern to the licensee or registrant against whom the complaint was made or who was the subject of investigation. If a complaint precipitated the investigation, the board shall send a response to the person making the complaint.

(b) A confidential letter of concern is not discipline.

(8) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the board shall not resolve the complaint by a deferred settlement, action, judgment, or prosecution.

(9) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee or registrant is acting in a manner that is an imminent threat to the health and safety of the public or a person is acting or has acted without the required license or registration, the board may issue an order to cease and desist the activity. The board shall set forth in the order the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (9), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. The board shall conduct the hearing pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(10) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the board may issue to the person an order to show cause as to why the board should not issue a final order directing the person to cease and desist from the unlawful act or unlicensed or unregistered practice.

(b) The board shall promptly notify a person against whom the board has issued an order to show cause pursuant to paragraph (a) of this subsection (10) of the issuance of the order and shall include in the notice a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. The board may serve the notice upon the person against whom the order is issued by personal service, by first-class United States mail, postage prepaid, or as may be practicable. Personal service or mailing of an order or document pursuant to this subsection (10) constitutes notice to the person.

(c) (I) The board shall commence the hearing on an order to show cause no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (10). The board may continue the hearing by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the board commence the hearing later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (10) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon the person pursuant to paragraph (b) of this subsection (10) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order becomes final as to that person by operation of law. The hearing must be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or registration or has or is about to engage in acts or practices constituting violations of this article, the board may issue a final cease-and-desist order directing the person to cease and desist from further unlawful acts or unlicensed or unregistered practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (10), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) is effective when issued and is a final order for purposes of judicial review.

(11) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed or unregistered act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, or any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the board may enter into a stipulation with the person.

(12) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(13) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-42.5-125.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1566, § 1, effective July 1.

Editor's note: This section is similar to former §§ 12-22-125.2 and 12-22-308 (2), (3), and (4) as they existed prior to 2012.

12-42.5-125. Judicial review. The court of appeals has initial jurisdiction to review all final actions and orders that are subject to judicial review of the board and shall conduct the judicial review proceedings in accordance with section 24-4-106 (11), C.R.S.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1570, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-125.5 as it existed prior to 2012.

12-42.5-126. Unlawful acts. (1) It is unlawful:

- (a) To practice pharmacy without a license;
- (b) To obtain or dispense or to procure the administration of a drug by fraud, deceit, misrepresentation, or subterfuge, by the forgery or alteration of an order, or by the use of a false name or the giving of a false address;
- (c) To willfully make a false statement in any order, report, application, or record required by this article;
- (d) To falsely assume the title of or falsely represent that one is a pharmacist, practitioner, or registered outlet;
- (e) To make or utter a false or forged order;
- (f) To affix a false or forged label to a package or receptacle containing drugs;
- (g) To sell, compound, dispense, give, receive, or possess any drug or device unless it was sold, compounded, dispensed, given, or received in accordance with sections 12-42.5-118 to 12-42.5-122;
- (h) Except as provided in section 12-42.5-122, to dispense a different drug or brand of drug in place of the drug or brand ordered or prescribed without the oral or written permission of the practitioner ordering or prescribing the drug;
- (i) To manufacture, process, pack, distribute, sell, dispense, or give a drug, or the container or labeling of the drug, that, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed such drug, container, or label and that thereby

falsely purports or is represented to be the product of or to have been packed or distributed by such other drug manufacturer, processor, packer, or distributor;

(j) For an employer or an employer's agent or employee to coerce a pharmacist to dispense a prescription drug against the professional judgment of the pharmacist;

(k) For an employer, an employer's agent or employee, or a pharmacist to use or coerce to be used nonpharmacist personnel in any position or task that would require the nonpharmacist to practice pharmacy or to make a judgmental decision using pharmaceutical knowledge or in violation of the delegatory restrictions enumerated in section 12-42.5-116 (5);

(l) To dispense any drug without complying with the labeling, drug identification, and container requirements imposed by law.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1570, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-126 as it existed prior to 2012.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Criminal provisions not overlapping. Former § 12-22-319 (now § 12-22-315) and this section do not proscribe the same conduct and hence do not violate the constitutional guarantees of equal protection and due process. *People v. Wellington*, 633 P.2d 1390 (Colo. 1981); *People v. Caponey*, 647 P.2d 668 (Colo. 1982).

Board not required to issue notice before announcing final decision following changes

in penalty. Changes, made by the state board of pharmacy in hearing officer's penalty for pharmacist's violation of this section, rendered without notice to the appellant or without any further hearings following a hearing officer's initial decision and order, were quasi-judicial in nature and thus neither this section nor due process principles required that the board issue any notice prior to announcing its final decision. *Mitchell v. Klapper*, 626 P.2d 1163 (Colo. App. 1980).

12-42.5-127. Unauthorized practice - penalties. Any person who practices or offers or attempts to practice pharmacy without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and any person committing a second or subsequent offense commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1571, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-127 as it existed prior to 2012.

12-42.5-128. New drugs - when sales permissible. (1) No person shall sell, deliver, offer for sale, hold for sale, or give away any new drug not authorized to move in interstate commerce under appropriate federal law.

(2) This section does not apply to a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs if the drug is plainly labeled to be for investigational use only.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1571, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-128 as it existed prior to 2012.

12-42.5-129. Advertising of prescription drug prices. A prescription drug outlet may advertise its prices for prescription drugs. If the drug is advertised by its brand or proprietary name, the prescription drug outlet shall also include its generic name in the advertisement.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1572, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-129 as it existed prior to 2012.

12-42.5-130. Nonresident prescription drug outlet - registration. (1) Any prescription drug outlet located outside this state that ships, mails, or delivers, in any manner, drugs or devices into this state is a nonresident prescription drug outlet and shall register with the board and disclose to the board the following:

(a) The location, names, and titles of all principal entity officers and all pharmacists who are dispensing drugs or devices to the residents of this state. The nonresident prescription drug outlet shall submit a report containing this information to the board on an annual basis and within thirty days after any change of office, officer, or pharmacist.

(b) A verification that it complies with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the board pursuant to this section. The nonresident prescription drug outlet shall maintain at all times a valid, unexpired license, permit, or registration to conduct the prescription drug outlet in compliance with the laws of the state in which it is a resident. As a prerequisite to registering with the board, the nonresident prescription drug outlet shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.

(2) The registration requirements of this section apply only to a nonresident prescription drug outlet that only ships, mails, or delivers, in any manner, drugs and devices into this state pursuant to a prescription order.

(3) A nonresident prescription drug outlet doing business in this state that has not obtained a registration shall not conduct the business of selling or distributing drugs in this state without first registering as a nonresident prescription drug outlet. A nonresident prescription drug outlet shall make application for a nonresident prescription drug outlet registration on a form furnished by the board. The board may require such information as it deems necessary to carry out the purpose of this section.

(4) (a) The board may deny, revoke, or suspend a nonresident prescription drug outlet registration for failure to comply with this section or with any rule promulgated by the board.

(b) The board may deny, revoke, or suspend a nonresident prescription drug outlet registration if the nonresident prescription drug outlet's license or registration has been revoked or not renewed for noncompliance with the laws of the state in which it is a resident.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1572, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-130 as it existed prior to 2012.

12-42.5-131. Records. (1) (a) All persons licensed or registered under this article shall keep and maintain records of the receipt, distribution, or other disposal of prescription drugs or controlled substances, shall make the records available to the board upon request for inspection, copying, verification, or any other purpose, and shall retain the records for two years or for a period otherwise required by law.

(b) The board may permit a wholesaler to maintain a portion of its records at a central location that is different from the storage facility of the wholesaler. If the board grants the

permission, the wholesaler shall make available all relevant records within forty-eight hours after a request for inspection, copying, verification, or any other purpose by the board. The wholesaler shall make all other records that are available for immediate access readily available to the board.

(2) A wholesaler shall establish and maintain inventories and records of all transactions regarding the receipt and distribution of prescription drugs. A wholesaler shall make its records available to the board in accordance with subsection (1) of this section. A wholesaler shall include the following information in its records:

(a) The source of the prescription drugs, including the name and principal address of the seller or transferor of the prescription drugs and the address of the location from which the prescription drugs were shipped;

(b) The identity and quantity of the drugs received, distributed, or disposed of by the wholesale distributor; and

(c) The dates of receipt, distribution, or other disposition of the prescription drugs.

(3) The record of any controlled substance distributed, administered, dispensed, or otherwise used must show the date the controlled substance was distributed, administered, dispensed, used, or otherwise disposed of, the name and address of the person to whom or for whose use the controlled substance was distributed, administered, dispensed, used, or otherwise disposed of, and the kind and quantity of the controlled substance.

(4) Manufacturing records of controlled substances must include the kind and quantity of controlled substances produced or removed from process of manufacture and the dates of production or removal from process of manufacture.

(5) A person who maintains a record required by federal law that contains substantially the same information as set forth in subsections (1) to (4) of this section is deemed to comply with the record-keeping requirements of this section.

(6) A person required to maintain records pursuant to this section shall keep a record of any controlled substance lost, destroyed, or stolen, the kind and quantity of the controlled substance, and the date of the loss, destruction, or theft.

(7) Prescription drug outlets shall report thefts of controlled substances to the proper law enforcement agencies and to the board within thirty days after the occurrence of the thefts.

(8) A person licensed, registered, or otherwise authorized under this article or other laws of this state shall distribute, administer, dispense, use, or otherwise dispose of controlled substances listed in schedule I or II of part 2 of article 18 of title 18, C.R.S., only pursuant to an order form. Compliance with the provisions of federal law respecting order forms is deemed compliance with this section.

(9) Prescriptions, orders, and records required by this part 1 and stocks of controlled substances are open for inspection only to federal, state, county, and municipal officers whose duty it is to enforce the laws of this state or of the United States relating to controlled substances or the regulation of practitioners. No officer having knowledge by virtue of his or her office, of a prescription, order, or record shall divulge his or her knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer to which prosecution or proceeding the person to whom the prescriptions, orders, or records relate is a party.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1573, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 2012. For a detailed comparison, see the comparative tables located in the back of the index.

12-42.5-132. Immunity. Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article is immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness,

respectively, if the individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article is immune from any civil or criminal liability that may result from participation.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1574, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-132 as it existed prior to 2012.

12-42.5-133. Unused medication - licensed facilities - correctional facilities - reuse - rules. (1) As used in this section, unless the context otherwise requires:

(a) "Correctional facility" means a facility under the supervision of the United States, the department of corrections, or a similar state agency or department in a state other than Colorado in which persons are or may be lawfully held in custody as a result of conviction of a crime; a jail or an adult detention center of a county, city, or city and county; and a private contract prison operated by a state, county, city, or city and county.

(a.5) "Licensed facility" means a hospital, hospital unit, community mental health center, acute treatment unit, hospice, nursing care facility, or assisted living residence that is required to be licensed pursuant to section 25-3-101, C.R.S., or a licensed long-term care facility as defined in section 25-1-124 (2.5) (b), C.R.S.

(b) "Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, or similar or related article that is required to be labeled pursuant to 21 CFR part 801.

(c) "Medical supply" means a consumable supply item that is disposable and not intended for reuse.

(d) "Medication" means a prescription that is not a controlled substance.

(2) (a) (I) If donated by the patient, resident, or the patient's or resident's next of kin, a licensed facility may return unused medications, medical supplies, and medical devices to a pharmacist within the licensed facility or a prescription drug outlet in order for the medication to be redispensed to another patient or donated to a nonprofit entity that has the legal authority to possess the medication or to a practitioner authorized by law to prescribe the medication.

(II) (A) A licensed facility may donate unused medications to a person legally authorized to dispense the medications on behalf of a nonprofit entity that has the express purpose of providing medications, medical devices, or medical supplies for the relief of victims who are in urgent need as a result of natural or other types of disasters. A licensed pharmacist shall review the process of donating the unused medications to the nonprofit entity.

(B) Nothing in this subparagraph (II): Creates or abrogates any liability on behalf of a prescription drug manufacturer for the storage, donation, acceptance, or dispensing of a medication or product; or creates any civil cause of action against a prescription drug manufacturer in addition to that which is available under applicable law.

(III) A correctional facility may return unused medications, medical supplies, and medical devices to the pharmacist within the correctional facility or a prescription drug outlet in order for the medication to be redispensed to another patient or donated to a nonprofit entity that has the legal authority to possess the medication or to a practitioner authorized by law to prescribe the medication.

(b) Medications are only available to be dispensed to another person or donated to a nonprofit entity under this section if the medications are:

(I) Liquid and the vial is still sealed and properly stored;

(II) Individually packaged and the packaging has not been damaged; or

(III) In the original, unopened, sealed, and tamper-evident unit dose packaging.

(c) The following medications may not be donated:

(I) Medications packaged in traditional brown or amber pill bottles;

(II) Controlled substances;

- (III) Medications that require refrigeration, freezing, or special storage;
 - (IV) Medications that require special registration with the manufacturer; or
 - (V) Medications that are adulterated or misbranded, as determined by a person legally authorized to dispense the medications on behalf of the nonprofit entity.
- (3) Medication dispensed or donated pursuant to this section must bear an expiration date that is later than six months after the date the drug was donated.
- (4) The board shall adopt rules that allow a pharmacist to redispense medication pursuant to this section and section 25.5-5-502, C.R.S., and to donate medication pursuant to this section.
- (5) Nothing in this section or section 25.5-5-502, C.R.S., creates or abrogates any liability on behalf of a prescription drug manufacturer for the storage, donation, acceptance, or dispensing of an unused donated medication or creates any civil cause of action against a prescription drug manufacturer in addition to that which is available under applicable law.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1574, § 1, effective July 1; (1)(a) amended and (1)(a.5) and (2)(a)(III) added, (SB 12-161), ch. 205, p. 815, § 1, effective August 8.

Editor's note: (1) This section is similar to former §§ 12-22-133 and 12-22-134 as they existed prior to 2012.

(2) Amendments to section 12-22-133 by Senate Bill 12-161 were relocated and harmonized with amendments to this section by House Bill 12-1311.

12-42.5-134. Confidential agreement to limit practice - violation - grounds for discipline. (1) If a pharmacist or intern has a physical or mental illness or condition that renders the person unable to practice pharmacy with reasonable skill and safety to clients, the pharmacist or intern shall notify the board of the illness or condition in a manner and within a period determined by the board. The board may require the pharmacist or intern to submit to an examination or refer the pharmacist or intern to the pharmacy peer health assistance diversion program established in part 2 of this article to evaluate the extent of the illness or condition and its impact on the pharmacist's or intern's ability to practice pharmacy with reasonable skill and safety to clients.

(2) (a) Upon determining that a pharmacist or intern with a physical or mental illness or condition is able to render limited services with reasonable skill and safety to clients, the board may enter into a confidential agreement with the pharmacist or intern in which the pharmacist or intern agrees to limit his or her practice based on the restrictions imposed by the illness or condition, as determined by the board.

(b) As part of the agreement, the pharmacist or intern is subject to periodic reevaluations or monitoring as determined appropriate by the board. The board may refer the pharmacist or intern to the pharmacy peer health assistance diversion program for reevaluation or monitoring.

(c) The parties may modify or dissolve the agreement as necessary based on the results of a reevaluation or of monitoring.

(3) By entering into an agreement with the board pursuant to this section to limit his or her practice, a pharmacist or intern is not engaging in activities prohibited pursuant to section 12-42.5-123. The agreement does not constitute a restriction or discipline by the board. However, if the pharmacist or intern fails to comply with the terms of an agreement entered into pursuant to this section, the failure constitutes a prohibited activity pursuant to section 12-42.5-123 (1) (r), and the pharmacist or intern is subject to discipline in accordance with section 12-42.5-124.

(4) This section does not apply to a pharmacist or intern subject to discipline for prohibited activities as described in section 12-42.5-123 (1) (e).

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1576, § 1, effective July 1.

PART 2

PHARMACY PEER HEALTH
ASSISTANCE
DIVERSION PROGRAM

12-42.5-201. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that the creation of a pharmacy peer health assistance diversion program for those persons subject to the jurisdiction of the board will serve to safeguard the life, health, property, and public welfare of the people of this state. A pharmacy peer health assistance diversion program will help practitioners experiencing impaired practice due to psychiatric, psychological, or emotional problems or excessive alcohol or drug use or addiction. The general assembly further declares that a pharmacy peer health assistance diversion program will protect the privacy and welfare of those persons who provide services and at the same time assist the board in carrying out its duties and responsibilities to ensure that only qualified persons are allowed to engage in providing those services that are under the jurisdiction of the board.

(2) It is the intent of the general assembly that the pharmacy peer health assistance diversion program and its related procedures be utilized by the board in conjunction with, or as an alternative to, the use of disciplinary proceedings by the board, which proceedings are by their nature time-consuming and costly to the people of this state. The pharmacy peer health assistance diversion program is hereby established to alleviate the need for disciplinary proceedings, while at the same time providing safeguards that protect the public health, safety, and welfare. The general assembly further declares that it intends that the board will act to implement the provisions of this article.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1577, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-601 as it existed prior to 2012.

12-42.5-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Impaired practice" means a licensee's inability to meet the requirements of the laws of this state and the rules of the board governing his or her practice when the licensee's cognitive, interpersonal, or psychomotor skills are affected by psychiatric, psychological, or emotional problems or excessive alcohol or drug use or addiction.

(2) "Licensee" means any pharmacist or intern who is licensed by the board.

(3) "Peer health assistance organization" means an organization that provides a formal, structured program that meets the requirements specified in this part 2 and is administered by appropriate professionals for the purpose of assisting licensees experiencing impaired practice to obtain evaluation, treatment, short-term counseling, monitoring of progress, and ongoing support for the purpose of arresting and treating the licensee's psychiatric, psychological, or emotional problems or excessive alcohol or drug use or addiction.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1577, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-602 as it existed prior to 2012.

12-42.5-203. Pharmacy peer health assistance fund. (1) There is hereby created in the state treasury the pharmacy peer health assistance fund. The fund consists of moneys collected by the board and credited to the fund pursuant to subsection (2) of this section. Any interest earned on the investment of moneys in the fund must be credited at least annually to the fund.

(2) (a) As a condition of licensure and licensure renewal in this state, every applicant shall pay to the administering entity that has been selected by the board pursuant to

paragraphs (c) and (d) of this subsection (2) an amount set by the board not to exceed fifty-six dollars biennially, which amount shall be used to support designated providers that have been selected by the board to provide assistance to pharmacists and interns needing help in dealing with physical, emotional, psychiatric, psychological, drug abuse, or alcohol abuse problems that may be detrimental to their ability to practice.

(b) The board shall select one or more peer health assistance organizations as designated providers. To be eligible for designation by the board a peer health assistance diversion program shall:

(I) Provide for the education of pharmacists and interns with respect to the recognition and prevention of physical, emotional, and psychological problems and provide for intervention when necessary or under circumstances that may be established by rules promulgated by the board;

(II) Offer assistance to a pharmacist or intern in identifying physical, emotional, or psychological problems;

(III) Evaluate the extent of physical, emotional, or psychological problems and refer the pharmacist or intern for appropriate treatment;

(IV) Monitor the status of a pharmacist or intern who has been referred for treatment;

(V) Provide counseling and support for the pharmacist or intern and for the family of any pharmacist or intern referred for treatment;

(VI) Agree to receive referrals from the board;

(VII) Agree to make their services available to all licensed Colorado pharmacists and interns.

(c) The administering entity must be a qualified, nonprofit, private foundation that is qualified under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, and must be dedicated to providing support for charitable, benevolent, educational, and scientific purposes that are related to pharmaceutical education, pharmaceutical research and science, and other pharmaceutical charitable purposes.

(d) The responsibilities of the administering entity are:

(I) To collect the required annual payments, directly or through the board;

(II) To verify to the board, in a manner acceptable to the board, the names of all pharmacist and intern applicants who have paid the fee set by the board;

(III) To distribute the moneys collected, less expenses, to the designated provider, as directed by the board;

(IV) To provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(V) To post a surety performance bond in an amount specified by the board to secure performance under the requirements of this section. The administering entity may recover the actual administrative costs incurred in performing its duties under this section in an amount not to exceed ten percent of the total amount collected.

(e) The board, at its discretion, may collect the required annual payments payable to the administering entity for the benefit of the administering entity and shall transfer all such payments to the administering entity. All required annual payments collected or due to the board for each fiscal year are custodial funds that are not subject to appropriation by the general assembly, and the funds do not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1578, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-603 as it existed prior to 2012.

12-42.5-204. Eligibility - participants. (1) Any licensee may apply to the board for participation in a qualified peer health assistance diversion program.

(2) In order to be eligible for participation, a licensee shall:

(a) Acknowledge the existence or the potential existence of a psychiatric, psychological, or emotional problem or excessive alcohol or drug use or addiction;

(b) After a full explanation of the operation and requirements of the peer health assistance diversion program, agree to voluntarily participate in the program and agree in writing to participate in the program of the peer health assistance organization designated by the board.

(3) Notwithstanding the provisions of this section, the board may summarily suspend the license of any licensee who is referred to a peer health assistance diversion program by the board and who fails to attend or to complete the program. If the board summarily suspends the license, the board shall schedule a hearing on the suspension, which shall be conducted in accordance with section 24-4-105, C.R.S.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1580, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-605 as it existed prior to 2012.

12-42.5-205. Liability. Nothing in this part 2 creates any liability of the board, members of the board, or the state of Colorado for the actions of the board in making awards to pharmacy peer health assistance organizations or in designating licensees to participate in the programs of pharmacy peer health assistance organizations. No civil action may be brought or maintained against the board, its members, or the state for an injury alleged to have been the result of an act or omission of a licensee participating in or referred to a state-funded program provided by a pharmacy peer health assistance organization. However, the state remains liable under the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., if an injury alleged to have been the result of an act or omission of a licensee participating in or referred to a state-funded peer health assistance diversion program occurred while the licensee was performing duties as an employee of the state.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1580, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-607 as it existed prior to 2012.

12-42.5-206. Immunity. Any member of the board acting pursuant to this part 2 is immune from suit in any civil action if the member acted in good faith within the scope of the function of the board, made a reasonable effort to obtain the facts of the matter as to which the member acted, and acted in the reasonable belief that the action taken by the member was warranted by the facts.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1580, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-608 as it existed prior to 2012.

PART 3

WHOLESALEERS

12-42.5-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Authentication" means the process of affirmatively verifying that each transaction listed on a pedigree has occurred before any wholesale distribution of a prescription drug occurs.

(2) "Board-registered outlet" means a prescription drug outlet, an other outlet, a nonresident prescription drug outlet, a wholesaler, or a manufacturer.

(3) "Designated representative" means a person authorized by a licensed wholesaler to act as a representative for the wholesaler.

(4) “Drop shipment” means the sale by a manufacturer of the manufacturer’s prescription drug, that manufacturer’s third-party logistics provider, or that manufacturer’s exclusive distributor to a wholesaler whereby the wholesaler takes title to, but not possession of, the prescription drug and the wholesaler invoices the board-registered outlet or practitioner authorized by law to prescribe the prescription drug and the board-registered outlet or the practitioner authorized by law to prescribe the prescription drug receives delivery of the prescription drug directly from the manufacturer of such drug, that manufacturer’s third-party logistics provider, or that manufacturer’s exclusive distributor.

(5) “Facility” means a facility of a wholesaler where prescription drugs are stored, handled, repackaged, or offered for sale.

(6) “Normal distribution channel” means a chain of custody for a prescription drug that goes directly or by drop shipment from a manufacturer of the prescription drug to:

(a) (I) A wholesaler to a pharmacy to a patient or other designated persons authorized by law to dispense or administer a prescription drug to a patient;

(II) A wholesaler to a chain pharmacy warehouse to their intracompany pharmacies to a patient;

(III) A chain pharmacy warehouse to its intracompany pharmacies to a patient; or

(IV) A pharmacy to a patient; or

(b) A manufacturer’s colicensed partner, third-party logistics provider, or exclusive distributor to a wholesaler to a pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or

(c) A manufacturer’s colicensed partner, or that manufacturer’s third-party logistics provider, or exclusive distributor to a wholesaler to a chain pharmacy warehouse to that chain pharmacy warehouse’s intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or

(d) A wholesaler to a pharmacy buying cooperative warehouse to a pharmacy that is a member or member owner of the cooperative to a patient or other designated person authorized by law to dispense or administer the prescription drug to a patient.

(7) “Pedigree” means a document or electronic file containing information that records each distribution of any given prescription drug that leaves the normal distribution channel.

(8) “Third-party logistics provider” means anyone who contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer but does not take title to a prescription drug or have general responsibility to direct the prescription drug’s sale or disposition.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1580. § 1, effective July 1.

Editor’s note: This section is similar to former § 12-22-801 (1) and (2) as it existed prior to 2012.

12-42.5-302. Exemptions. (1) (a) The board may exempt a pharmacy benefits entity from the requirements of sections 12-42.5-303 and 12-42.5-304 if the entity’s purchases are solely from a manufacturer or a wholesale distributor in the normal distribution channel, and any subsequent sales or further distributions are to entities other than a wholesaler within the normal distribution channel.

(b) For the purposes of this section, “pharmacy benefits entity” means an entity that is not engaged in the activities of a chain pharmacy warehouse but that assists in the administration of pharmacy benefits under contracts with insurers or to a company under common ownership with that entity.

(2) The board may exempt a wholesaler from any requirement of this part 3 if the wholesaler exclusively distributes animal health medicines. The board may exempt a wholesaler that distributes animal health medicines from the requirements of section 12-42.5-306.

(3) The board shall exempt from the requirements of sections 12-42.5-303 and 12-42.5-304:

(a) A licensed wholesaler operated by a nonprofit organization exempt from taxation under section 501 (c) (3) of the federal “Internal Revenue Code of 1986”, as amended, that

engages only in intracompany sales or transfers of prescription drugs to licensed other outlets or pharmacies that are controlled by, or under common ownership or control with, the wholesaler and that purchase drugs directly from the manufacturer or the manufacturer's authorized distributor of record for distribution or transfer to the wholesaler's licensed other outlets, pharmacies, or other areas authorized by state law;

(b) A licensed wholesaler operated by a hospital, a state agency, or a political subdivision if the entity purchases drugs directly from a manufacturer or a manufacturer's authorized distributor of record and if any further distribution is to authorized licensed entities within its own network.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1585, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-801 (3) as it existed prior to 2012.

12-42.5-303. Wholesaler license requirements. (1) (a) A wholesaler that resides in this state must be licensed by the board. A wholesaler that does not reside in this state must be licensed in this state prior to engaging in the wholesale distribution of prescription drugs in this state. The board shall exempt a manufacturer and that manufacturer's third-party logistics providers to the extent involving that manufacturer's drugs under contract from any licensing qualifications and other requirements, including the requirements in subparagraphs (VI) and (VII) of paragraph (a) of subsection (3) of this section, subsections (4) to (6) of this section, and section 12-42.5-304, to the extent the requirements are not required by federal law or regulation, unless the particular requirements are deemed necessary and appropriate following rule-making by the board.

(b) A manufacturer's exclusive distributor and pharmacy buying cooperative warehouse must be licensed by the board as a wholesaler pursuant to this part 3. A third-party logistics provider must be licensed by the board as a wholesale distributor pursuant to this part 3.

(2) (a) The board may adopt rules to approve an accreditation body to evaluate a wholesaler's operations to determine compliance with professional standards and any other applicable laws and to perform inspections of each facility and location where the wholesaler conducts wholesale distribution operations.

(b) An applicant for a license shall pay any fee required by the accreditation body or the board and comply with any rules promulgated by the board.

(c) The board shall not issue or renew a license to a wholesaler who does not comply with this part 3.

(3) (a) An applicant for a wholesaler license shall provide to the board the following information, and any other information deemed appropriate by the board on a form provided by the board:

(I) The name, full business address, and telephone number of the applicant;

(II) The trade and business names used by the applicant;

(III) The addresses, telephone numbers, and names of the contact persons for all facilities used by the applicant for the storage, handling, and distribution of prescription drugs;

(IV) The type of ownership or operation of the applicant;

(V) The names of the owner and the operator of the applicant, including:

(A) The name of each partner if the applicant is a partnership;

(B) The name and title of each officer and director, the name of the corporation, and the state of incorporation, if the applicant is a corporation;

(C) The name of the limited liability company, if the applicant is a limited liability company, and the name of the parent company, if any, and the state of incorporation or formation of both; or

(D) The name of the sole proprietor and the business entity if the applicant is a sole proprietorship;

(VI) A list of the licenses and permits issued to the applicant by any other state that authorizes the applicant to purchase or possess prescription drugs; and

(VII) The name of the applicant's designated representative for the facility, the fingerprints of the designated representative, and a personal information statement for the designated representative that includes information as required by the board, including but not limited to the information in subsection (5) of this section.

(b) A licensee shall complete and return a form approved by the board at each renewal period. The board may suspend or revoke the license of a wholesaler if the board determines that the wholesaler no longer qualifies for a license.

(4) Prior to issuing a wholesaler license to an applicant, the board, the regulatory oversight body from another state, or board-approved accreditation body may conduct a physical inspection of the facility at the business address provided by the applicant. Nothing in this subsection (4) shall preclude the board from inspecting a wholesaler.

(5) The designated representative of an applicant for a wholesaler license shall:

(a) Be at least twenty-one years of age;

(b) Have at least three years of full-time employment history with a pharmacy or a wholesaler in a capacity related to the dispensing and distribution of and the record-keeping related to prescription drugs;

(c) Be employed by the applicant in a full-time managerial position;

(d) Be actively involved in and aware of the actual daily operation of the wholesaler;

(e) Be physically present at the facility of the applicant during regular business hours, except when the absence of the designated representative is authorized, including, but not limited to, sick leave and vacation leave;

(f) Serve in the capacity of a designated representative for only one applicant or wholesaler at a time, except where more than one licensed wholesaler is co-located in the same facility and the wholesalers are members of an affiliated group as defined by section 1504 of the federal "Internal Revenue Code of 1986";

(g) Not have any convictions under federal, state, or local law relating to wholesale or retail prescription drug distribution or a controlled substance, as defined in section 18-18-102 (5), C.R.S.;

(h) Not have any felony convictions pursuant to federal, state, or local law; and

(i) Update all of the information required in this part 3 whenever changes occur.

(6) A wholesaler shall obtain a license for each facility it uses for the distribution of prescription drugs.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1585, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-802 as it existed prior to 2012.

12-42.5-304. Criminal history record check. Prior to submission of an application, each designated representative shall have his or her fingerprints taken by a local law enforcement agency for the purpose of obtaining a fingerprint-based criminal history record check. The designated representative shall submit payment by certified check or money order for the fingerprints and for the actual costs of the record check at the time the fingerprints are submitted to the Colorado bureau of investigation. Upon receipt of fingerprints and receipt of the payment for costs, the Colorado bureau of investigation shall conduct a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1587, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-803 as it existed prior to 2012.

12-42.5-305. Restrictions on transactions. (1) A wholesaler shall accept prescription drug returns or exchanges from a pharmacy or a chain pharmacy warehouse pursuant to the terms and conditions of the agreement between the wholesale distributor and the

pharmacy or chain pharmacy warehouse. The receiving wholesale distributor shall distribute returns or exchanges of expired, damaged, recalled, or otherwise unsaleable pharmaceutical product only to the original manufacturer or to a third-party returns processor. The returns or exchanges of prescription drugs, saleable or unsaleable, including any redistribution by a receiving wholesaler, are not subject to the pedigree requirements of section 12-42.5-306, so long as the drugs are exempt from the pedigree requirement of the federal food and drug administration's currently applicable "Prescription Drug Marketing Act of 1987" guidance. The pharmacies, chain pharmacy warehouses, and pharmacy buying cooperative warehouses are responsible for ensuring that the prescription drugs returned are what they purport to be and shall ensure that those returned prescription drugs were stored under proper conditions since their receipt. Wholesalers are responsible for policing their returns process and helping to ensure that their operations are secure and do not permit the entry of adulterated or counterfeit product. A pharmacist shall not knowingly return a medication that is not what it purports to be.

(2) A manufacturer or wholesaler shall furnish prescription drugs only to a board-registered outlet or practitioner authorized by law to prescribe the drugs. Before furnishing prescription drugs to a person or entity not known to the manufacturer or wholesaler, the manufacturer or wholesaler shall affirmatively verify that the person or entity is legally authorized to receive the prescription drugs by contacting the board.

(3) A manufacturer or wholesaler may furnish prescription drugs to a hospital pharmacy receiving area if a pharmacist or authorized receiving agent signs, at the time of delivery, a receipt showing the type and quantity of the prescription drug received. The pharmacist or authorized receiving agent shall report any discrepancy between the receipt and the type and quantity of the prescription drug actually received to the delivering manufacturer or wholesaler by the next business day after the delivery to the pharmacy receiving area.

(4) A manufacturer or wholesaler shall not accept payment for, or allow the use of, a person's or entity's credit to establish an account for the purchase of prescription drugs from any person other than the owner of record, the chief executive officer, or the chief financial officer listed on the license of a person or entity legally authorized to receive prescription drugs. An account established for the purchase of prescription drugs must bear the name of the licensee. This subsection (4) does not apply to standard ordering and purchasing business practices between a chain pharmacy warehouse, a wholesaler, and a manufacturer.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1588, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-804 as it existed prior to 2012.

Cross references: For the "Prescription Drug Marketing Act of 1987", see Pub.L. 100-293.

12-42.5-306. Records - study - authentication - pedigree - rules. (1) A wholesaler shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs. The records must include the pedigree for each wholesale distribution of a prescription drug that occurs outside the normal distribution channel.

(2) A wholesaler in the possession of a pedigree for a prescription drug shall verify that each transaction on the pedigree has occurred prior to distributing the prescription drug.

(3) A pedigree shall include all necessary identifying information concerning each sale in the chain of distribution of the product from the manufacturer or the first authorized distributor of record through the acquisition and sale by a wholesaler until final sale to a pharmacy or other person dispensing or administering the prescription drug. The pedigree shall include, at a minimum:

(a) The name, address, telephone number, and, if available, the electronic mail address of each owner of the prescription drug and each wholesaler of the drug;

(b) The name and address of each location from which the prescription drug was shipped, if different from that of the owner;

(c) The transaction dates;

(d) Certification that each recipient has authenticated the pedigree;

(e) The name of the prescription drug;

(f) The dosage form and strength of the prescription drug;

(g) The size and number of containers;

(h) The lot number of the prescription drug; and

(i) The name of the manufacturer of the finished dosage form.

(4) A purchaser or wholesaler shall maintain each pedigree for three years after the date of the sale or transfer of the prescription drug and shall make the pedigree available for inspection or use within five business days upon the request of an authorized law enforcement officer or an authorized agent of the board.

(5) This section does not apply to a retail pharmacy or chain pharmacy warehouse if the retail pharmacy or chain pharmacy warehouse does not engage in the wholesale distribution of prescription drugs.

(6) The board shall adopt rules as necessary for the implementation of this part 3.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1589, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-805 as it existed prior to 2012.

12-42.5-307. Penalty. (1) A person who engages in the wholesale distribution of prescription drugs in violation of this part 3 is subject to a penalty of up to fifty thousand dollars.

(2) A person who knowingly engages in the wholesale distribution of prescription drugs in violation of this part 3 is subject to a penalty of up to five hundred thousand dollars.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1590, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-806 as it existed prior to 2012.

PART 4

ELECTRONIC MONITORING OF PRESCRIPTION DRUGS

12-42.5-401. Legislative declaration. (1) The general assembly finds, determines, and declares that:

(a) Prescription drug abuse occurs in this country to an extent that exceeds or rivals the abuse of illicit drugs;

(b) Prescription drug abuse occurs at times due to the deception of the authorized practitioners where patients seek controlled substances for treatment and the practitioner is unaware of the patient's other medical providers and treatments;

(c) Electronic monitoring of prescriptions for controlled substances provides a mechanism whereby practitioners can discover the extent of each patient's requests for drugs and whether other providers have prescribed similar substances during a similar period of time;

(d) Electronic monitoring of prescriptions for controlled substances provides a mechanism for law enforcement officials and regulatory boards to efficiently investigate practitioner behavior that is potentially harmful to the public.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1590, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-701 as it existed prior to 2012.

12-42.5-402. Definitions. As used in this part 4, unless the context otherwise requires:

(1) “Controlled substance” means any schedule II, III, IV, or V drug as listed in sections 18-18-204, 18-18-205, 18-18-206, and 18-18-207, C.R.S.

(2) “Division” means the division of professions and occupations in the department of regulatory agencies.

(3) “Drug abuse” or “abuse” means utilization of a controlled substance for nonmedical purposes or in a manner that does not meet generally accepted standards of medical practice.

(4) “Prescription drug outlet” or “pharmacy” means any resident or nonresident pharmacy outlet registered or licensed pursuant to this article where prescriptions are compounded and dispensed.

(5) “Program” means the electronic prescription drug monitoring program developed or procured by the board in accordance with section 12-42.5-403.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1590, § 1, effective July 1.

Editor’s note: This section is similar to former § 12-22-702 as it existed prior to 2012.

12-42.5-403. Prescription drug use monitoring program. (1) The board shall develop or procure a prescription controlled substance electronic program to track information regarding prescriptions for controlled substances dispensed in Colorado, including the following information:

(a) The date the prescription was dispensed;

(b) The name of the patient and the practitioner;

(c) The name and amount of the controlled substance;

(d) The method of payment;

(e) The name of the dispensing pharmacy; and

(f) Any other data elements necessary to determine whether a patient is visiting multiple practitioners or pharmacies, or both, to receive the same or similar medication.

(2) Each practitioner and each dispensing pharmacy shall disclose to a patient receiving a controlled substance that his or her identifying prescription information will be entered into the program database and may be accessed for limited purposes by specified individuals.

(3) The board shall establish a method and format for prescription drug outlets to convey the necessary information to the board or its designee. The method must not require more than a one-time entry of data per patient per prescription by a prescription drug outlet.

(4) The division may contract with any individual or public or private agency or organization in carrying out the data collection and processing duties required by this part 4.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1591, § 1, effective July 1.

Editor’s note: This section is similar to former § 12-22-704 as it existed prior to 2012.

12-42.5-404. Program operation - access - rules. (1) The board shall operate and maintain the program.

(2) The board shall adopt all rules necessary to implement the program.

(3) The program is available for query only to the following persons or groups of persons:

(a) Board staff responsible for administering the program;

(b) Any practitioner with the statutory authority to prescribe controlled substances to the extent the query relates to a current patient of the practitioner to whom the practitioner is prescribing or considering prescribing any controlled substance;

(c) Practitioners engaged in a legitimate program to monitor a patient’s drug abuse;

(d) Pharmacists, to the extent the information requested relates specifically to a current patient to whom the pharmacist is dispensing or considering dispensing a controlled substance or to whom the pharmacist is providing clinical patient care services;

(e) Law enforcement officials so long as the information released is specific to an individual patient or practitioner and is part of a bona fide investigation, and the request for information is accompanied by an official court order or subpoena;

(f) The individual who is the recipient of a controlled substance prescription so long as the information released is specific to the individual;

(g) State regulatory boards within the division and the director of the division so long as the information released is specific to an individual practitioner and is part of a bona fide investigation, and the request for information is accompanied by an official court order or subpoena; and

(h) A resident physician with an active physician training license issued by the Colorado medical board pursuant to section 12-36-122 and under the supervision of a licensed physician.

(4) The board shall not charge a practitioner or pharmacy who transmits data in compliance with the operation and maintenance of the program a fee for the transmission of the data.

(5) The board, pursuant to a written agreement that ensures compliance with this part 4, may provide data to qualified personnel of a public or private entity for the purpose of bona fide research or education so long as the data does not identify a recipient of a practitioner who prescribed, or a prescription drug outlet that dispensed, a prescription drug.

(6) The board shall provide a means of sharing information about individuals whose information is recorded in the program with out-of-state health care practitioners and law enforcement officials that meet the requirements of paragraph (b), (c), or (e) of subsection (3) of this section.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1592, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-705 as it existed prior to 2012.

12-42.5-405. Prescription drug monitoring fund - creation - gifts, grants, and donations - fee. (1) The board may seek and accept funds from any public or private entity for the purposes of implementing and maintaining the program. The board shall transmit any funds it receives to the state treasurer, who shall credit the same to the prescription drug monitoring fund, which fund is hereby created. The moneys in the fund are subject to annual appropriation by the general assembly for the sole purpose of implementing and maintaining the program. The moneys in the fund must not be transferred to or revert to the general fund at the end of any fiscal year.

(2) After implementing the program, the board shall seek gifts, grants, and donations on an annual basis for the purpose of maintaining the program. The board shall report annually to the health and human services committee of the senate and the health and environment committee of the house of representatives, or any successor committees, regarding the gifts, grants, and donations requested, of whom they were requested, and the amounts received.

(3) If, based upon the appropriations for the direct and indirect costs of the program, there are insufficient funds to maintain the program, the division may collect an annual fee of no more than seventeen dollars and fifty cents for the fiscal years 2011-12 and 2012-13, twenty dollars for the fiscal years 2013-14 and 2014-15, and twenty-five dollars for each fiscal year thereafter, from an individual who holds a license from the division that authorizes him or her to prescribe a controlled substance, as defined in section 18-18-102 (5), C.R.S. The division shall set the fee pursuant to section 24-34-105, C.R.S., and shall collect the fee in conjunction with the license renewal fees collected pursuant to section 24-34-105, C.R.S. Moneys collected pursuant to this subsection (3) are credited to the prescription drug monitoring fund created in subsection (1) of this section.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1593, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-706 as it existed prior to 2012.

12-42.5-406. Violations - penalties. A person who knowingly releases, obtains, or attempts to obtain information from the program in violation of this part 4 shall be punished by a civil fine of not less than one thousand dollars and not more than ten thousand dollars for each violation. Fines paid shall be deposited in the general fund.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1593, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-707 as it existed prior to 2012.

12-42.5-407. Prescription drug outlets - prescribers - responsibilities - liability. (1) A prescription drug outlet shall submit information in the manner required by the board.

(2) A practitioner who has, in good faith, written a prescription for a controlled substance to a patient is not liable for information submitted to the program. A practitioner or prescription drug outlet who has, in good faith, submitted the required information to the program is not liable for participation in the program.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1593, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-708 as it existed prior to 2012.

12-42.5-408. Exemption - waiver. (1) A hospital licensed or certified pursuant to section 25-1.5-103, C.R.S., a prescription drug outlet located within the hospital that is dispensing a controlled substance for a chart order or dispensing less than or equal to a twenty-four-hour supply of a controlled substance, and emergency medical services personnel certified pursuant to section 25-3.5-203, C.R.S., are exempt from the reporting provisions of this part 4. A hospital prescription drug outlet licensed pursuant to section 12-42.5-112 shall comply with the provisions of this part 4 for controlled substances dispensed for outpatient care that have more than a twenty-four-hour supply.

(2) A prescription drug outlet that does not report controlled substance data to the program due to a lack of electronic automation of the outlet's business may apply to the board for a waiver from the reporting requirements.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1594, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-709 as it existed prior to 2012.

12-42.5-409. Repeal of part. This part 4 is repealed, effective July 1, 2021. Prior to its repeal, the department of regulatory agencies shall review the functions of the board and the program under this part 4 as provided in section 24-34-104, C.R.S.

Source: L. 2012: Entire article added with relocations, (HB 12-1311), ch. 281, p. 1594, § 1, effective July 1.

Editor's note: This section is similar to former § 12-22-710 as it existed prior to 2012.

ARTICLE 43

Mental Health

Editor's note: This article was numbered as article 1 of chapter 108, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1988, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Law reviews: For article, "Nailing Jello to the Wall: Colorado Regulates Psychotherapists", see 19 Colo. Law. 71 (1990).

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- 12-43-603. Licensure - examination - licensed professional counselors.
- 12-43-604. Rights and privileges of licensure.

- 12-43-605. Continuing professional competency - board rules - repeal.

PART 7

STATE BOARD OF REGISTERED
PSYCHOTHERAPISTS

- 12-43-701. Definitions.
- 12-43-702. State board of registered psychotherapists - creation - subject to termination.
- 12-43-702.5. Database of registered psychotherapists - unauthorized practice - penalties - data collection.
- 12-43-703. Powers and duties of the grievance board. (Repealed)
- 12-43-704. Prohibited activities - related provisions. (Repealed)
- 12-43-704.5. Authority of grievance board - cease-and-desist orders. (Repealed)
- 12-43-705. Disciplinary proceedings - judicial review - mental and physical examinations. (Repealed)
- 12-43-706. Reconsideration and review of action of grievance board. (Repealed)
- 12-43-707. Unlawful acts. (Repealed)
- 12-43-708. Injunctive proceedings. (Repealed)
- 12-43-709. Expenses of the board.
- 12-43-710. Jurisdiction.
- 12-43-711. Records. (Repealed)
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PART 8

ADDICTION COUNSELORS

- 12-43-801. Definitions.
- 12-43-802. State board of addiction counselor examiners.
- 12-43-803. Practice of addiction counseling defined - scope of practice.
- 12-43-804. Requirements for licensure and certification - rules.
- 12-43-804.5. Rights and privileges of certification and licensure.
- 12-43-805. Continuing professional competency - rules - repeal.

PART 1

LEGISLATIVE DECLARATION

12-43-101. Legislative declaration. The general assembly hereby finds and determines that, in order to safeguard the public health, safety, and welfare of the people of this state and in order to protect the people of this state against the unauthorized, unqualified, and improper application of psychology, social work, marriage and family therapy, professional

counseling, psychotherapy, and addiction counseling, it is necessary that the proper regulatory authorities be established and adequately provided for. The general assembly therefore declares that there shall be established a state board of psychologist examiners, a state board of social work examiners, a state board of marriage and family therapist examiners, a state board of licensed professional counselor examiners, a state board of registered psychotherapists, and a state board of addiction counselor examiners with the authority to license, register, or certify, and take disciplinary actions or bring injunctive actions, or both, concerning licensed psychologists and psychologist candidates, licensed social workers, licensed marriage and family therapists and marriage and family therapist candidates, licensed professional counselors and licensed professional counselor candidates, registered psychotherapists, and licensed and certified addiction counselors, respectively, and mental health professionals who have been issued a provisional license pursuant to this article.

Source: **L. 88:** Entire article R&RE, p. 535, § 1, effective July 1. **L. 98:** Entire section amended, p. 1107, § 3, effective July 1. **L. 2005:** Entire section amended, p. 126, § 1, effective August 8. **L. 2008:** Entire section amended, p. 416, § 2, effective August 5. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1292, § 17, effective July 1.

ANNOTATION

Annotator's note. Since § 12-43-101 is similar to § 12-43-101 as it existed prior to the 1988 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

Occupations requiring special knowledge or skill are subject to regulation. Colorado has a legitimate and substantial interest in prescribing reasonable qualifications for occupations that require special knowledge or skill or affect

the public health, welfare, morals, or safety. *Soc. of Comm. & Inst. Psychologists v. Lamm*, 741 P.2d 707 (Colo. 1987).

Licensing scheme does not offend notions of substantive due process and equal protection. *Soc. of Comm. & Inst. Psychologists v. Lamm*, 741 P.2d 707 (Colo. 1987).

Behavioral explanation is in psychologist's realm. *People v. Lyles*, 186 Colo. 302, 526 P.2d 1332 (1974).

PART 2

GENERAL PROVISIONS

Editor's note: Sections 12-43-221 to 12-43-229 were added with relocations in 1998 containing provisions of some sections formerly located in part 7 of this article. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

12-43-201. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" includes the state board of psychologist examiners, the state board of social work examiners, the state board of licensed professional counselor examiners, the state board of marriage and family therapist examiners, the state board of registered psychotherapists, and the state board of addiction counselor examiners.

(1.3) "Certificate holder" means an addiction counselor certified pursuant to this article.

(1.5) "Certified addiction counselor" means a person who is an addiction counselor certified pursuant to this article.

(1.7) "Director" means the director of the division of professions and occupations in the department of regulatory agencies.

(1.8) "Division" means the division of professions and occupations in the department of regulatory agencies.

(2) (Deleted by amendment, L. 2000, p. 1841, § 17, effective August 2, 2000.)

(3) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1278, § 7, effective July 1, 2011.)

(3.5) "Licensed addiction counselor" means a person who is an addiction counselor licensed pursuant to this article.

(4) (Deleted by amendment, L. 98, p. 1107, § 4, effective July 1, 1998.)

(5) “Licensed professional counselor” means a person who is a professional counselor licensed pursuant to this article.

(5.5) “Licensed social worker” means a person who:

(a) Is a licensed social worker or licensed clinical social worker; and

(b) Is licensed pursuant to this article.

(6) “Licensee” means a psychologist, social worker, clinical social worker, marriage and family therapist, licensed professional counselor, or addiction counselor licensed pursuant to this article.

(7) “Marriage and family therapist” means a person who is a marriage and family therapist licensed pursuant to this article.

(7.5) “Professional relationship” means an interaction that is deliberately planned or directed, or both, by the licensee, registrant, or certificate holder toward obtaining specific objectives.

(7.7) (a) “Provisional license” means a license or certification issued pursuant to section 12-43-206.5.

(b) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1278, § 7, effective July 1, 2011.)

(7.8) (a) “Provisional licensee” means a person who holds a provisional license pursuant to section 12-43-206.5.

(b) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1278, § 7, effective July 1, 2011.)

(8) “Psychologist” means a person who is a psychologist licensed pursuant to this article.

(9) (a) “Psychotherapy” means the treatment, diagnosis, testing, assessment, or counseling in a professional relationship to assist individuals or groups to alleviate mental disorders, understand unconscious or conscious motivation, resolve emotional, relationship, or attitudinal conflicts, or modify behaviors that interfere with effective emotional, social, or intellectual functioning. Psychotherapy follows a planned procedure of intervention that takes place on a regular basis, over a period of time, or in the cases of testing, assessment, and brief psychotherapy, psychotherapy can be a single intervention.

(b) It is the intent of the general assembly that the definition of psychotherapy as used in this article be interpreted in its narrowest sense to regulate only those persons who clearly fall within the definition set forth in this subsection (9).

(9.1) (a) “Registered psychotherapist” means a person:

(I) Whose primary practice is psychotherapy or who holds himself or herself out to the public as being able to practice psychotherapy for compensation; and

(II) Who is registered with the state board of registered psychotherapists pursuant to section 12-43-702.5 to practice psychotherapy in this state.

(b) “Registered psychotherapist” also includes a person who:

(I) Is a licensed school psychologist licensed pursuant to section 22-60.5-210 (1) (b), C.R.S.;

(II) Is practicing outside of a school setting; and

(III) Is registered with the state board of registered psychotherapists pursuant to section 12-43-702.5.

(9.3) “Registrant” means a psychologist candidate, marriage and family therapist candidate, or licensed professional counselor candidate registered pursuant to section 12-43-304 (7), 12-43-504 (5), or 12-43-603 (5), respectively, or a registered psychotherapist.

(9.5) to (10) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1278, § 7, effective July 1, 2011.)

Source: L. 88: Entire article R&RE, p. 536, § 1, effective July 1. L. 89: (10) amended, p. 696, § 1, effective April 15. L. 92: (7.5) added and (9) amended, p. 2033, § 1, effective July 1. L. 98: (1), (4), (5), (6), (7), (8), and (10) amended and (5.5), (9.3), and (9.5) added, p. 1107, § 4, effective July 1. L. 2000: (2) and (10) amended and (9.7) added, p. 1841, § 17, effective August 2. L. 2005: (5.5)(a) and (9.3) amended, p. 126, § 2, effective

August 8. **L. 2006:** (7.7) and (7.8) added, p. 1204, § 5, effective May 26. **L. 2008:** (1.5), (1.7), and (3.5) added and (6) amended, p. 416, § 3, effective August 5. **L. 2011:** IP, (1), (3), (6), (7.5), (7.7), (7.8)(b), (9), (9.3), (9.5), (9.7), and (10) amended and (1.3), (1.8), and (9.1) added, (SB 11-187), ch. 285, p. 1278, § 7, effective July 1.

12-43-202. Practice outside of or beyond professional training, experience, or competence - general scope of practice for licensure, registration, or certification.

(1) Notwithstanding any other provision of this article, no licensee, registrant, or certificate holder is authorized to practice outside of or beyond his or her area of training, experience, or competence.

(2) The practice of psychotherapy is one area of practice for mental health professionals licensed, certified, or registered pursuant to this article but may not be the only or primary practice area of such professionals, other than persons registered as psychotherapists pursuant to part 7 of this article. The requirements for licensure, registration, or certification as a mental health professional pursuant to this article are contained in sections 12-43-303, 12-43-403, 12-43-503, 12-43-602.5, and 12-43-803, which define the practice of psychology, social work, marriage and family therapy, licensed professional counseling, and addiction counseling, respectively.

Source: **L. 88:** Entire article R&RE, p. 536, § 1, effective July 1. **L. 98:** Entire section amended, p. 1108, § 5, effective July 1. **L. 2008:** Entire section amended, p. 417, § 4, effective August 5. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1292, § 18, effective July 1.

12-43-203. Boards - meetings - duties - powers - removal of members - immunity.

(1) In addition to all other powers and duties conferred or imposed upon each board by this article or by any other law, each board shall have the powers specified in this section.

(2) (a) (I) Each board shall annually hold a meeting and elect from its membership a chairperson and vice-chairperson. Each board shall meet at such times as it deems necessary or advisable or as deemed necessary and advisable by the chairperson or a majority of its members. Each board may conduct meetings by electronic means. Each board shall give reasonable notice of its meetings in the manner prescribed by law. A majority of each board constitutes a quorum at any meeting or hearing.

(II) All meetings are open to the public, except when:

(A) A board, or an administrative law judge acting on behalf of a board, specifically determines that the harm to a complainant or other recipient of services to keep such proceedings or related documents open to the public outweighs the public interest in observing the proceedings; or

(B) The licensee, registrant, or certificate holder is participating in good faith in a program approved by the board designed to end an addiction or dependency and the licensee, registrant, or certificate holder has not violated the board's order regarding the person's participation in the treatment program.

(III) If the board determines that it is in the best interest of a complainant or other recipient of services to keep proceedings or related documents closed to the public, the final action of the board must be open to the public without disclosing the name of the client or other recipient. In all open meetings, the board shall take reasonable steps to keep the names of the recipients of services confidential.

(b) The proceedings of each board shall be conducted pursuant to article 4 of title 24, C.R.S.

(3) Each board is authorized to:

(a) Adopt, and from time to time revise, such rules and regulations as may be necessary to carry out its powers and duties;

(b) Adopt an examination;

(c) Examine for, deny, withhold, or approve the license of an applicant, and renew licenses pursuant to section 12-43-212;

(d) Appoint advisory committees to assist in the performance of its duties;

(e) Conduct hearings as necessary to carry out its powers and duties.

(3.5) In carrying out its duties related to the approval of applications for licensure, registration, or certification pursuant to this section, section 12-43-212, and this article, each board shall delegate the function of the preliminary review and approval of applications to the staff of the board, with approval of an application ratified by action of the board. Each board, in its sole discretion, may individually review any application requiring board consideration prior to the approval of the application pursuant to section 12-43-212 and this article.

(4) Each board shall maintain current lists of the names of all licensees, registrants, and certificate holders and records of cases and decisions rendered by the board. In addition, each board shall keep an accurate record of the results of all examinations.

(5) Repealed.

(6) Publications of each board intended for circulation in quantity outside the board shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

(7) (a) A member of a board or of a professional review committee authorized by a board, a member of staff to a board or committee, a person acting as a witness or consultant to a board or committee, a witness testifying in a proceeding authorized under this article, and a person who lodges a complaint pursuant to this article is immune from liability in a civil action brought against him or her for acts occurring while acting in his or her capacity as a board or committee member, staff, consultant, or witness, respectively, if the individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. A person participating in good faith in lodging a complaint or participating in an investigative or administrative proceeding pursuant to this article is immune from any civil or criminal liability that may result from such participation.

(b) A person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding before the board pursuant to this article is immune from any civil or criminal liability that might result by reason of the action.

(8) (Deleted by amendment, L. 98, p. 1108, § 6, effective July 1, 1998.)

(9) Any board member having an immediate personal, private, or financial interest in any matter pending before the board shall disclose the fact and shall not vote upon such matter.

(10) The governor may remove any board member for misconduct, incompetence, or neglect of duty. Actions constituting neglect of duty shall include, but not be limited to, the failure of board members to attend three consecutive meetings or at least three-quarters of the board's meetings in any one calendar year.

(11) (a) (I) Subject to the requirements of subparagraph (II) of this paragraph (a), a professional review committee may be established pursuant to this subsection (11) to investigate the quality of care being given by a person licensed, registered, or certified pursuant to this article. If a professional review committee is established, it must include in its membership at least three persons licensed, registered, or certified under this article, and such persons must be licensees, registrants, or certificate holders in the same profession as the licensee, registrant, or certificate holder who is the subject of a professional review proceeding.

(II) A professional review committee may be authorized to act only by a society or an association of persons licensed, registered, or certified pursuant to this article whose membership includes not less than one-third of the persons licensed, registered, or certified pursuant to this article residing in this state if the licensee, registrant, or certificate holder whose services are the subject of review is a member of the society or association.

(b) (Deleted by amendment, L. 2004, p. 1849, § 101, effective August 4, 2004.)

(12) The boards shall develop rules or policies to provide guidance to persons licensed, registered, or certified pursuant to this article to assist in determining whether a relationship with a client or potential client is likely to impair his or her professional judgment or increase the risk of client exploitation in violation of section 12-43-222 (1) (i).

Source: **L. 88:** Entire article R&RE, p. 537, § 1, effective July 1. **L. 92:** (2)(a) amended and (3.5) added, p. 2034, § 2, effective July 1. **L. 96:** (5) repealed, p. 1226, § 34, effective August 7. **L. 98:** (2)(a), (3.5), (4), (8), and (11) amended, p. 1108, § 6, effective July 1. **L. 2004:** (2)(a) amended, p. 909, § 1, effective July 1; (7)(a) and (11)(b) amended, p. 1849, § 101, effective August 4. **L. 2008:** (4), (7), and (11)(a) amended, p. 417, § 5, effective August 5. **L. 2011:** (2)(a), (3.5), (4), (7), and (11)(a) amended and (12) added, (SB 11-187), ch. 285, p. 1293, § 19, effective July 1.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (5), see section 1 of chapter 237, Session Laws of Colorado 1996.

12-43-203.5. Limitation on authority. The authority granted each board under the provisions of this article does not authorize a board to arbitrate or adjudicate fee disputes between licensees, registrants, or certificate holders, or between a licensee, registrant, or certificate holder and any other party.

Source: **L. 89:** Entire section added, p. 675, § 22, effective July 1. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1295, § 20, effective July 1.

Cross references: For the legislative declaration contained in the 1989 act enacting this section, see section 1 of chapter 111, Session Laws of Colorado 1989.

12-43-204. Fees - renewal. (1) All fees collected pursuant to this article shall be determined, collected, and appropriated in the same manner as set forth in section 24-34-105, C.R.S.

(2) Each board may charge fees established pursuant to section 24-34-105, C.R.S., to all applicants for licensure, registration, or certification under this article.

(3) Every person licensed, registered, or certified to practice psychology, social work, marriage and family therapy, professional counseling, psychotherapy, or addiction counseling within the state shall renew his or her license, registration, or certification pursuant to a schedule established by the director, and licenses, registrations, and certifications shall be renewed pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license, registration, or certification pursuant to the schedule established by the director, the license, registration, or certification expires. Any person whose license, registration, or certification expires is subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(3.5) The director shall coordinate fee-setting pursuant to this section so that all licensees, registrants, and certificate holders pay fees as required by this section and section 12-43-702.5 (1).

(4) (Deleted by amendment, L. 2004, p. 1850, § 102, effective August 4, 2004.)

Source: **L. 88:** Entire article R&RE, p. 538, § 1, effective July 1. **L. 92:** (3.5) added, p. 2034, § 3, effective July 1. **L. 98:** (3), (3.5), and (4) amended, p. 1110, § 7, effective July 1. **L. 2004:** (3.5) amended, p. 910, § 2, effective July 1; (3) and (4) amended, p. 1850, § 102, effective August 4. **L. 2008:** (3) and (3.5) amended, p. 418, § 6, effective August 5. **L. 2011:** (1) to (3) and (3.5) amended, (SB 11-187), ch. 285, p. 1295, § 21, effective July 1.

12-43-205. Records. (1) Each board shall keep a record of proceedings and a register of all applications for licenses, registrations, or certifications, which must include:

- (a) The name and age of each applicant;
- (b) The date of the application;
- (c) The mailing address of the applicant;
- (d) A summary of the educational and other qualifications of each applicant;

- (e) Whether or not an examination was required and, if required, proof that the applicant passed the examination;
- (f) Whether licensure, registration, or certification was granted;
- (g) The date of the action of the board;
- (h) Other information the board deems necessary or advisable in aid of the requirements of this section.

Source: **L. 88:** Entire article R&RE, p. 539, § 1, effective July 1. **L. 2008:** IP(1), (1)(g), and (1)(h) amended, p. 418, § 7, effective August 5. **L. 2011:** IP(1), (1)(a), (1)(c), and (1)(e) to (1)(h) amended, (SB 11-187), ch. 285, p. 1296, § 22, effective July 1.

12-43-206. Licensure by endorsement - rules. A board may issue a license by endorsement to engage in the practice of psychology, social work, marriage and family therapy, professional counseling, or addiction counseling to an applicant who has a license, registration, or certification in good standing as a psychologist, social worker, marriage and family therapist, licensed professional counselor, or addiction counselor under the laws of another jurisdiction if the applicant presents proof satisfactory to the board that, at the time of application for a Colorado license by endorsement, the applicant possesses credentials and qualifications that are substantially equivalent to the requirements of section 12-43-304, 12-43-404, 12-43-504, 12-43-603, or 12-43-804, whichever is applicable. Each board shall promulgate rules setting forth the manner in which the board will review credentials and qualifications of an applicant.

Source: **L. 88:** Entire article R&RE, p. 539, § 1, effective July 1. **L. 98:** Entire section amended, p. 1111, § 8, effective July 1. **L. 2008:** Entire section amended, p. 418, § 8, effective August 5. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1296, § 23, effective July 1.

12-43-206.5. Provisional license - fees. (1) (a) The board may issue a provisional license to an applicant who has completed a post-graduate degree that meets the educational requirements for licensure in section 12-43-304, 12-43-403, 12-43-504, 12-43-603, or 12-43-804, as applicable, and who is working in a residential child care facility as defined in section 26-6-102 (8), C.R.S., under the supervision of a licensee.

(b) A provisional license issued pursuant to paragraph (a) of this subsection (1) terminates at the earliest of:

(I) Thirty days after termination of the provisional licensee's employment with a qualifying residential child care facility, unless the provisional licensee obtains and submits to the board proof of employment with another residential child care facility; or

(II) Thirty days after termination of the provisional licensee's supervision by a licensee unless the provisional licensee obtains and submits to the board proof of supervision by another licensee.

(c) A provisional licensee shall notify the board of any change in supervision within thirty days after the change.

(2) Each board may charge an application fee to an applicant for a provisional license. All fees collected pursuant to this subsection (2) shall be transmitted to the state treasurer, who shall credit the same to the division of professions and occupations cash fund pursuant to section 24-34-105, C.R.S. An application for a provisional license must identify the name, contact information, and license number of the licensee providing supervision of the provisional licensure applicant.

(3) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1278, § 6, effective July 1, 2011.)

Source: **L. 2006:** Entire section added, p. 1205, § 6, effective May 26. **L. 2008:** (1) and (2) amended, p. 419, § 9, effective August 5. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1278, § 6, effective July 1.

12-43-207. License - issuance. Each board shall issue a license, registration, or certification, as appropriate, when an applicant successfully qualifies for licensure, registration, or certification as provided in this article.

Source: L. 88: Entire article R&RE, p. 539, § 1, effective July 1. L. 2011: Entire section amended, (SB 11-187), ch. 285, p. 1296, § 24, effective July 1.

12-43-208. Drugs - medicine. Nothing in this article permits psychologists, social workers, marriage and family therapists, licensed professional counselors, psychotherapists, and addiction counselors licensed, registered, or certified under this article to administer or prescribe drugs or in any manner engage in the practice of medicine as defined by the laws of this state.

Source: L. 88: Entire article R&RE, p. 539, § 1, effective July 1. L. 98: Entire section amended, p. 1111, § 9, effective July 1. L. 2008: Entire section amended, p. 419, § 10, effective August 5. L. 2011: Entire section amended, (SB 11-187), ch. 285, p. 1296, § 25, effective July 1.

12-43-209. Collaborate with physician. In order to provide for the diagnosis and treatment of medical problems, a licensee, registrant, or certificate holder shall collaborate with a physician licensed under the laws of this state, except when practicing pursuant to section 12-43-201 (9). A licensee, registrant, or certificate holder shall not diagnose, prescribe for, treat, or advise a client with reference to medical problems.

Source: L. 88: Entire article R&RE, p. 540, § 1, effective July 1. L. 98: Entire section amended, p. 1111, § 10, effective July 1. L. 2008: Entire section amended, p. 420, § 11, effective August 5. L. 2011: Entire section amended, (SB 11-187), ch. 285, p. 1297, § 26, effective July 1.

12-43-210. Division of professions and occupations to supervise. Each board shall be under the supervision and control of the division of professions and occupations of the department of regulatory agencies as created by section 24-34-102, C.R.S.

Source: L. 88: Entire article R&RE, p. 540, § 1, effective July 1.

12-43-211. Professional service corporations for the practice of psychology, social work, marriage and family therapy, professional counseling, and addiction counseling - definitions. (1) Licensees, registrants, or certificate holders may form professional service corporations for the practice of psychology, social work, marriage and family therapy, professional counseling, psychotherapy, or addiction counseling under the “Colorado Business Corporation Act”, articles 101 to 117 of title 7, C.R.S., if the corporations are organized and operated in accordance with this section. The articles of incorporation of a professional service corporation formed pursuant to this section must contain provisions complying with the following requirements:

(a) The name of the corporation shall contain the words “professional company” or “professional corporation” or abbreviations thereof.

(b) The corporation must be organized by licensees, registrants, or certificate holders for the purpose of conducting the practice of psychology, social work, marriage and family therapy, professional counseling, psychotherapy, or addiction counseling by the respective licensees, registrants, or certificate holders of those practices. The corporation may be organized with any other person, and any person may own shares in such corporation, if the following conditions are met:

(I) The practice of psychology, as defined in section 12-43-303, by the professional service corporation is performed by or under the supervision of a licensed psychologist, and any psychologist member of the professional service corporation remains individually responsible for his or her professional acts and conduct as provided elsewhere in this article;

(II) (Deleted by amendment, L. 98, p. 1111, 11, effective July 1, 1998.)

(III) The practice of social work, as defined in section 12-43-403, by the professional service corporation is performed by a licensed social worker acting independently or under the supervision of a person licensed pursuant to this article or a licensed social worker. Any licensed social worker member of the professional service corporation remains individually responsible for his or her professional acts and conduct as provided elsewhere in this article.

(IV) The practice of marriage and family therapy, as defined in section 12-43-503, by the professional service corporation is performed by a licensed marriage and family therapist acting independently or under the supervision of a person licensed pursuant to this article or a licensed marriage and family therapist. Any licensed marriage and family therapist member of the professional service corporation remains individually responsible for his or her professional acts and conduct as provided elsewhere in this article.

(V) The practice of professional counseling, as defined in section 12-43-601, by the professional service corporation is performed by a licensed professional counselor acting independently or under the supervision of a person licensed pursuant to this article or a licensed professional counselor. Any licensed professional counselor member of the professional service corporation remains individually responsible for his or her professional acts and conduct as provided elsewhere in this article.

(VI) The practice of addiction counseling, as defined in section 12-43-802, by the professional service corporation is performed by a licensed addiction counselor acting independently or under the supervision of a person licensed pursuant to this article or a licensed addiction counselor. Any licensed addiction counselor member of the professional service corporation remains individually responsible for his or her professional acts and conduct as provided in this article; or

(VII) The practice of psychotherapy, as defined in section 12-43-201, by the professional service corporation is performed by a registered psychotherapist acting independently or under the supervision of a person licensed pursuant to this article or a registered psychotherapist. Any registered psychotherapist member of the professional service corporation remains individually responsible for his or her professional acts and conduct as provided in this article.

(c) The corporation may exercise the powers and privileges conferred upon corporations by the laws of Colorado only in furtherance of and subject to its corporate purpose.

(d) and (e) Repealed.

(f) Lay directors and officers shall not exercise any authority whatsoever over professional matters.

(g) The articles of incorporation must provide, and all shareholders of the corporation must agree, that either all shareholders of the corporation are jointly and severally liable for all acts, errors, and omissions of the employees of the corporation or that all shareholders of the corporation are jointly and severally liable for all acts, errors, and omissions of the employees of the corporation except during periods when the corporation maintains professional liability insurance that meets the following minimum standards:

(I) The insurance insures the corporation against liability imposed upon the corporation by law for damages resulting from any claim made against the corporation arising out of the performance of professional services for others by those officers and employees of the corporation who are licensed, registered, or certified to practice under this article or by those employees who provide professional services under supervision.

(II) The insurance insures the corporation against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all nonprofessional employees.

(III) The insurance is in an amount for each claim of at least one hundred thousand dollars multiplied by the number of persons licensed, registered, or certified to practice under this article who are employed by the corporation. The policy may provide for an aggregate maximum limit of liability per year for all claims of three hundred thousand dollars also multiplied by the number of licensees, registrants, or certificate holders employed by the corporation, but no corporation is required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate maximum limit of liability for all claims during the year of nine hundred thousand dollars.

(IV) The insurance policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured corporation or any stockholder or employee of the corporation; or the conduct of any business enterprise, as distinguished from the practice of licensees, registrants, or certificate holders, in which the insured corporation under this section is not permitted to engage but that nevertheless may be owned by the insured corporation or in which the insured corporation may be a partner or that may be controlled, operated, or managed by the insured corporation in its own or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, when not resulting from breach of professional duty of, bodily injury to, or sickness, disease, or death of any person or to injury to or destruction of any tangible property, including the loss of use of tangible property.

(V) The insurance policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(2) The corporation shall not act or fail to act in a manner that would violate section 12-43-222 (1). Any violation of this section by the corporation is grounds for a board to discipline any licensee, registrant, or certificate holder who is a member of or is employed by the corporation pursuant to section 12-43-224.

(3) Nothing in this section diminishes or changes the obligation of each licensee, registrant, or certificate holder employed by the corporation to conduct his or her practice in a manner that does not violate section 12-43-222 (1). Any licensee, registrant, or certificate holder who, by act or omission, causes the corporation to act or fail to act in a way that violates section 12-43-222 (1) or this section is personally responsible for the act or omission and is subject to discipline by the board.

(4) A professional service corporation may adopt a pension, profit sharing (whether cash or deferred), health and accident, insurance, or welfare plan for all of its employees, including lay employees, if such plan does not require or result in the sharing of specific or identifiable fees with lay employees and if any payments made to lay employees, or into any such plan in behalf of lay employees, are based upon their compensation or length of service, or both, rather than the amount of fees or income received.

(5) Nothing in this section shall be deemed to modify the privileges regarding confidential communications specified in sections 12-43-218 and 13-90-107 (1) (g), C.R.S.

(6) Nothing in this article limits persons licensed, registered, or certified under this article from forming a corporation with persons licensed, registered, or certified under this article.

(7) As used in this section, unless the context otherwise requires:

(a) "Articles of incorporation" includes operating agreements of limited liability companies and partnership agreements of registered limited liability partnerships.

(b) "Corporation" includes a limited liability company organized under the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S., and a limited liability partnership registered under section 7-60-144 or 7-64-1002, C.R.S.

(c) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(d) "Employees" includes employees, members, and managers of a limited liability company and employees and partners of a registered limited liability partnership.

(e) "Share" includes a member's rights in a limited liability company and a partner's rights in a registered limited liability partnership.

(f) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

Source: L. 88: Entire article R&RE, p. 540, § 1, effective July 1. L. 89: (1)(b) R&RE, (1)(d) and (1)(e) repealed, and (1)(f) amended, pp. 697, 700, 698. §§ 1, 7, 2, effective June 7. L. 93: IP(1) amended, p. 863, § 36, effective July 1, 1994. L. 95: (7) added, p. 815, § 36, effective May 24. L. 97: (7)(b) amended, p. 919, § 16, effective January 1, 1998. L. 98: IP(1), IP(1)(b), (1)(b)(II), (1)(b)(III), (2), and (3) amended, p. 1111, § 11, effective July 1. L. 2008: IP(1) and IP(1)(b) amended and (1)(b)(VI) added, p. 420, § 12, effective

August 5; (1)(g)(I), (1)(g)(III), (1)(g)(IV), and (6) amended, p. 1881, § 16, effective August 5. **L. 2011:** IP(1), (1)(b), (1)(g), (2), (3), and (6) amended, (SB 11-187), ch. 285, p. 1297, § 27, effective July 1.

ANNOTATION

Law reviews. For article, "Operating a Personal Service Corporation", see 17 Colo. Law. 2011 (1988).

12-43-212. Denial of license, registration, or certification - reinstatement.

(1) Each board is empowered to determine whether an applicant for licensure, registration, or certification, or for registry as a candidate for licensure, registration, or certification, possesses the qualifications required by this article.

(2) If a board determines that an applicant does not possess the applicable qualifications required by this article or, for a licensed clinical social worker, licensed social worker, licensed marriage and family therapist, licensed professional counselor, licensed addiction counselor, or level II or III certified addiction counselor, is unable to demonstrate his or her continued professional competence as required by section 12-43-411, 12-43-506, 12-43-605, or 12-43-805, respectively, the board may deny the applicant a license, registration, or certification or deny the reinstatement of a license, registration, or certification. If the application is denied, the board shall provide the applicant with a statement in writing setting forth the basis of the board's determination that the applicant does not possess the qualifications or professional competence required by this article. The applicant may request a hearing on the determination as provided in section 24-4-104 (9), C.R.S.

(3) If a board has any reason to believe that or receives any information that an applicant has committed any of the acts set forth in section 12-43-222 (1) as grounds for discipline, the board may deny a license, registration, or certification to the applicant if the board determines that there is a basis for the denial. The order of the board to grant or deny a license, registration, or certification constitutes final agency action.

(4) A board, on its own motion or upon application, at any time after the refusal to grant a license, registration, or certification, may reconsider its prior action and grant a license, registration, or certification. The board has sole discretion to determine whether to take further action on the application after it refuses to grant a license, registration, or certification.

Source: **L. 88:** Entire article R&RE, p. 542, § 1, effective July 1. **L. 98:** (3) amended, p. 1112, § 12, effective July 1. **L. 2009:** (2) amended, (HB 09-1086), ch. 304, p. 1641, § 1, effective August 5. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1300, § 28, effective July 1.

12-43-213. Legislative intent - schools and colleges - examinations. It is the intent of the general assembly that the definition relating to full-time courses of study and institutions of higher education for graduation of persons who are qualified to take examinations for licensure under this article be liberally construed by each board under the board's rule-making powers to ensure the right to take the examinations. It is not the intent that technical barriers be used to deny the ability to take an examination.

Source: **L. 88:** Entire article R&RE, p. 542, § 1, effective July 1. **L. 2008:** Entire section amended, p. 420, § 13, effective August 5. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1300, § 29, effective July 1.

12-43-214. Mandatory disclosure of information to clients. (1) Except as otherwise provided in subsection (4) of this section, every licensee, registrant, or certificate holder shall provide the following information verbally and in writing to each client during the initial client contact:

(a) The name, business address, and business phone number of the licensee, registrant, or certificate holder;

(b) (I) An explanation of the levels of regulation applicable to mental health professionals under this article and the differences between licensure, registration, and certification, including the educational, experience, and training requirements applicable to the particular level of regulation; and

(II) A listing of any degrees, credentials, certifications, registrations, and licenses held or obtained by the licensee, registrant, or certificate holder, including the education, experience, and training the licensee, registrant, or certificate holder was required to satisfy in order to obtain the degree, credentials, certifications, registrations, or licenses;

(c) A statement indicating that the practice of licensed or registered persons in the field of psychotherapy is regulated by the division, and an address and telephone number for the board that regulates the licensee, registrant, or certificate holder;

(d) A statement indicating that:

(I) A client is entitled to receive information about the methods of therapy, the techniques used, the duration of therapy, if known, and the fee structure;

(II) The client may seek a second opinion from another therapist or may terminate therapy at any time;

(III) In a professional relationship, sexual intimacy is never appropriate and should be reported to the board that licenses, registers, or certifies the licensee, registrant, or certificate holder;

(IV) The information provided by the client during therapy sessions is legally confidential in the case of licensed marriage and family therapists, social workers, professional counselors, and psychologists; licensed or certified addiction counselors; and registered psychotherapists, except as provided in section 12-43-218 and except for certain legal exceptions that will be identified by the licensee, registrant, or certificate holder should any such situation arise during therapy; and

(e) If the mental health professional is a registered psychotherapist, a statement indicating that a registered psychotherapist is a psychotherapist listed in the state's database and is authorized by law to practice psychotherapy in Colorado but is not licensed by the state and is not required to satisfy any standardized educational or testing requirements to obtain a registration from the state.

(2) If the client is a child who is consenting to mental health services pursuant to section 27-65-103, C.R.S., disclosure shall be made to the child. If the client is a child whose parent or legal guardian is consenting to mental health services, disclosure shall be made to the parent or legal guardian.

(3) In residential, institutional, or other settings where psychotherapy may be provided by multiple providers, disclosure shall be made by the primary therapist. The institution shall also provide a statement to the patient containing the information in paragraphs (c) and (d) of subsection (1) of this section and a statement that the patient is entitled to the information listed in paragraphs (a) and (b) of subsection (1) of this section concerning any psychotherapist in the employ of the institution who is providing psychotherapy services to the patient.

(4) The disclosure of information required by subsection (1) of this section is not required when psychotherapy is being administered in any of the following circumstances:

(a) In an emergency;

(b) Pursuant to a court order or involuntary procedures pursuant to sections 27-65-105 to 27-65-109, C.R.S.;

(c) The sole purpose of the professional relationship is for forensic evaluation;

(d) The client is in the physical custody of either the department of corrections or the department of human services and such department has developed an alternative program to provide similar information to such client and such program has been established through rule or regulation;

(e) The client is incapable of understanding such disclosure and has no guardian to whom disclosure can be made;

(f) By a social worker practicing in a hospital that is licensed or certified under section 25-1.5-103 (1) (a) (I) or (1) (a) (II), C.R.S.;

(g) By a person licensed or certified pursuant to this article, or by a registered psychotherapist practicing in a hospital that is licensed or certified under section 25-1.5-103 (1) (a) (I) or (1) (a) (II), C.R.S.

(5) If the client has no written language or is unable to read, an oral explanation shall accompany the written copy.

(6) Unless the client, parent, or guardian is unable to write, or refuses or objects, the client, parent, or guardian shall sign the disclosure form required by this section not later than the second visit with the psychotherapist.

Source: **L. 88:** Entire article R&RE, p. 543, § 1, effective July 1. **L. 89:** IP(1) amended and (4) and (5) added, p. 698, § 3, effective June 7. **L. 92:** (6) added, p. 2035, § 4, effective July 1. **L. 94:** (4)(d) amended, p. 2638, § 82, effective July 1. **L. 95:** (4)(f) added, p. 107, § 1, effective July 1. **L. 98:** IP(1), (1)(a), (1)(d)(III), and (1)(d)(IV) amended, p. 1113, § 13, effective July 1. **L. 2003:** (4)(f) amended, p. 703, § 20, effective July 1. **L. 2004:** (4)(g) added, p. 910, § 3, effective July 1. **L. 2008:** IP(1), (1)(a), (1)(b), (1)(d)(III), and (1)(d)(IV) amended, p. 420, § 14, effective August 5; (1)(c) amended, p. 1883, § 17, effective August 5. **L. 2010:** (2) and (4)(b) amended, (SB 10-175), ch. 188, p. 779, § 11, effective April 29. **L. 2011:** IP(1), (1)(a) to (1)(c), (1)(d)(III), (1)(d)(IV), (4)(d), and (4)(g) amended and (1)(e) added, (SB 11-187), ch. 285, p. 1301, § 30, effective July 1.

12-43-215. Scope of article - exemptions. (1) Any person engaged in the practice of religious ministry shall not be required to comply with the provisions of this article; except that such person shall not hold himself or herself out to the public by any title incorporating the terms “psychologist”, “social worker”, “licensed social worker”, “LSW”, “licensed clinical social worker”, “clinical social worker”, “LCSW”, “licensed marriage and family therapist”, “LMFT”, “licensed professional counselor”, “LPC”, “addiction counselor”, “licensed addition counselor”, “LAC”, “certified addition counselor”, or “CAC” unless that person has been licensed or certified pursuant to this article.

(2) The provisions of this article shall not apply to the practice of employment or rehabilitation counseling as performed in the private and public sectors; except that the provisions of this article shall apply to employment or rehabilitation counselors practicing psychotherapy in the field of mental health.

(3) The provisions of this article shall not apply to employees of the department of human services, employees of county departments of social services, or personnel under the direct supervision and control of the department of human services or any county department of social services for work undertaken as part of their employment.

(4) The provisions of this article shall not apply to persons who are licensed pursuant to section 22-60.5-210, C.R.S., and who are not licensed under this article for work undertaken as part of their employment by, or contractual agreement with, the public schools.

(5) Nothing in this section limits the applicability of section 18-3-405.5, C.R.S., which applies to any person while he or she is practicing psychotherapy as defined in this article.

(6) The provisions of this article shall not apply to mediators resolving judicial disputes pursuant to part 3 of article 22 of title 13, C.R.S.

(7) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1302, § 31, effective July 1, 2011.)

(8) The provisions of section 12-43-702.5 shall not apply to employees of community mental health centers or clinics as those centers or clinics are defined by section 27-66-101, C.R.S., but such persons practicing outside the scope of employment as employees of a facility defined by section 27-66-101, C.R.S., shall be subject to the provisions of section 12-43-702.5.

(9) The provisions of this article shall not apply to a person who resides in another state and who is currently licensed or certified as a psychologist, marriage and family therapist, clinical social worker, professional counselor, or addiction counselor in that state to the extent that the licensed or certified person performs activities or services in this state, if the activities and services are:

- (a) Performed within the scope of the person's license or certification;
 - (b) Do not exceed twenty days per year in this state;
 - (c) Are not otherwise in violation of this article; and
 - (d) Disclosed to the public that the person is not licensed or certified in this state.
- (10) The provisions of this article do not apply to a professional coach, including a life coach, executive coach, personal coach, or business coach, who has had coach-specific training and who serves clients exclusively as a coach, as long as the professional coach does not engage in the practice of psychology, social work, marriage and family therapy, licensed professional counseling, psychotherapy, or addiction counseling, as those practices are defined in this article.

Source: L. 88: Entire article R&RE, p. 543, § 1, effective July 1. L. 89: (3) to (5) added, p. 699, § 4, effective June 7. L. 92: (6), (7), and (8) added, p. 2035, § 5, effective July 1. L. 94: (3) amended, p. 2639, § 83, effective July 1. L. 95: (8) amended, p. 1093, § 8, effective May 31. L. 98: (1) and (8) amended, p. 1113, § 14, effective July 1. L. 2000: (4) amended, p. 1842, § 18, effective August 2. L. 2003: (9) added, p. 1321, § 1, effective April 22. L. 2004: (1) and (7) amended and (10) added, p. 910, § 4, effective July 1. L. 2008: (1) amended, p. 421, § 15, effective August 5. L. 2010: (8) amended, (SB 10-175), ch. 188, p. 779, § 12, effective April 29. L. 2011: (5), (7), and (10) amended, (SB 11-187), ch. 285, p. 1302, § 31, effective July 1.

ANNOTATION

Nothing in this article establishes a continuing, legitimate expectation or entitlement to practice psychology under repealed exemptions previously found in this section. Therefore, plaintiffs previously exempt have no cognizable property interest in practicing psychology under

the repealed exemptions. *Soc. of Comm. & Inst. Psychologists v. Lamm*, 741 P.2d 707 (Colo. 1987) (decided under § 12-43-114 as it existed prior to the 1988 repeal and reenactment of this article).

12-43-216. Title use restrictions. A psychologist, social worker, marriage and family therapist, professional counselor, or addiction counselor may only use the title for which he or she is licensed, certified, or registered under this article. Except as provided in section 12-43-306 (3), no other person shall hold himself or herself out to the public by any title or description of services incorporating the terms “licensed clinical social worker”, “clinical social worker”, “LCSW”, “licensed social worker”, “LSW”, “marriage and family therapist”, “LMFT”, “professional counselor”, “LPC”, “psychologist”, “psychologist candidate”, “psychology”, “psychological”, “addiction counselor”, “licensed addiction counselor”, “LAC”, “certified addiction counselor”, or “CAC”, and no other person shall state or imply that he or she is licensed to practice social work, marriage and family therapy, professional counseling, psychology, or addiction counseling. Nothing in this section shall prohibit a person from stating or using the educational degrees that such person has obtained.

Source: L. 88: Entire article R&RE, p. 544, § 1, effective July 1. L. 98: Entire section amended, p. 1114, § 15, effective July 1. L. 2005: Entire section amended, p. 127, § 3, effective August 8. L. 2008: Entire section amended, p. 421, § 16, effective August 5.

12-43-217. Judicial review of final board actions and orders. Final actions and orders of a board appropriate for judicial review may be judicially reviewed in the court of appeals, and judicial proceedings for the enforcement of a board order may be instituted in accordance with section 24-4-106 (11), C.R.S.

Source: L. 88: Entire article R&RE, p. 544, § 1, effective July 1.

12-43-218. Disclosure of confidential communications. (1) A licensee, registrant, or certificate holder shall not disclose, without the consent of the client, any confidential

communications made by the client, or advice given to the client, in the course of professional employment. A licensee's, registrant's, or certificate holder's employee or associate, whether clerical or professional, shall not disclose any knowledge of said communications acquired in such capacity. Any person who has participated in any therapy conducted under the supervision of a licensee, registrant, or certificate holder, including group therapy sessions, shall not disclose any knowledge gained during the course of such therapy without the consent of the person to whom the knowledge relates.

(2) Subsection (1) of this section does not apply when:

(a) A client or the heirs, executors, or administrators of a client file suit or a complaint against a licensee, registrant, or certificate holder on any cause of action arising out of or connected with the care or treatment of the client by the licensee, registrant, or certificate holder;

(b) A licensee, registrant, or certificate holder was in consultation with a physician, registered professional nurse, licensee, registrant, or certificate holder against whom a suit or complaint was filed based on the case out of which said suit or complaint arises;

(c) A review of services of a licensee, registrant, or certificate holder is conducted by any of the following:

(I) A board or a person or group authorized by the board to make an investigation on its behalf;

(II) The governing board of a hospital licensed pursuant to part 1 of article 3 of title 25, C.R.S., where the licensee, registrant, or certificate holder practices or the medical staff of such hospital if the medical staff operates pursuant to written bylaws approved by the governing board of the hospital; or

(III) A professional review committee established pursuant to section 12-43-203 (11) if said person has signed a release authorizing such review.

(3) The records and information produced and used in the review provided for in paragraph (c) of subsection (2) of this section do not become public records solely by virtue of the use of the records and information. The identity of a client whose records are reviewed shall not be disclosed to any person not directly involved in the review process, and procedures shall be adopted by a board, hospital, association, or society to ensure that the identity of the client is concealed during the review process itself and to comply with section 12-43-224 (4).

(4) Subsection (1) of this section shall not apply to any delinquency or criminal proceeding, except as provided in section 13-90-107, C.R.S., regarding any delinquency or criminal proceeding involving a licensed psychologist.

(5) Nothing in this section shall be deemed to prohibit any other disclosures required by law.

(6) This section does not apply to covered entities, their business associates, or health oversight agencies, as each is defined in the federal "Health Insurance Portability and Accountability Act of 1996", as amended by the federal "Health Information Technology for Economic and Clinical Health Act", and the respective implementing regulations.

Source: L. 88: Entire article R&RE, p. 544, § 1, effective July 1. L. 89: (4) amended, p. 699, § 5, effective July 7. L. 98: (1), (2)(a), (2)(b), IP(2)(c), (2)(c)(I), (2)(c)(II), and (3) amended, p. 1114, § 16, effective July 7. L. 2000: (1), (2)(a), (2)(b), IP(2)(c), and (2)(c)(II) amended, p. 1842, § 19, effective August 2. L. 2008: (1), (2), and (3) amended, p. 422, § 17, effective August 5. L. 2011: (1), IP(2), (2)(a), (2)(b), IP(2)(c), (2)(c)(I), (2)(c)(II), and (3) amended and (6) added, (SB 11-187), ch. 285, p. 1302, § 32, effective July 1.

ANNOTATION

Law reviews. For article, "New Definitions of Therapist Confidentiality", see 18 Colo. Law. 251 (1989). For article, "Admissibility of Mental and Physical Health Records and Testimony", see 29 Colo. Law. 61 (December 2000).

The prohibition against revealing confidential information absent consent established by subsection (1) is inapplicable when a grievance is filed against a psychologist and the board, in the interest of public health and

safety, investigates the conduct of the psychologist. *Colo. Bd. of Psychologist Exam'rs v. I.W.*, 140 P.3d 186 (Colo. App. 2006).

This section does not create a private cause of action for damages for violation of a patient's right to confidentiality. *Dauwe v. Musante*, 122 P.3d 15 (Colo. App. 2004).

Communication between social worker and client may be compelled in the case of a sexual assault of a child under age 16. Court should make a determination after an in-camera review of the records. *People v. Ross*, 745 P.2d 277 (Colo. App. 1987) (decided under § 12-63.5-115 prior to its repeal in 1988).

Making it a criminal act for a social worker to reveal a privileged communication from a client was irreconcilable with § 19-3-304. *Human Servs. Inc. v. Woodward*, 765 P.2d 1052 (Colo. App. 1988) (decided under § 12-63.5-115 prior to its repeal in 1988).

When a psychotherapist reveals opinions to third parties without the client's consent, the psychotherapist is negligent. A divorced mother of two children was seeking therapy concerning allegations that the ex-husband and father of the children had abused the children. The mother was dissatisfied with treatment and ended the therapeutic relationship. The psychotherapist sent a letter to the father of the children and the new therapist for the mother and children opining that the mother's actions were alienating the father from the children. Such letter prompted the father to modify his custody arrangement with the mother. By sending the letter to the father, the psychotherapist was negligent and breached the duty of care to the mother. *Mitchell v. Ryder*, 20 P.3d 1229 (Colo. App. 2000).

12-43-219. Article not to restrict other professions. (1) Nothing in this article shall be construed to prohibit any member of any other profession who is duly licensed or certified pursuant to the laws of this state from rendering service consistent with his or her training and professional ethics so long as the professional does not hold himself or herself out to the public by any title or description to which such professional is not entitled pursuant to the provisions of this article.

(2) No person licensed pursuant to article 38 of this title shall be subject to the jurisdiction of a board created pursuant to this article to the extent such person is under the jurisdiction of the state board of nursing.

Source: L. 88: Entire article R&RE, p. 545, § 1, effective July 1. **L. 95:** Entire section amended, p. 1089, § 14, effective July 1.

12-43-220. Data base of licensed and unlicensed psychotherapists - violation - penalty - data collection - report to sunrise and sunset review committee - repeal. (Repealed)

Source: L. 92: Entire section added, p. 2035, § 6, effective July 1. **L. 98:** Entire section repealed, p. 1115, § 17, effective July 1.

Editor's note: This section was relocated to § 12-43-702.5 in 1998.

12-43-221. Powers and duties of the boards - rules. (1) In addition to all other powers and duties conferred and imposed upon the boards, as defined in section 12-43-201 (1), each board has the following powers and duties with respect to the licensing, registration, and certification of the persons licensed, registered, or certified by each individual board pursuant to this article:

(a) To annually elect one of its members as chairperson and one as vice-chairperson. Each board may meet at such times and adopt such rules for its government as it deems proper.

(b) (I) To make investigations, hold hearings, and take evidence in accordance with article 4 of title 24, C.R.S., and this article in all matters relating to the exercise and performance of the powers and duties vested in each board.

(II) Each board, or an administrative law judge acting on the board's behalf, may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter

before the board. Each board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board pursuant to paragraph (e) of this subsection (1).

(III) Upon failure of a witness to comply with a subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. The court may punish the failure to obey the order of the court as a contempt of court.

(c) To aid the several district attorneys of this state in the enforcement of this article and in the prosecution of all persons, firms, associations, or corporations charged with the violation of any of its provisions and to report to the appropriate district attorney any violation of this article that it reasonably believes involves a criminal violation;

(d) To take disciplinary actions in conformity with this article;

(e) Through the department of regulatory agencies and subject to appropriations made to the department of regulatory agencies, to employ administrative law judges on a full-time or part-time basis to conduct any hearings required by this article. The administrative law judges shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S.

(f) To notify the public of all disciplinary actions taken against licensees, registrants, or certificate holders pursuant to this article.

(2) Pursuant to this part 2 and article 4 of title 24, C.R.S., each board is authorized to adopt and revise rules as necessary to enable the board to carry out the provisions of this part 2 with respect to the regulation of the persons licensed, registered, or certified by each individual board pursuant to this article.

Source: L. 98: Entire section added with relocations, p. 1115, § 18, effective July 1. **L. 2004:** (1)(b) amended, p. 1851, § 103, effective August 4. **L. 2008:** IP(1), (1)(b)(I), (1)(b)(II), (1)(f), and (2) amended, p. 423, § 18, effective August 5. **L. 2011:** IP(1), (1)(b), (1)(f), and (2) amended, (SB 11-187), ch. 285, p. 1304, § 33, effective July 1.

Editor's note: This section is similar to former § 12-43-703 as it existed prior to 1998.

ANNOTATION

The board's declaratory order to comply with the provisions of a subpoena within a set period of time does not constitute enforcement of the subpoena, but rather establishes a time frame within which a person subject to the

subpoena must comply in order to avoid enforcement by a court of competent jurisdiction. *Colo. Bd. of Psychologist Exam'rs v. I.W.*, 140 P.3d 186 (Colo. App. 2006).

12-43-221.5. Confidential agreement to limit practice - violation grounds for discipline. (1) If a licensee, registrant, or certificate holder has a physical or mental illness or condition that renders the person unable to practice his or her mental health profession with reasonable skill and with safety to clients, the licensee, registrant, or certificate holder shall notify the board that regulates his or her profession of the illness or condition in a manner and within a period determined by his or her oversight board. The applicable board may require the licensee, registrant, or certificate holder to submit to an examination or refer the licensee, registrant, or certificate holder to a peer health assistance program, if such program exists, to evaluate the extent of the illness or condition and its impact on the licensee's, registrant's, or certificate holder's ability to practice with reasonable skill and with safety to clients.

(2) (a) Upon determining that a licensee, registrant, or certificate holder with a physical or mental illness or condition is able to render limited services with reasonable skill and with safety to clients, the applicable board may enter into a confidential agreement with the licensee, registrant, or certificate holder in which the licensee, registrant, or certificate

holder agrees to limit his or her practice based on the restrictions imposed by the illness or condition, as determined by the applicable board.

(b) As part of the agreement, the licensee, registrant, or certificate holder is subject to periodic reevaluations or monitoring as determined appropriate by the applicable board. The board may refer the licensee, registrant, or certificate holder to a peer assistance health program, if one exists, for reevaluation or monitoring.

(c) The parties may modify or dissolve the agreement as necessary based on the results of a reevaluation or of monitoring.

(3) By entering into an agreement with the applicable board pursuant to this section to limit his or her practice, the licensee, registrant, or certificate holder is not engaging in activities prohibited pursuant to section 12-43-222. The agreement does not constitute a restriction or discipline by the applicable board. However, if the licensee, registrant, or certificate holder fails to comply with the terms of an agreement entered into pursuant to this section, the failure constitutes a prohibited activity pursuant to section 12-43-222 (1) (f), and the licensee, registrant, or certificate holder is subject to discipline in accordance with section 12-43-223.

(4) This section does not apply to a licensee, registrant, or certificate holder subject to discipline for prohibited activities as described in section 12-43-222 (1) (e).

Source: L. 2011: Entire section added, (SB 11-187), ch. 285, p. 1288, § 16, effective July 1.

12-43-222. Prohibited activities - related provisions. (1) A person licensed, registered, or certified under this article violates this article if the person:

(a) Has been convicted of or pled guilty or nolo contendere to a felony or received a deferred sentence to a felony charge. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea is conclusive evidence of the conviction or plea. In considering the disciplinary action, each board is governed by section 24-5-101, C.R.S.

(b) Has violated or attempted to violate, directly or indirectly, or assisted or abetted the violation of, or conspired to violate any provision or term of this article or rule promulgated pursuant to this article or any order of a board established pursuant to this article;

(c) Has used advertising that is misleading, deceptive, or false;

(d) (I) Has committed abuse of health insurance pursuant to section 18-13-119, C.R.S.;

(II) Has advertised through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the person will perform any act prohibited by section 18-13-119, C.R.S.;

(e) Habitually or excessively uses or abuses alcohol, a habit-forming drug, or a controlled substance, as defined in section 18-18-102 (5), C.R.S.;

(f) (I) Fails to notify the board that regulates his or her profession of a physical or mental illness or condition that affects the person's ability to treat clients with reasonable skill and safety or that may endanger the health or safety of persons under his or her care;

(II) Fails to act within the limitations created by a physical or mental illness or condition that renders the person unable to treat clients with reasonable skill and safety or that may endanger the health or safety of persons under his or her care; or

(III) Fails to comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-43-221.5;

(g) (I) Has acted or failed to act in a manner that does not meet the generally accepted standards of the professional discipline under which the person practices. Generally accepted standards may include, at the board's discretion, the standards of practice generally recognized by state and national associations of practitioners in the field of the person's professional discipline.

(II) A certified copy of a malpractice judgment of a court of competent jurisdiction is conclusive evidence that the act or omission does not meet generally accepted standards of the professional discipline, but evidence of the act or omission is not limited to a malpractice judgment.

(h) Has performed services outside of such person's area of training, experience, or competence;

(i) Has maintained relationships with clients that are likely to impair such person's professional judgment or increase the risk of client exploitation, such as treating employees, supervisees, close colleagues, or relatives;

(j) Has exercised undue influence on the client, including the promotion of the sale of services, goods, property, or drugs in such a manner as to exploit the client for the financial gain of the practitioner or a third party;

(k) Has failed to terminate a relationship with a client when it was reasonably clear that the client was not benefiting from the relationship and is not likely to gain such benefit in the future;

(l) Has failed to refer a client to an appropriate practitioner when the problem of the client is beyond such person's training, experience, or competence;

(m) Has failed to obtain a consultation or perform a referral when such failure is not consistent with generally accepted standards of care;

(n) Has failed to render adequate professional supervision of persons practicing pursuant to this article under such person's supervision according to generally accepted standards of practice;

(o) Has accepted commissions or rebates or other forms of remuneration for referring clients to other professional persons;

(p) Has failed to comply with any of the requirements pertaining to mandatory disclosure of information to clients pursuant to section 12-43-214;

(q) Has offered or given commissions, rebates, or other forms of remuneration for the referral of clients; except that a licensee, registrant, or certificate holder may pay an independent advertising or marketing agent compensation for advertising or marketing services rendered on the person's behalf by such agent, including compensation that is paid for the results of performance of such services on a per-patient basis;

(r) Has engaged in sexual contact, sexual intrusion, or sexual penetration, as defined in section 18-3-401, C.R.S., with a client during the period of time in which a therapeutic relationship exists or for up to two years after the period in which such a relationship exists;

(s) Has resorted to fraud, misrepresentation, or deception in applying for or in securing licensure or taking any examination provided for in this article;

(t) Has engaged in any of the following activities and practices:

(I) Repeated ordering or performing demonstrably unnecessary laboratory tests or studies without clinical justification for the tests or studies;

(II) The administration, without clinical justification, of treatment that is demonstrably unnecessary;

(III) Ordering or performing any service or treatment that is contrary to the generally accepted standards of the person's practice and is without clinical justification;

(IV) Using or recommending rebirthing or any therapy technique that may be considered similar to rebirthing as a therapeutic treatment. "Rebirthing" means the reenactment of the birthing process through therapy techniques that involve any restraint that creates a situation in which a patient may suffer physical injury or death. For the purposes of this subparagraph (IV), a parent or legal guardian may not consent to physical, chemical, or mechanical restraint on behalf of a child or ward.

(u) Has falsified or repeatedly made incorrect essential entries or repeatedly failed to make essential entries on patient records;

(v) Has committed a fraudulent insurance act, as set forth in section 10-1-128, C.R.S.;

(w) Has sold or fraudulently obtained or furnished a license, registration, or certification to practice as a psychologist, social worker, marriage and family therapist, licensed professional counselor, psychotherapist, or addiction counselor or has aided or abetted in such activities; or

(x) Has failed to respond, in the manner required by the board, to a complaint filed with or by the board against the licensee, registrant, or certificate holder.

(2) A disciplinary action relating to a license, registration, or certification to practice a profession licensed, registered, or certified under this article or any related occupation in any other state, territory, or country for disciplinary reasons constitutes prima facie evidence

of grounds for disciplinary action, including denial of licensure, registration, or certification, by a board. This subsection (2) applies only to disciplinary actions based upon acts or omissions in such other state, territory, or country substantially similar to those acts or omissions set out as grounds for disciplinary action pursuant to subsection (1) of this section.

Source: L. 98: Entire section added with relocations, p. 1116, § 18, effective July 1. **L. 2001:** (1)(t)(II) and (1)(t)(III) amended and (1)(t)(IV) added, p. 379, § 2, effective April 17. **L. 2003:** (1)(v) amended, p. 622, § 37, effective July 1. **L. 2004:** (1)(e) and (1)(r) amended, p. 911, § 5, effective July 1; (1)(e) amended, p. 1196, § 43, effective August 4. **L. 2006:** (1)(w) added, p. 93, § 51, effective August 7. **L. 2008:** IP(1), (1)(e), (1)(w), and (2) amended, p. 423, § 19, effective August 5. **L. 2011:** IP(1), (1)(a), (1)(e) to (1)(g), (1)(q), (1)(t)(I), (1)(t)(III), (1)(v), (1)(w), and (2) amended and (1)(x) added, (SB 11-187), ch. 285, p. 1286, § 14, effective July 1. **L. 2012:** (1)(e) amended, (HB 12-1311), ch. 281, p. 1616, § 30, effective July 1.

Editor's note: (1) This section is similar to former § 12-43-704 as it existed prior to 1998. (2) Amendments to subsection (1)(e) by House Bill 04-1251 and Senate Bill 04-239 were harmonized.

Cross references: For the legislative declaration and the short title contained in the 2001 act amending subsections (1)(t)(II) and (1)(t)(III) and enacting subsection (1)(t)(IV), see section 1 of chapter 129, Session Laws of Colorado 2001.

ANNOTATION

Annotator's note. Since § 12-43-222 is similar to § 12-43-704 as it existed prior to the 1998 amendment to part 2 of article 43 of title 12, which resulted in the relocation of provisions, a relevant case construing that provision

has been included in the annotations to this section.

Applied in *Davis v. Bd. of Psychologist Exam'rs*, 791 P.2d 1198 (Colo. App. 1989).

12-43-223. Authority of boards - cease-and-desist orders - rules. (1) (a) If a licensee, registrant, or certificate holder violates any provision of section 12-43-222, the board that licenses, registers, or certifies the licensee, registrant, or certificate holder may:

- (I) Deny, revoke, or suspend the person's license, registration, or certification;
- (II) Deny, revoke, or suspend the listing of a registered psychotherapist in the state board of registered psychotherapists database;
- (III) Issue a letter of admonition to a licensee, registrant, or certificate holder;
- (IV) Issue a confidential letter of concern to a licensee, registrant, or certificate holder;
- (V) Place a licensee, registrant, or certificate holder on probation; or
- (VI) Apply for an injunction pursuant to section 12-43-227 to enjoin a licensee, registrant, or certificate holder from practicing the profession for which the person is licensed, registered, or certified under this article.

(b) When a licensee, registrant, or certificate holder violates an administrative requirement of this article, the board regulating the licensee, registrant, or certificate holder may impose an administrative fine on the licensee, registrant, or certificate holder, not to exceed five thousand dollars per violation. Each board shall adopt rules establishing a schedule of fines setting forth different levels of fines based on whether the licensee, registrant, or certificate holder has committed a single violation or subsequent violations of administrative requirements.

(2) (Deleted by amendment, L. 98, p. 1119, § 18, effective July 1, 1998.)

(3) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1287, § 15, effective July 1, 2011.)

(4) (a) If it appears to a board, based upon credible evidence as presented in a written complaint by any person, that a licensee or registrant is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required license or registration, the board may issue an order to cease and desist

such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (4), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(5) (a) If it appears to a board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed or unregistered practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (5) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (5) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (5). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (5) does not appear at the hearing, a board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (5) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after such board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If a board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or registration, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or unlicensed or unregistered practices.

(IV) A board shall provide notice, in the manner set forth in paragraph (b) of this subsection (5), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(6) If it appears to a board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed or unregistered act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the board may enter into a stipulation with such person.

(7) If any person fails to comply with a final cease-and-desist order or a stipulation, a board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(8) A person aggrieved by the final cease-and-desist order may seek judicial review of a board's determination or of a board's final order as provided in section 12-43-224 (5).

Source: L. 98: Entire section added with relocations, p. 1119, § 18, effective July 1. L. 2006: (4) amended and (5) to (8) added, p. 812, § 39, effective July 1. L. 2011: (1) and (3) amended, (SB 11-187), ch. 285, p. 1287, § 15, effective July 1.

Editor's note: This section is similar to former § 12-43-704.5 as it existed prior to 1998.

12-43-224. Disciplinary proceedings - judicial review - mental and physical examinations - multiple licenses. (1) (a) A proceeding for discipline of a licensee, registrant, or certificate holder may be commenced when the board that licenses, registers, or certifies the licensee, registrant, or certificate holder has reasonable grounds to believe that the licensee, registrant, or certificate holder under the board's jurisdiction has committed any act or failed to act pursuant to the grounds established in section 12-43-222 or 12-43-226.

(b) A licensee, registrant, or certificate holder who holds more than one license, registration, or certification pursuant to this article, who has committed any act or failed to act pursuant to the grounds established in section 12-43-222 or 12-43-226, is subject to disciplinary action by all boards that license, register, or certify the person pursuant to this article. The findings, conclusions, and final agency order of the first board to take disciplinary action pursuant to this section against the licensee, registrant, or certificate holder, or any disciplinary action taken by the state grievance board as it existed prior to July 1, 1998, is prima facie evidence against the person in any subsequent disciplinary action taken by another board concerning the same act or series of acts.

(c) If a licensee, registrant, or certificate holder who applies for a license, registration, or certification pursuant to this article has been disciplined by any board created pursuant to this article, or the state grievance board as it existed prior to July 1, 1998, the findings, conclusions, and final agency order of the first board to take disciplinary action pursuant to this section against the licensee, registrant, or certificate holder is prima facie evidence against the person in any subsequent application made for a license, registration, or certification to any other board created pursuant to this article.

(2) (a) Disciplinary proceedings shall be conducted in the manner prescribed by the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(b) Each board, through the department of regulatory agencies, may employ administrative law judges, on a full-time or part-time basis, to conduct hearings as provided by this article or on any matter within the board's jurisdiction upon such conditions and terms as such board may determine. A board may elect to refer a case for formal hearing to an administrative law judge, with or without an assigned advisor from such board. If a board so elects to refer a case with an assigned advisor and such advisor is a member of the board, the advisor shall be excluded from such board's review of the decision of the administrative law judge. The advisor shall assist the administrative law judge in obtaining and interpreting data pertinent to the hearing.

(c) (I) Except as provided in subparagraph (II) of this paragraph (c), a board shall not deny, revoke, or suspend a licensee's, registrant's, or certificate holder's right to use a title and shall not place a licensee, registrant, or certificate holder on probation pursuant to the grounds established in sections 12-43-222 and 12-43-226 until a hearing has been conducted if required pursuant to section 24-4-105, C.R.S.

(II) The board that licenses, registers, or certifies a licensee, registrant, or certificate holder pursuant to this article may summarily suspend the person's license, registration, or certification, subject to the limitation of section 24-4-104, C.R.S., under the following circumstances:

(A) In emergency situations, as provided for by section 24-4-104, C.R.S.;

(B) The licensee, registrant, or certificate holder has been adjudicated by a court of competent jurisdiction as being a person who is gravely disabled, mentally retarded, mentally incompetent, or insane or as a person with a mental illness by a court of competent jurisdiction; or

(C) The licensee, registrant, or certificate holder violates paragraph (e) of this subsection (2).

(d) If a board has reasonable cause to believe that a licensee, registrant, or certificate holder whom the board licenses, registers, or certifies pursuant to this article is unable to practice with reasonable skill and safety to patients, the board may require the licensee, registrant, or certificate holder to submit to mental or physical examinations designated by the board. Upon the failure of the licensee, registrant, or certificate holder to submit to a mental or physical examination, and unless the person shows good cause for such failure, the board may act pursuant to paragraph (c) of this subsection (2) or enjoin a licensee, registrant, or certificate holder pursuant to section 12-43-227 until the person submits to the required examinations.

(e) Every licensee, registrant, or certificate holder is deemed to have consented to submit to mental or physical examinations when directed in writing by the board that licenses, registers, or certifies the licensee, registrant, or certificate holder pursuant to this article and to have waived all objections to the admissibility of the examiner's testimony or examination reports on the ground of privileged communication.

(f) The results of any mental or physical examination ordered by a board may be used as evidence in any proceeding initiated by a board or within that board's jurisdiction in any forum.

(3) Disciplinary actions may consist of the following:

(a) **Revocation of a license, registration, or certification.** (I) Revocation of a license, registration, or certification by a board means that the licensee, registrant, or certificate holder shall surrender his or her license, registration, or certification.

(II) Any person whose license, registration, or certification to practice is revoked is ineligible to apply for any license, registration, or certification issued under this article for at least three years after the date of surrender of the license, registration, or certification. Any reapplication after such three-year period is treated as a new application.

(b) **Suspension of a license, registration, or certification.** Suspension of a license, registration, or certification by the board that licenses, registers, or certifies such licensee, registrant, or certificate holder pursuant to this article is for a period to be determined by the applicable board.

(c) **Probationary status.** A board may impose probationary status on a licensee, registrant, or certificate holder. If a board places a licensee, registrant, or certificate holder on probation, it may include conditions for continued practice that the board deems appropriate to assure that the licensee, registrant, or certificate holder is physically, mentally, and otherwise qualified to practice in accordance with generally accepted professional standards of practice, including any of the following:

(I) Submission by the licensee, registrant, or certificate holder to examinations a board may order to determine the person's physical or mental condition or professional qualifications;

(II) Participation in therapy or courses of training or education the board determines necessary to correct deficiencies found either in the hearing or by such examinations;

(III) Review or supervision of the person's practice as may be necessary to determine the quality of, and correct any deficiencies in, that practice; and

(IV) The imposition of restrictions upon the nature of the person's practice to assure that he or she does not practice beyond the limits of his or her capabilities.

(d) **Issuance of letters of admonition.** (I) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee, registrant, or certificate holder.

(II) When a letter of admonition is sent by the board, by certified mail, to a licensee, registrant, or certificate holder, the letter also must advise the person that he or she has the right to request, in writing within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(III) If the request for adjudication is timely made, the letter of admonition is vacated and the matter shall be processed by means of formal disciplinary proceedings.

(e) **Issuance of confidential letters of concern.** When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board but indicates to the board conduct by the licensee, registrant, or certificate holder that could lead to serious consequences if not corrected, the board may issue and send to the licensee, registrant, or certificate holder a confidential letter of concern. The letter must advise the licensee, registrant, or certificate holder that the board is concerned about a complaint it received about the licensee, registrant, or certificate holder and must specify what action, if any, the licensee, registrant, or certificate holder should take to assuage the board's concern. Confidential letters of concern are confidential, and the board shall not disclose the existence of such a letter or its contents to members of the public or in any court action unless the board is a party to the action.

(f) **Deferred settlement or judgment.** When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(4) (a) Except as provided in paragraph (b) of this subsection (4), if a complaint is dismissed, records of investigations, examinations, hearings, meetings, and other proceedings of the board conducted pursuant to this section are exempt from the open records law, article 72 of title 24, C.R.S.

(b) The exemption from the open records law specified in paragraph (a) of this subsection (4) does not apply:

(I) When a decision to proceed with a disciplinary action has been agreed upon by a majority of the members of the applicable board and a notice of formal complaint is drafted and served on the licensee, registrant, or certificate holder by first-class mail; or

(II) Upon final agency action.

(c) In any final agency action or formal complaint, the board, when it deems necessary, shall redact all names of clients or other recipients of services to protect such persons' confidentiality.

(5) Final board actions and orders appropriate for judicial review may be judicially reviewed in the court of appeals, and judicial proceedings for the enforcement of a board order may be instituted in accordance with section 24-4-106 (11), C.R.S.

(6) (Deleted by amendment, L. 98, p. 1120, § 18, effective July 1, 1998.)

(7) Any board member having an immediate personal, private, or financial interest in any matter pending before the board shall disclose the fact to the board and shall not vote upon such matter.

(8) Any licensee, registrant, or certificate holder against whom a malpractice claim is settled or a judgment rendered in a court of competent jurisdiction shall notify the board that licenses, registers, or certifies the licensee, registrant, or certificate holder pursuant to this article of the judgment or settlement within sixty days after the disposition.

(9) Any licensee, registrant, or certificate holder who has direct knowledge that a licensee, registrant, or certificate holder has violated section 12-43-222 or 12-43-226 has a duty to report the violation to the board that licenses, registers, or certifies the licensee, registrant, or certificate holder pursuant to this article unless reporting the violation would violate the prohibition against disclosure of confidential information without client consent pursuant to section 12-43-218.

Source: L. 98: Entire section added with relocations, p. 1120, § 18, effective July 1. **L. 2000:** (4) amended, p. 267, § 1, effective February 1, 2001. **L. 2004:** (3)(d) amended and (3)(f) added, p. 1852, § 104, effective August 4. **L. 2005:** (3)(a)(I) and (3)(b) amended, p. 127, § 4, effective August 8. **L. 2006:** (2)(c) amended, p. 1395, § 34, effective August 7. **L. 2011:** (1), (2)(c) to (2)(e), (3), (4), (8), and (9) amended, (SB 11-187), ch. 285, p. 1304, § 34, effective July 1.

Editor's note: (1) This section is similar to former § 12-43-705 as it existed prior to 1998.

(2) Although the amending clause in Senate Bill 11-187 indicated that all of subsection (3) was amended, only subsections (3)(a) through (3)(e) appeared in the final act.

12-43-225. Reconsideration and review of action of a board. A board, on its own motion or upon application, at any time after the imposition of any discipline as provided in section 12-43-224, may reconsider its prior action and reinstate or restore such license, registration, or certification; terminate probation; or reduce the severity of its prior disciplinary action. The board has sole discretion to determine whether to take further action or hold a hearing with respect to its prior disciplinary action.

Source: L. 98: Entire section added with relocations, p. 1124, § 18, effective July 1. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1309, § 35, effective July 1.

Editor's note: This section is similar to former § 12-43-706 as it existed prior to 1998.

12-43-226. Unauthorized practice - penalties.

(1) Repealed.

(2) Any person who practices or offers or attempts to practice as a psychologist, social worker, marriage and family therapist, licensed professional counselor, psychotherapist, or addiction counselor without an active license, registration, or certification issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense. Any person who commits a second or any subsequent offense commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(3) Repealed.

(4) No action may be maintained for the breach of a contract involving the unlawful practice of psychology, social work, professional counseling, marriage and family therapy, addiction counseling, or psychotherapy or for the recovery of compensation for services rendered under such a contract.

(5) When an individual has been the recipient of services prohibited by this article, whether or not such person knew that the rendition of the services were unlawful:

(a) Such person or such person's personal representative is entitled to recover the amount of any fee paid for the services; and

(b) Damages for injury or death occurring as a result of the services may be recovered in an appropriate action without any showing of negligence.

Source: L. 98: Entire section added with relocations, p. 1124, § 18, effective July 1. **L. 2001:** (1)(a) amended, p. 380, § 3, effective April 17. **L. 2002:** (2) amended, p. 1481, § 88, effective October 1. **L. 2005:** (1)(b) amended, p. 127, § 5, effective August 8. **L. 2006:** (1) and (3) repealed and (2) amended, p. 94, §§ 53, 52, effective August 7. **L. 2008:** (2) and (4) amended, p. 424, § 20, effective August 5. **L. 2011:** (2) amended, (SB 11-187), ch. 285, p. 1309, § 36, effective July 1.

Editor's note: This section is similar to former § 12-43-707 as it existed prior to 1998.

Cross references: For the legislative declaration and short title contained in the 2001 act amending subsection (1)(a), see section 1 of chapter 129, Session Laws of Colorado 2001; for the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-43-227. Injunctive proceedings. (1) A board may, in the name of the people of the state of Colorado, through the attorney general of the state of Colorado, apply for an injunction in any court of competent jurisdiction:

(a) To enjoin any person licensed, registered, or certified by that board pursuant to this article from committing any act prohibited by this article;

(b) To enjoin a licensee, registrant, or certificate holder regulated by that board from practicing the profession for which the person is licensed, registered, or certified under this article if the person has violated section 12-43-224 (2) (d) or 12-43-222.

(c) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1309, § 37, effective July 1, 2011.)

(2) If the board demonstrates that the defendant has been or is committing any act prohibited by this article, the court shall enter a decree perpetually enjoining the defendant from further committing the act or from practicing any profession licensed, registered, or certified pursuant to this article.

(3) Injunctive proceedings are in addition to, and not in lieu of, penalties and other remedies provided in this article.

(4) When seeking an injunction under this section, a board is not required to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from a continued violation.

Source: L. 98: Entire section added with relocations, p. 1125, § 18, effective July 1. **L. 2005:** IP(1) and (1)(b) amended, p. 128, § 6, effective August 8. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1309, § 37, effective July 1.

Editor's note: This section is similar to former § 12-43-708 as it existed prior to 1998.

12-43-227.5. Mental health professional peer health assistance program - fees - administration - rules. (1) (a) On and after July 1, 2012, as a condition of licensure, registration, or certification and renewal in this state, every person applying for a new license, registration, or certification or to renew his or her license, registration, or certification shall pay a fee, for use by the administering entity selected by the director pursuant to this subsection (1), in an amount not to exceed twenty-five dollars per application for a new or to renew a license, registration, or certification. The director may adjust the maximum fee amount on January 1, 2013, and annually thereafter to reflect changes in the United States bureau of statistics consumer price index for the Denver-Boulder consolidated metropolitan statistical area for all urban consumers or goods, or its successor index. The fee shall be forwarded to the chosen administering entity for use in supporting designated providers selected to provide assistance to licensees, registrants, or certificate holders needing help in dealing with physical, emotional, or psychological conditions that may be detrimental to their ability to practice their mental health profession.

(b) The director, in consultation with the boards, shall select one or more peer health assistance programs as designated providers. For purposes of selecting designated providers, the director shall use a competitive bidding process that encourages participation from interested vendors. To be eligible for designation, a peer health assistance program must:

(I) Provide for the education of mental health professionals with respect to the recognition and prevention of physical, emotional, and psychological conditions and provide for intervention when necessary or under circumstances established by the board by rule;

(II) Offer assistance to a mental health professional in identifying physical, emotional, or psychological conditions;

(III) Evaluate the extent of physical, emotional, or psychological conditions and refer the mental health professional for appropriate treatment;

(IV) Monitor the status of a mental health professional who has been referred for treatment;

(V) Provide counseling and support for the mental health professional and for the family of any mental health professional referred for treatment;

(VI) Agree to receive referrals from the board; and

(VII) Agree to make its services available to all licensed, registered, or certified mental health professionals.

(c) The director may select an entity to administer the mental health professional peer assistance program. An administering entity must be a nonprofit private foundation that is qualified under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, and that is dedicated to providing support for charitable, benevolent, educational, and scientific purposes that are related to mental health professions, mental health professional education, mental health research and science, and other mental health charitable purposes.

(d) The administering entity shall:

- (I) Distribute the moneys collected by the division, less expenses, to the designated provider, as directed by the director;
- (II) Provide an annual accounting to the division of all amounts collected, expenses incurred, and amounts disbursed; and
- (III) Post a surety performance bond in an amount specified by the director to secure performance under the requirements of this section. The administering entity may recover the actual administrative costs incurred in performing its duties under this section in an amount not to exceed ten percent of the total amount collected.
- (e) The division shall collect the required annual payments payable to the administering entity for the benefit of the administering entity and shall transfer all such payments to the administering entity. All required annual payments collected or due for each fiscal year are custodial funds that are not subject to appropriation by the general assembly, and the distribution of payments to the administering entity or expenditure of the payments by the administering entity does not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.
- (2) (a) Any mental health professional who is referred by the applicable board to a peer health assistance program shall enter into a stipulation with the board pursuant to section 12-43-223 (6) before participating in the program. The agreement must contain specific requirements and goals to be met by the participant, including the conditions under which the program will be successfully completed or terminated, and a provision that a failure to comply with the requirements and goals are to be promptly reported to the board and that such failure will result in disciplinary action by the board.
- (b) Notwithstanding sections 12-43-223, 12-43-224, and 24-4-104, C.R.S., the applicable board may immediately suspend the license of any mental health professional who is referred to a peer health assistance program by the board and who fails to attend or to complete the program. If the mental health professional objects to the suspension, he or she may submit a written request to the board for a formal hearing on the suspension within ten days after receiving notice of the suspension, and the board shall grant the request. In the hearing, the mental health professional bears the burden of proving that his or her license, registration, or certification should not be suspended.
- (c) Any mental health professional who self-refers and is accepted into a peer health assistance program shall affirm that, to the best of his or her knowledge, information, and belief, he or she knows of no instance in which he or she has violated this article or the rules of the board, except in those instances affected by the mental health professional's physical, emotional, or psychological conditions.
- (3) Nothing in this section creates any liability on the director, division, or state of Colorado for their actions in making grants to peer assistance programs, and no civil action may be brought or maintained against the board, director, division, or state for an injury alleged to have been the result of the activities of any state-funded peer assistance program or the result of an act or omission of a mental health professional participating in or referred by a state-funded peer assistance program. However, the state remains liable under the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., if an injury alleged to have been the result of an act or omission of a mental health professional participating in or referred by a state-funded peer assistance program occurred while such mental health professional was performing duties as an employee of the state.
- (4) The boards may promulgate rules necessary to implement this section. The boards and the director shall seek and obtain input from representatives of each type of mental health professional regulated under this article in the development of the peer health assistance program and related rules.
- (5) As used in this section, "mental health professional" means a psychologist, social worker, marriage and family therapist, licensed professional counselor, psychotherapist, or addiction counselor regulated under this article.

12-43-228. Minimum standards for testing. (1) Every person licensed, registered, or certified under this article must meet the minimum professional preparation standards set forth in this section to engage in the administration, scoring, or interpretation of the following levels of psychometric or electrodiagnostic testing:

(a) **General use.** There is no educational or experience minimum necessary for a licensee, registrant, or certificate holder to administer standardized personnel selection, achievement, general aptitude, or proficiency tests.

(b) **Technical use.** A master's degree in anthropology, psychology, counseling, marriage and family therapy, social work, or sociology from a regionally accredited university or college certified by the accrediting agency or body to award graduate degrees and completion of at least one graduate level course each in statistics, psychometric measurement, theories of personality, individual and group test administration and interpretation, and psychopathology is required in order to administer, score, or interpret tests that require technical knowledge of test construction and use or require the application of scientific and psychophysiological knowledge. Such tests include, but are not limited to, tests of general intelligence, special aptitudes, temperament, values, interests, and personality inventories.

(c) **Advanced use.** A licensee, registrant, or certificate holder must meet all the requirements of paragraph (b) of this subsection (1) and, in addition, completion, at a regionally accredited university or college certified by the accrediting agency or body to award graduate degrees, of at least one graduate-level course in six of the following areas: Cognition, emotion, attention, sensory-perceptual function, psychopathology, learning, encephalopathy, neuropsychology, psychophysiology, personality, growth and development, projective testing, and neuropsychological testing and completion of one year of experience in advanced use practice under the supervision of a person fully qualified under this paragraph (c) in order to practice projective testing, neuropsychological testing, or use of a battery of three or more tests to:

(I) Determine the presence, nature, causation, or extent of psychosis, dementia, amnesia, cognitive impairment, influence of deficits on competence, and ability to function adaptively;

(II) Determine the etiology or causative factors contributing to psychological dysfunction, criminal behavior, vocational disability, neurocognitive dysfunction, or competence; or

(III) Predict the psychological responses to specific medical, surgical, and behavioral interventions.

(2) The board licensing, registering, or certifying any person violating this section may bring disciplinary proceedings or injunctive proceedings against the person pursuant to section 12-43-224 or 12-43-227.

(3) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1310, § 38, effective July 1, 2011.)

Source: L. 98: Entire section added with relocations, p. 1126, § 18, effective July 1. **L. 2011:** IP(1), (1)(a), IP(1)(c), (2), and (3) amended, (SB 11-187), ch. 285, p. 1310, § 38, effective July 1.

12-43-229. Repeal of article. (1) This article is repealed, effective September 1, 2020. Prior to such repeal, all of the boards relating to the licensing, registration, or certification of and grievances against any person licensed, registered, or certified pursuant to this article shall be reviewed as provided for in section 24-34-104, C.R.S.

(2) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1274, § 1, effective July 1, 2011.)

Source: L. 98: Entire section added with relocations, p. 1127, § 18, effective July 1. **L. 2004:** Entire section amended, p. 911, § 6, effective July 1. **L. 2008:** Entire section amended, p. 424, § 21, effective August 5. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1274, § 1, effective July 1.

Editor's note: This section is similar to former § 12-43-712 as it existed prior to 1998.

PART 3

PSYCHOLOGISTS

Editor's note: This article was repealed and reenacted in 1988, and this part 3 was subsequently repealed and reenacted in 1998, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 3 prior to 1998, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the article heading.

12-43-301. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Approved school" means any university or other institution of higher education offering a full-time graduate course of study in psychology and having programs approved by the American psychological association or the board.

(2) "Board" means the state board of psychologist examiners created by section 12-43-302 (1).

(3) Repealed.

(4) "License" means a certificate of licensure as a licensed psychologist.

(5) Repealed.

(6) "Licensed psychologist" means a person licensed under this part 3.

(7) Repealed.

(8) "Professional psychological training program" means a doctoral training program that:

(a) Is a planned program of study that reflects an integration of the science and practice of psychology; and

(b) For applicants receiving their terminal degrees after 1990, is designated as a doctoral program in psychology by the association of state and provincial psychology boards or the national register of health service providers in psychology, or is accredited by the American psychological association or Canadian psychological association.

Source: L. 98: Entire part R&RE, p. 1128, § 19, effective July 1. **L. 2011:** (3), (5), and (7) repealed, (SB 11-187), ch. 285, p. 1311, § 39, effective July 1.

12-43-302. State board of psychologist examiners. (1) There is hereby created a state board of psychologist examiners under the supervision and control of the division of professions and occupations of the department of regulatory agencies, created in section 24-1-122 (2) (g), C.R.S.

(2) The board consists of seven members who are citizens of the United States and residents of the state of Colorado as follows:

(a) Four board members must be licensed psychologists, at least two of whom shall be engaged in the direct practice of psychology; except that, if, after a good-faith attempt, the governor determines that an applicant for membership on the board pursuant to this paragraph (a) who is engaged in the direct practice of psychology is not available to serve on the board for a particular term, the governor may appoint a licensed psychologist who is not engaged in the direct practice of psychology.

(b) Three board members must be representatives of the general public, one of whom may be a mental health consumer or family member of a mental health consumer. These individuals must have never been psychologists, applicants or former applicants for licensure as psychologists, members of another mental health profession, or members of households that include psychologists or members of another mental health profession or otherwise have conflicts of interest or the appearance of such conflicts with their duties as board members.

(3) (Deleted by amendment, L. 2007, p. 130, § 1, effective August 3, 2007.)

(4) (a) Each board member shall hold office until the expiration of such member's appointed term or until a successor is duly appointed. Except as specified in paragraph (b) of this subsection (4), the term of each member shall be four years, and no board member shall serve more than two full consecutive terms. Any vacancy occurring in board

membership other than by expiration of a term shall be filled by the governor by appointment for the unexpired term of such member.

(b) The terms of office of the members on the board are modified as follows in order to ensure staggered terms of office:

(I) The second term of office of the licensed psychologist board member and one of the two board members representing the general public, whose second term would otherwise expire on June 30, 2010, shall expire on May 31, 2008, and the governor shall appoint one new licensed psychologist and one new representative of the general public to serve terms as described in paragraph (a) of this subsection (4) commencing on June 1, 2008.

(II) The initial term of office of the one board member representing the general public whose initial term would otherwise expire on June 30, 2009, shall expire on May 31, 2009, and the board member is eligible to serve one additional four-year term commencing on June 1, 2009, and expiring on May 31, 2013. On and after the expiration of this board member's term or a vacancy in this position, the governor shall appoint a licensed psychologist to this position on the board, who is eligible to serve terms as described in paragraph (a) of this subsection (4) commencing on June 1 of the applicable year.

(III) The initial term of office of one of the two licensed psychologist board members whose initial term would otherwise expire on June 30, 2010, shall expire on May 31, 2009. This board member shall be eligible to serve one additional four-year term, commencing on June 1, 2009, and expiring on May 31, 2013. On and after the expiration of this board member's term, persons appointed to this position on the board shall serve terms as described in paragraph (a) of this subsection (4) commencing on June 1 of the applicable year.

(IV) The initial terms of office of the remaining licensed psychologist board member and the other board member representing the general public, whose initial terms would otherwise expire on June 30, 2010, shall expire on May 31, 2010. Each of these board members shall be eligible to serve one additional four-year term commencing on June 1, 2010, and expiring on May 31, 2014. On and after the expiration of these board members' terms, persons appointed to these positions on the board shall serve terms as described in paragraph (a) of this subsection (4) commencing on June 1 of the applicable year.

(V) The second term of office of the remaining board member representing the general public whose second term would otherwise expire on June 30, 2010, shall expire on May 31, 2010. The governor shall appoint one new representative of the general public to serve terms as described in paragraph (a) of this subsection (4) commencing on June 1, 2010.

(5) The governor may remove any board member for misconduct, incompetence, or neglect of duty after giving the board member a written statement of the charges and an opportunity to be heard thereon. Actions constituting neglect of duty shall include, but not be limited to, the failure of board members to attend three consecutive meetings or at least three quarters of the total meetings in any calendar year.

(6) Each board member shall receive a certificate of appointment from the governor.

Source: L. 98: Entire part R&RE, p. 1128, § 19, effective July 1. L. 2004: (4) and (6) amended, p. 911, § 7, effective July 1. L. 2007: (2), (3), and (4) amended, p. 130, § 1, effective August 3. L. 2011: (2), IP(4)(b), and (4)(b)(II) amended, (SB 11-187), ch. 285, p. 1311, § 40, effective July 1.

12-43-303. Practice of psychology defined. (1) For the purposes of this part 3, the "practice of psychology" means the observation, description, evaluation, interpretation, or modification of human behavior by the application of psychological principles, methods, or procedures, for the purpose of:

(a) Preventing, eliminating, evaluating, assessing, or predicting symptomatic, maladaptive, or undesired behavior;

(b) Evaluating, assessing, or facilitating the enhancement of individual, group, or organizational effectiveness, including personal effectiveness, adaptive behavior, interpersonal relationships, work and life adjustment, health, and individual, group, or organizational performance; or

(c) Providing clinical information to be utilized in legal proceedings.

- (2) The practice of psychology includes:
- (a) Psychological testing and the evaluation or assessment of personal characteristics such as intelligence; personality; cognitive, physical, or emotional abilities; skills; interests; aptitudes; and neuropsychological functioning;
 - (b) Counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy;
 - (c) Diagnosis, treatment, and management of mental and emotional disorder or disability, substance use disorders, disorders of habit or conduct, as well as of the psychological aspects of physical illness, accident, injury, or disability;
 - (d) Psychoeducational evaluation, therapy, and remediation;
 - (e) Consultation with physicians, other health care professionals, and patients regarding all available treatment options with respect to provision of care for a specific patient or client;
 - (f) The provision of direct services to individuals or groups for the purpose of enhancing individual and thereby organizational effectiveness, using psychological principles, methods, or procedures to assess and evaluate individuals on personal characteristics for individual development or behavior change or for making decisions about the individual, such as selection; and
 - (g) The supervision of any of the practices described in this subsection (2).
- (h) to (l) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1311, § 41, effective July 1, 2011.)
- (3) Psychological services may be rendered to individuals, families, groups, organizations, institutions, the public, and the courts.
- (4) The practice of psychology shall be construed within the meaning of this definition without regard to whether payment is received for services rendered.

Source: L. 98: Entire part R&RE, p. 1129, § 19, effective July 1. **L. 2011:** (1) and (2) amended, (SB 11-187), ch. 285, p. 1311, § 41, effective July 1.

12-43-304. Qualifications - examinations - licensure. (1) The board shall issue a license as a psychologist to each applicant who files an application in a form and manner required by the board, submits the fee required by the board pursuant to section 12-43-204, and furnishes evidence satisfactory to the board that he or she:

- (a) Is at least twenty-one years of age;
- (b) Is not in violation of any provision of this article or any rules promulgated by the board;
- (c) Holds a doctorate degree with a major in psychology, or the equivalent to such major as determined by the board, from an approved school;
- (d) Has had at least one year of postdoctoral experience practicing psychology under supervision approved by the board; and
- (e) Demonstrates professional competence by passing a single, written examination in psychology as prescribed by the board and a jurisprudence examination administered by the division.

(1.5) (a) The examination by the board described in paragraph (e) of subsection (1) of this section shall be given not less than twice per year at such time and place and under such supervision as the board may determine.

- (b) The examination shall test for knowledge of the following three areas:
 - (I) General psychology;
 - (II) Clinical and counseling psychology; and
 - (III) Application of the practice of clinical and counseling psychology, including knowledge of appropriate statutes and professional ethics.

(c) The board or its designated representatives shall administer and determine the pass or fail status of the examination and take any actions necessary to ensure impartiality. The board shall determine the passing score for the examination based upon a level of minimum competency to engage in the practice of psychology.

(2) to (6) (Deleted by amendment, L. 2007, p. 137, § 1, effective July 1, 2007.)

(7) (a) The board shall register as a psychologist candidate a person who files an application for registration, accompanied by the fee required by section 12-43-204, and who:

(I) Submits evidence satisfactory to the board that he or she has met the requirements of paragraphs (a), (b), and (c) of subsection (1) of this section; and

(II) Has not been previously registered as a psychologist candidate by the board.

(b) A psychologist candidate registered pursuant to this subsection (7) is not required to register with the database of registered psychotherapists pursuant to section 12-43-702.5, and is under the jurisdiction of the state board of psychologist examiners. If the requirements of paragraphs (d) and (e) of subsection (1) of this section are not met within four years, the registration of the psychologist candidate expires and is not renewable unless the board, in its discretion, grants the candidate an extension. A person whose psychologist candidate registration expires is not precluded from applying for licensure or registration with any other mental health board for which the person is qualified.

Source: L. 98: Entire part R&RE, p. 1131, § 19, effective July 1. L. 2004: (1)(e) amended and (7) added, p. 912, §§ 8, 9, effective July 1. L. 2007: (1.5) added and (2) to (6) amended, p. 137, § 1, effective July 1. L. 2011: IP(1), (1)(b), (1)(e), (1.5)(c), and (7) amended, (SB 11-187), ch. 285, p. 1284, § 12, effective July 1.

12-43-305. Rights and privileges of licensure. (1) Any person who possesses a valid, unsuspended, and unrevoked license as a licensed psychologist has the right to:

(a) Engage in the private, independent practice of psychology;

(b) Practice and supervise psychology practice; and

(c) Use the title “psychologist” and the terms “psychology” and “psychological”. No other person may assume these titles or use these terms on any work or letter, sign, figure, or device to indicate that the person using such title or terms is a licensed psychologist.

(2) Any person duly licensed as a psychologist shall not be required to obtain any other license or certification to practice psychology as defined in section 12-43-303 unless otherwise required by the board.

Source: L. 98: Entire part R&RE, p. 1132, § 19, effective July 1.

12-43-306. Exemptions. (1) Nothing in this part 3 shall be construed to prevent the teaching of psychology, or the conduct of psychological research, if such teaching or research does not involve the delivery or supervision of direct psychological services to individuals who are themselves, rather than a third party, the intended beneficiaries of such services without regard to the source or extent of payment for services rendered. Nothing in this part 3 shall prevent the provision of expert testimony by psychologists who are exempted by this part 3. Persons holding an earned doctoral degree in psychology from an approved school may use the title “psychologist” in conjunction with the activities permitted in this subsection (1).

(2) Nothing in this part 3 shall be construed to prevent members of other professions licensed under the laws of this state from rendering services within the scope of practice as set out in the statutes regulating their professional practices so long as they do not represent themselves to be psychologists or their services as psychological.

(3) The use of the title “psychologist” may be continued by an unlicensed person who, as of July 1, 1982, is employed by a state, county, or municipal agency or by other political subdivisions or any educational institution chartered by the state, but only so long as such person remains in the employment of the same institution or agency and only in the course of conducting duties for such agency or institution.

(4) Nothing in this part 3 shall be construed to limit the use of an official title on the part of any doctoral level graduate of a research psychology program or an industrial or organizational psychology program from a regionally accredited university while engaged in the conduct of psychological research or the provision of psychological consultation to

organizations or institutions if such services do not include the clinical practice of psychology.

(5) Nothing in this part 3 shall be construed to require the new regulation of any occupational or professional group that is not currently subject to regulation under state law.

(6) Nothing in this part 3 prevents the practice of psychotherapy by persons registered with the state board of registered psychotherapists pursuant to section 12-43-702.5.

(7) No person may engage in the practice of psychology as a psychologist, or refer to himself or herself as a psychologist, unless such person is licensed pursuant to this part 3.

Source: L. 98: Entire part R&RE, p. 1132, § 19, effective July 1. **L. 2011:** (6) amended, (SB 11-187), ch. 285, p. 1313, § 42, effective July 1.

PART 4

SOCIAL WORKERS

Editor's note: (1) Provisions relating to social workers were contained in article 63.5 of this title prior to its repeal in 1988.

(2) This article was repealed and reenacted in 1988, and this part 4 was subsequently repealed and reenacted in 1998, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 4 prior to 1998, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the article heading.

12-43-401. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Approved school" means any university or other institution of higher education offering a full-time undergraduate course of study in social work approved by the council on social work education or its predecessor organization.

(2) "Board" means the state board of social work examiners, created in section 12-43-402.

(3) Repealed.

(4) "Clinical social work practice" shall have the same meaning as "social work practice" as defined in section 12-43-403.

(5) "Graduate school of social work" means any university or other institution of higher education offering a full-time graduate course of study in social work approved by the council on social work education or its predecessor organization.

(5.5) "Independent practice" means practicing independent of supervision.

(6) "Independent private practice" means a practice charging a fee in a setting other than under the auspices of a public or private nonprofit agency exempt from federal income tax under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended.

(7) "Licensed clinical social worker" means any person licensed under the provisions of this part 4 as a clinical social worker.

(8) "Licensed social worker" means a person licensed under this part 4 as a licensed social worker.

(9) Repealed.

(10) (Deleted by amendment, L. 2004, p. 912, § 10, effective July 1, 2004.)

(11) "Social worker" means a person who possesses an earned master's or bachelor's degree in social work from a social work education program accredited by the council on social work education, or a doctoral degree in social work from a doctoral program within a social work education program accredited by the council on social work education, and who is practicing within the scope of section 12-43-403.

Source: L. 98: Entire part R&RE, p. 1133, § 19, effective July 1. **L. 2000:** (6) amended, p. 1843, § 20, effective August 2. **L. 2004:** (5.5) and (11) added and (8) to (10) amended, p. 912, § 10, effective July 1. **L. 2005:** (3) amended, p. 128, § 7, effective August 8.

L. 2009: (4) amended, (HB 09-1339), ch. 427, p. 2382, § 1, effective July 1. **L. 2011:** (3) and (9) repealed and (8) amended, (SB 11-187), ch. 285, pp. 1311, 1313, §§ 39, 43, effective July 1.

Cross references: For the federal "Internal Revenue Code of 1986", see title 26 of the United States Code.

ANNOTATION

Law reviews. For article, "Court-ordered Counseling by Social Workers in Colorado", see 15 Colo. Law. 47 (1985).

12-43-402. State board of social work examiners. (1) There is hereby created under the supervision and control of the division of professions and occupations of the department of regulatory agencies the state board of social work examiners, which shall consist of seven members who are citizens of the United States and residents of the state of Colorado.

(2) (a) Four board members shall be licensed clinical social workers, at least two of whom shall be engaged in direct social work practice; except that, if, after a good-faith attempt, the governor determines that an applicant for membership on the board pursuant to this paragraph (a) who is engaged in direct social work practice is not available to serve on the board for a particular term, the governor may appoint a licensed clinical social worker who is not engaged in direct social work practice.

(b) Three board members shall be representatives of the general public. These individuals shall have never been a social worker, an applicant or former applicant for licensure as a social worker, a member of another mental health profession, or a member of a household that includes a social worker or a member of another mental health profession or otherwise have conflicts of interest or the appearance of such conflicts with his or her duties as a board member.

(3) (a) Each board member shall hold office until the expiration of such member's appointed term or until a successor is duly appointed. Except as specified in paragraph (b) of this subsection (3), the term of each member shall be four years, and no board member shall serve more than two full consecutive terms. Any vacancy occurring in board membership other than by expiration of a term shall be filled by the governor by appointment for the remainder of the unexpired term of such member.

(b) The terms of office of the members on the board are modified as follows in order to ensure staggered terms of office:

(I) The second term of office of one of the two licensed clinical social worker board members who, as of July 25, 2010, would have served two four-year terms shall expire on June 30, 2008, and the governor shall appoint a new licensed clinical social worker to serve terms as described in paragraph (a) of this subsection (3) commencing on July 1, 2008.

(II) The initial term of office of one of the board members representing the general public whose initial term would otherwise expire on July 25, 2010, expires on June 30, 2008, and the board member is eligible to serve one additional four-year term commencing on July 1, 2008, and expiring on June 30, 2012. On and after the expiration of this board member's term or a vacancy in this position, the governor shall appoint a licensed clinical social worker to this position on the board, who is eligible to serve terms as described in paragraph (a) of this subsection (3) commencing on July 1 of the applicable year.

(III) The term of office of the one member representing the general public who, as of July 25, 2009, would have served one full four-year term and one partial four-year term shall expire on June 30, 2009, and the member shall be eligible to serve one additional four-year term commencing on July 1, 2009, and expiring on June 30, 2013. On and after the expiration of this board member's term, persons appointed to this position on the board shall serve terms as described in paragraph (a) of this subsection (3) commencing on July 1 of the applicable year.

(IV) The term of office of the one licensed clinical social worker board member who, as of July 25, 2010, would have served one full four-year term and one partial four-year

term shall expire on June 30, 2009, and the board member shall be eligible to serve one additional four-year term commencing on July 1, 2009, and expiring on June 30, 2013. On and after the expiration of this board member's term, persons appointed to this position on the board shall serve terms as described in paragraph (a) of this subsection (3) commencing on July 1 of the applicable year.

(V) The initial terms of office of the one remaining licensed clinical social worker board member and the two remaining board members representing the general public whose initial terms would otherwise expire on July 25, 2010, shall expire on June 30, 2010, and each of these board members shall be eligible to serve one additional four-year term, commencing on July 1, 2010, and expiring on June 30, 2014. On and after the expiration of these board members' terms, persons appointed to these positions on the board shall serve terms as described in paragraph (a) of this subsection (3) commencing on July 1 of the applicable year.

(4) (Deleted by amendment, L. 2007, p. 132, § 2, effective August 3, 2007.)

(5) The governor may remove any board member for misconduct, incompetence, or neglect of duty after giving the board member a written statement of the charges and an opportunity to be heard thereon. Actions constituting neglect of duty shall include, but not be limited to, the failure of board members to attend three consecutive meetings or at least three quarters of the total meetings in any calendar year.

(6) Each board member shall receive a certificate of appointment from the governor.

(7) When professional judgment specific to clinical practice is required in the review of alleged violations of section 12-43-222, the board may appoint an advisory committee of clinical practitioners to review and make recommendations to the board.

Source: L. 98: Entire part R&RE, p. 1134, § 19, effective July 1. L. 2004: (2)(a), (3), and (6) amended, p. 913, § 11, effective July 1. L. 2007: (2)(a), (3), and (4) amended, p. 132, § 2, effective August 3. L. 2011: (2), IP(3)(b), and (3)(b)(II) amended and (7) added, (SB 11-187), ch. 285, p. 1313, § 44, effective July 1.

12-43-403. Social work practice defined. (1) For the purposes of this part 4, "social work practice" means the professional application of social work theory and methods by a graduate with a master's degree in social work or a doctoral degree in social work or a bachelor's degree in social work from an accredited social work program, for the purpose of prevention, assessment, diagnosis, and intervention with individual, family, group, organizational, and societal problems, including alcohol and substance abuse and domestic violence, based on the promotion of biopsychosocial developmental processes, person-in-environment transactions, and empowerment of the client system. Social work theory and methods are based on known accepted principles that are taught in professional schools of social work in colleges or universities accredited by the council on social work education.

(2) Professional social work practice may include, but is not limited to:

- (a) Assessment;
- (b) Differential diagnosis;
- (c) Treatment planning and evaluation;
- (d) Measurement of psychosocial functioning;
- (e) Crisis intervention, out-reach, short- and long-term treatment;
- (f) Therapeutic, individual, marital, and family interventions;
- (g) Client education;
- (h) Case management;
- (i) Mediation;
- (j) Advocacy;
- (k) Discharge, referral, and continuity of care planning and implementation;
- (l) Consultation;
- (m) Supervision;
- (n) Research;
- (o) Management and administration;
- (p) Program evaluation and education;
- (q) Social group work;

- (r) Community organization and development;
 - (s) Social policy analysis and development;
 - (t) Psychotherapy;
 - (u) Consultation, supervision, and teaching in higher education; and
 - (v) Counseling.
- (3) Social work practice may take place in a public or private agency or institutional, educational, or independent setting.

(4) Social work practice is directly based upon an advanced educational program that teaches the practitioner to analyze, intervene, and evaluate in ways that are highly differentiated, discriminating, and self-critical. A practitioner must be able to synthesize and apply a broad range of knowledge as well as practice with a high degree of autonomy and skill. A practitioner must be able to refine and advance the quality of his or her practice as well as that of the larger social work profession. These advanced competencies must be appropriately integrated and reflected in all aspects of a social work practice, including the ability to:

- (a) Apply critical thinking skills within professional contexts, including synthesizing and applying appropriate theories and knowledge to practice interventions;
- (b) Practice within the values and ethics of the social work profession and with an understanding of, and respect for, the positive value of diversity;
- (c) Demonstrate the professional use of self;
- (d) Understand the forms and mechanisms of oppression and discrimination and the strategies and skills of change that advance social and economic justice;
- (e) Understand and interpret the history of the social work profession and its current structure and issues;
- (f) Apply the knowledge and skills of a generalist social work perspective to practice with systems of all sizes;
- (g) Apply the knowledge and skills of advanced social work practice in an area of concentration;
- (h) Critically analyze and apply knowledge of biopsychosocial variables that affect an individual's development and behavior and use theoretical frameworks to understand the interactions among and between individuals and social systems;
- (i) Analyze the impact of social policies on client systems, workers, and agencies and demonstrate skills for influencing policy formulation and change;
- (j) Evaluate relevant research studies and apply findings to practice, and demonstrate skills in quantitative research design, data analysis, and knowledge dissemination;
- (k) Conduct empirical evaluations of their own practice interventions and those of other relevant systems; and
- (l) Use communication skills differentially with a variety of client populations, colleagues, and members of the community.

Source: L. 98: Entire part R&RE, p. 1135, § 19, effective July 1. L. 2004: (2)(u) added, p. 913, § 12, effective July 1. L. 2011: (1), (2)(t), and (2)(u) amended and (2)(v) added, (SB 11-187), ch. 285, p. 1314, § 45, effective July 1.

12-43-404. Qualifications - examination - licensure and registration. (1) The board shall license as a licensed social worker any person who files an application in a form and manner required by the board, submits the fee required by the board pursuant to section 12-43-204, and submits evidence satisfactory to the board that he or she:

- (a) Is at least twenty-one years of age;
- (b) Has obtained a master's degree from a graduate school of social work; and
- (c) Demonstrates professional competence by satisfactorily passing an examination in social work as prescribed by the board and a jurisprudence examination administered by the division.

(2) The board shall license as a licensed clinical social worker any person who files an application, in a form and manner required by the board, submits the fee required by the board pursuant to section 12-43-204, and submits evidence satisfactory to the board that he or she:

- (a) Is at least twenty-one years of age;
- (b) Has obtained a master's or doctorate degree from a graduate school of social work;
- (c) Has practiced social work for at least two years under the supervision of a licensed clinical social worker, which practice includes training and work experience in the area of clinical social work practice; and
- (d) Demonstrates professional competence by satisfactorily passing an examination in social work as prescribed by the board and a jurisprudence examination administered by the division.

(2.5) (a) The board or its designated representative shall give the examination described in paragraph (c) of subsection (1) of this section and in paragraph (d) of subsection (2) of this section at least twice per year at a time and place and under the supervision determined by the board.

(b) The board or its designated representatives shall administer and determine the pass or fail status of the examination and take any actions necessary to ensure impartiality. The board shall determine the passing score for the examination based upon a level of minimum competency to engage in social work practice.

(3) (Deleted by amendment, L. 2004, p. 914, § 13, effective July 1, 2004.)

(4) to (6) (Deleted by amendment, L. 2007, p. 138, § 2, effective July 1, 2007.)

(7) (Deleted by amendment, L. 2004, p. 914, § 13, effective July 1, 2004.)

Source: **L. 98:** Entire part R&RE, p. 1137, § 19, effective July 1. **L. 2004:** (1)(c), (2) to (4), (6), and (7) amended, p. 914, § 13, effective July 1. **L. 2007:** (2)(d), (4), (5), and (6) amended and (2.5) added, p. 138, § 2, effective July 1. **L. 2011:** IP(1), (1)(c), IP(2), (2)(c), (2)(d), and (2.5) amended, (SB 11-187), ch. 285, p. 1285, § 13, effective July 1.

ANNOTATION

Law reviews. For article, "Court-ordered Counseling by Social Workers in Colorado", see 15 Colo. Law. 47 (1985).

12-43-405. Rights and privileges of licensure and a social work degree. (1) Any person who possesses a valid, unsuspended, and unrevoked license as a social worker that was issued pursuant to section 12-43-404 has the right to practice social work under supervision and use the title "licensed social worker", "social worker", and the abbreviation "LSW". No other person shall assume these titles or use these abbreviations on any work or letter, sign, figure, or device to indicate that the person using the same is a licensed social worker or a social worker.

(2) Any person who possesses a valid, unsuspended, and unrevoked license as a clinical social worker that was granted pursuant to section 12-43-404 is entitled to engage in the private, independent practice of clinical social work and has the right to practice and supervise clinical social work practice and use the title "licensed clinical social worker", "clinical social worker", "social worker", or "licensed social worker", and the abbreviation "LCSW". No other person shall assume these titles or use these abbreviations on any work or letter, sign, figure, or device to indicate that the person using the same is a licensed clinical social worker or social worker.

(3) (a) (Deleted by amendment, L. 2005, p. 128, § 8, effective August 8, 2005.)

(b) Any person engaged in providing medically related social services in skilled nursing or nursing care facilities shall not be subject to the requirements of this article so long as that person meets the qualifications of, and provides services in accordance with, the federal regulations governing the medicare and medicaid program participation of these facilities and the Colorado department of public health and environment's regulations for the licensing of these facilities.

(4) Any person duly licensed as a licensed clinical social worker or any person under the supervision of a licensed clinical social worker shall not be required to obtain any other license or certification to practice social work, as defined in section 12-43-403, unless otherwise required by the board of social work examiners.

(5) Any person possessing an earned master's or bachelor's degree in social work from a social work education program accredited by the council on social work education, or a doctoral degree in social work from a doctoral program within a social work education program accredited by the council on social work education has the right to practice social work and to use the title "social worker". Only a person licensed as a clinical social worker or practicing under the supervision of a licensed clinical social worker may assert that he or she is practicing clinical social work or use the title of "clinical social worker".

Source: L. 98: Entire part R&RE, p. 1139, § 19, effective July 1. L. 2004: (5) added, p. 915, § 14, effective July 1. L. 2005: (1), (3)(a), and (4) amended, p. 128, § 8, effective August 8. L. 2011: (1) and (2) amended, (SB 11-187), ch. 285, p. 1315, § 46, effective July 1.

ANNOTATION

Law reviews. For article, "Court-ordered Counseling by Social Workers in Colorado", see 15 Colo. Law. 47 (1985).

12-43-406. Scope of part. (1) The practice of social work includes, but is not limited to, the following professional services: Assessment; differential diagnosis; treatment planning and evaluation; measurement of psychosocial functioning; crisis intervention; outreach; short- and long-term treatment; psychotherapy; therapeutic intervention; client education; case management; mediation; advocacy; discharge, referral, and continuity of care planning; consultation; supervision; research; administration; education; social-group work; community organization; and social policy analysis and development. Social work practice also may encompass other current or developing modalities and techniques that are consistent with this scope.

(2) No person may state that he or she is engaged in the practice of social work as a social worker, or refer to himself or herself as a social worker, unless the person is licensed pursuant to this part 4 or possesses an earned social work degree, as defined in section 12-43-401 (11). No person may practice as a clinical social worker unless licensed pursuant to section 12-43-404 (2) or licensed to practice social work and supervised pursuant to section 12-43-404 (1) or (2).

(3) No person may supervise the practice of social work for the purpose of licensure compliance or disciplinary proceedings unless licensed pursuant to section 12-43-404; except that, in cases where no LCSW is available for supervision for licensure, the licensee may apply to the board for approval to be supervised by a person with equivalent experience as determined by the board.

(4) Nothing in this part 4 shall be construed to prevent members of other professions licensed under the laws of this state from rendering services within the scope of practice so long as they do not represent themselves to be social workers or their services as social work.

(5) Nothing in this part 4 prevents the practice of psychotherapy by persons registered with the state board of registered psychotherapists pursuant to section 12-43-702.5.

Source: L. 98: Entire part R&RE, p. 1140, § 19, effective July 1. L. 2004: (2) and (3) amended, p. 915, § 15, effective July 1. L. 2011: (2) and (5) amended, (SB 11-187), ch. 285, p. 1315, § 47, effective July 1.

12-43-407. Exemptions. Nothing in this part 4 shall be construed to prevent the teaching of social work, or the conduct of social work research, if such teaching or research does not involve the delivery or supervision of direct social work services to individuals who are themselves, rather than a third party, the intended beneficiaries of such services without regard to the source or extent of payment for services rendered. Nothing in this part 4 shall prevent the provision of expert testimony by social workers who are exempted by

this part 4. Persons holding an earned doctoral degree in social work from an approved school may use the title “social worker” in conjunction with activities permitted in this section.

Source: L. 98: Entire part R&RE, p. 1141, § 19, effective July 1.

12-43-408. School social workers. (Repealed)

Source: L. 98: Entire part R&RE, p. 1141, § 19, effective July 1. L. 2005: (2) repealed, p. 129, § 9, effective August 8. L. 2011: (1) repealed, (SB 11-187), ch. 285, p. 1315, § 48, effective July 1.

12-43-409. Clinical social work practice of psychotherapy. For the purpose of licensure, the practice, under this part 4, of psychotherapy and other clinical activities within the definition of social work practice in section 12-43-403 is limited to licensed clinical social workers or licensed social workers supervised by licensed clinical social workers.

Source: L. 98: Entire part R&RE, p. 1141, § 19, effective July 1. L. 2011: Entire section amended, (SB 11-187), ch. 285, p. 1315, § 49, effective July 1.

12-43-410. Employees of social services. (1) Notwithstanding the exemption in section 12-43-215 (3), an employee of the department of human services, employee of a county department of social services, or personnel under the direct control or supervision of such departments, shall not state that he or she is engaged in the practice of social work as a social worker or refer to himself or herself as a social worker unless the person is licensed pursuant to this part 4 or possesses an earned social work degree, as defined in section 12-43-401 (11).

(2) Notwithstanding the exemption in section 12-43-215 (3), any employee licensed pursuant to this article who is terminated from employment by the department of human services or a county department of social services is subject to review and disciplinary action by the board that licenses or regulates the employee.

(3) An employee of the state department of human services or a county department of social services who has earned a bachelor's or master's degree in social work may apply to the board, for purposes related to licensure under this part 4, for approval for supervision by a person other than a licensed clinical social worker. The board shall consider input from representatives of the state department of human services and the county departments of social services when promulgating the rule concerning what qualifications or experience a person is required to possess in order to supervise an employee pursuant to this subsection (3).

Source: L. 98: Entire part R&RE, p. 1142, § 19, effective July 1. L. 2004: (1) amended, p. 916, § 16, effective July 1. L. 2005: (3) amended, p. 129, § 10, effective August 8. L. 2011: Entire section amended, (SB 11-187), ch. 285, p. 1316, § 50, effective July 1.

12-43-411. Continuing professional competency - board rules - repeal. (1) (a) In accordance with section 12-43-404, the board issues a license to practice as a clinical social worker or a social worker based on whether the applicant satisfies minimum educational and experience requirements that demonstrate professional competency to practice as a licensed clinical social worker or a licensed social worker, respectively. After a license is issued to an applicant, the licensed clinical social worker or licensed social worker shall maintain continuing professional competency to practice as a licensed clinical social worker or licensed social worker, respectively.

(b) The board shall adopt rules establishing a continuing professional competency program that includes, at a minimum, the following elements:

(I) A self-assessment of the knowledge and skills of a licensed clinical social worker or licensed social worker seeking to renew or reinstate a license;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of activities necessary to ensure at least minimal ability to safely practice the profession. Nothing in this subparagraph (III) shall require a licensed clinical social worker or a licensed social worker to retake any examination required pursuant to section 12-43-404 in connection with initial licensure.

(c) The board shall establish that a licensed clinical social worker or licensed social worker is deemed to satisfy the continuing competency requirements of this section if the licensed clinical social worker or licensed social worker meets the continued professional competence requirements of one of the following entities:

(I) A state department, including continued professional competence requirements imposed through a contractual arrangement with a provider;

(II) An accrediting body recognized by the board; or

(III) An entity approved by the board.

(d) (I) After the program is established, licensed clinical social workers and licensed social workers shall satisfy the requirements of the program in order to renew or reinstate a license to practice as a licensed clinical social worker or as a licensed social worker in Colorado.

(II) The requirements of this section apply to individual licensed clinical social workers or licensed social workers who are licensed pursuant to this part 4, and nothing in this section shall be construed to require a person who employs or contracts with a licensed clinical social worker or licensed social worker to comply with the requirements of this section.

(2) (a) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a licensed clinical social worker or a licensed social worker. The records or documents shall be used only by the board for purposes of determining whether a licensed clinical social worker or licensed social worker is maintaining continuing professional competency to engage in the profession.

(b) Subject to the requirements of paragraph (a) of this subsection (2), nothing in this section shall be construed to restrict the discovery of information or documents that are otherwise discoverable under the Colorado rules of civil procedure in connection with a civil action against a licensed clinical social worker or licensed social worker.

(3) As used in this section, "continuing professional competency" means the ongoing ability of a licensee to learn, integrate, and apply the knowledge, skill, and judgment to practice as a licensed clinical social worker or as a licensed social worker, as applicable, according to generally accepted industry standards and professional ethical standards in a designated role and setting.

(4) This section is repealed, effective July 1, 2014.

Source: L. 2009: Entire section added, (HB 09-1086), ch. 304, p. 1641, § 2, effective August 5.

PART 5

MARRIAGE AND FAMILY THERAPISTS

Editor's note: This article was repealed and reenacted in 1988, and this part 5 was subsequently repealed and reenacted in 1998, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 5 prior to 1998, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the article heading. Former C.R.S. section numbers prior to 1998 are shown in editor's notes following those sections that were relocated.

12-43-501. Definitions. As used in this part 5, unless the context otherwise requires:

(1) “Approved school” means any university or other institution of higher education offering a full-time graduate course of study in marriage and family therapy accredited by the commission on accreditation for marriage and family therapy education, a nationally recognized accrediting agency as determined by the board, or a substantially equivalent program approved by the board.

(2) “Board” means the state board of marriage and family therapist examiners created in section 12-43-502.

(3) Repealed.

(4) “Licensed marriage and family therapist” means a person licensed under the provisions of this part 5.

(5) Repealed.

Source: L. 98: Entire part R&RE, p. 1142, § 19, effective July 1. L. 2011: (3) and (5) repealed, (SB 11-187), ch. 285, p. 1311, § 39, effective July 1.

Editor’s note: This section is similar to former § 12-43-501 as it existed prior to 1998.

12-43-502. State board of marriage and family therapist examiners. (1) There is hereby created under the supervision and control of the division of professions and occupations of the department of regulatory agencies, created in section 24-1-122 (2) (g), C.R.S., the state board of marriage and family therapist examiners, which shall consist of seven members who are citizens of the United States and residents of the state of Colorado.

(2) (a) The members of the board shall be appointed by the governor as follows:

(I) Three members of the general public who are not regulated by this article; and

(II) Four marriage and family therapists.

(b) The public members shall have never been a marriage and family therapist, an applicant or former applicant for licensure as a marriage and family therapist, a member of another mental health profession, or a member of a household that includes a marriage and family therapist or a member of another mental health profession or otherwise have conflicts of interest or the appearance of such conflicts with his or her duties as a board member.

(c) (Deleted by amendment, L. 2004, p. 916, § 17, effective July 1, 2004.)

(3) (Deleted by amendment, L. 2007, p. 133, § 3, effective August 3, 2007.)

(4) (a) Each board member shall hold office until the expiration of his or her appointed term or until a successor is duly appointed. Except as specified in paragraph (b) of this subsection (4), members shall serve terms of four years, and no member shall serve more than two full consecutive terms. When the term of each board member expires, the governor shall appoint his or her successor for a term of four years. Any vacancy occurring in the board membership other than by the expiration of a term shall be filled by the governor by appointment for the remainder of the unexpired term of such member.

(b) The terms of office of the members on the board are modified as follows in order to ensure staggered terms of office:

(I) The second term of office of one of the board members representing the general public whose second term would otherwise expire on August 12, 2010, shall expire on July 31, 2008. On and after the expiration of this board member’s term, persons appointed to this position on the board shall serve terms as described in paragraph (a) of this subsection (4) commencing on August 1 of the applicable year.

(II) The initial term of office of one of the marriage and family therapist board members whose initial term would otherwise expire on August 12, 2010, shall expire on July 31, 2008, and the board member shall be eligible to serve one additional four-year term commencing on August 1, 2008, and expiring on July 31, 2012. On and after the expiration of this board member’s term, persons appointed to this position on the board shall serve terms as described in paragraph (a) of this subsection (4) commencing on August 1 of the applicable year.

(III) The term of office of the one board member representing the general public who, as of August 12, 2009, would have served one full four-year term and one partial four-year

term expires on July 31, 2009. This board member is eligible to serve one additional four-year term commencing on August 1, 2009, and expiring on July 31, 2013. On and after the expiration of this board member's term or a vacancy in this position, the governor shall appoint a marriage and family therapist to this position on the board, who is eligible to serve terms as described in paragraph (a) of this subsection (4) commencing on August 1 of the applicable year.

(IV) The initial term of office of one of the marriage and family therapist board members whose initial term would otherwise expire on August 12, 2010, shall expire on July 31, 2009, and the board member shall be eligible to serve one additional four-year term commencing August 1, 2009, and expiring on July 31, 2013. On and after the expiration of this board member's term, persons appointed to this position on the board shall serve terms as described in paragraph (a) of this subsection (4) commencing on August 1 of the applicable year.

(V) The initial term of office of one of the marriage and family therapist board members whose initial term of office would otherwise expire on August 12, 2010, shall expire on July 31, 2010, and the board member shall be eligible to serve one additional four-year term commencing on August 1, 2010, and expiring on July 31, 2014. On and after the expiration of this board member's term, persons appointed to this position on the board shall serve terms as described in paragraph (a) of this subsection (4) commencing on August 1 of the applicable year.

(VI) The second term of office of one of the board members representing the general public whose second term would otherwise expire on August 12, 2010, shall expire on July 31, 2010, and the governor shall appoint one new representative of the general public to serve terms as described in paragraph (a) of this subsection (4) commencing on August 1, 2010.

(VII) The term of office of the one board member representing the general public who, as of August 12, 2010, would have served one full four-year term and one partial four-year term shall expire on July 31, 2010. This board member shall be eligible to serve one additional four-year term commencing on August 1, 2010, and expiring on July 31, 2014. On and after the expiration of this board member's term, persons appointed to this position on the board shall serve terms as described in paragraph (a) of this subsection (4) commencing on August 1 of the applicable year.

(5) The governor may remove any board member for misconduct, incompetence, or neglect of duty after giving the board member a written statement of the charges and an opportunity to be heard thereon. Actions constituting neglect of duty shall include, but not be limited to, the failure of board members to attend three consecutive meetings or at least three quarters of the total meetings in any calendar year.

(6) Each board member shall receive a certificate of appointment from the governor.

Source: L. 98: Entire part R&RE, p. 1143, § 19, effective July 1. L. 2004: (2)(c), (4), and (6) amended, p. 916, § 17, effective July 1. L. 2007: (3) and (4) amended, p. 133, § 3, effective August 3. L. 2011: (2)(a), IP(4)(b), and (4)(b)(III) amended, (SB 11-187), ch. 285, p. 1316, § 51, effective July 1.

Editor's note: This section is similar to former § 12-43-502 as it existed prior to 1998.

12-43-503. Marriage and family therapy practice defined. (1) For the purposes of this part 5, "marriage and family therapy practice" means the rendering of professional marriage and family therapy services to individuals, couples, and families, singly or in groups, whether such services are offered directly to the general public or through organizations, either public or private, for a monetary fee. Marriage and family therapy utilizes established principles that recognize the interrelated nature of individual problems and dysfunctions to assess, understand, diagnose, and treat emotional and mental problems, alcohol and substance abuse, and domestic violence, and modify intrapersonal and interpersonal dysfunctions.

- (2) Professional marriage and family therapy practice may include, but is not limited to:
- (a) Assessment and testing;

- (b) Diagnosis;
 - (c) Treatment planning and evaluation;
 - (d) Therapeutic individual, marital, family, group, or organizational interventions;
 - (e) Psychotherapy;
 - (f) Client education;
 - (g) Consultation; and
 - (h) Supervision.
- (3) Professional marriage and family therapy practice includes practicing within the values and ethics of the marriage and family therapy profession.
- (4) This definition is to be interpreted in a manner that does not impinge upon or otherwise limit the scope of practice of other psychotherapists licensed under this article.

Source: L. 98: Entire part R&RE, p. 1144, § 19, effective July 1.

Editor's note: This section is similar to former § 12-43-501 (4) as it existed prior to 1998.

12-43-504. Qualifications - examination - licensure and registration. (1) The board shall issue a license as a marriage and family therapist to each applicant who files an application in a form and manner required by the board, submits the fee required by the board pursuant to section 12-43-204, and furnishes evidence satisfactory to the board that he or she:

- (a) Is at least twenty-one years of age;
- (b) Is not in violation of any provision of this article or any rule adopted under this article;
- (c) Holds a master's or doctoral degree from an accredited school or college in marriage and family therapy or its equivalent as determined by the board, such degree to include a practicum or internship in the principles and practice of marriage and family therapy;
- (d) Subsequent to receiving his or her master's or doctoral degree, has had at least two years of post-master's or one year postdoctoral practice in individual and marriage and family therapy, including at least one thousand five hundred hours of face-to-face direct client contact as determined by the board for the purpose of assessment and intervention under board-approved supervision; and
- (e) Demonstrates professional competence by passing an examination in marriage and family therapy prescribed by the board and a jurisprudence examination administered by the division.

(2) (Deleted by amendment, L. 2007, p. 139, § 3, effective July 1, 2007.)

(3) The examination by the board described in paragraph (e) of subsection (1) of this section shall be given not less than twice per year at such time and place and under such supervision as the board may determine.

(4) The board or its designated representatives shall administer and determine the pass or fail status of the examination and take any actions necessary to ensure impartiality. The board shall determine the passing score for the examination based upon a level of minimum competency to engage in marriage and family therapy practice.

(5) (a) The board shall register as a marriage and family therapist candidate a person who:

(I) Files an application for registration, accompanied by the fee as required by section 12-43-204;

(II) Submits evidence satisfactory to the board that he or she meets the requirements of paragraphs (a), (b), and (c) of subsection (1) of this section; and

(III) Has not been previously registered as a marriage and family therapist candidate by the board.

(b) A marriage and family therapist candidate who registers with the board pursuant to this subsection (5) is under the jurisdiction of the board and is not required to register with the database of registered psychotherapists pursuant to section 12-43-702.5.

(c) If a candidate does not meet the requirements of paragraphs (d) and (e) of subsection (1) of this section within four years after initial registration, the candidate's

registration expires and is not renewable, unless the board, in its discretion, grants the candidate an extension. A person whose marriage and family therapist candidate registration expires is not precluded from applying to this board or to any other board for licensure or registration in a mental health profession for which the person is qualified.

Source: **L. 98:** Entire part R&RE, p. 1144, § 19, effective July 1. **L. 2004:** (1)(e) amended, p. 916, § 18, effective July 1. **L. 2006:** IP(1) and (1)(d) amended, p. 527, § 1, effective January 1, 2007. **L. 2007:** (2), (3), and (4) amended, p. 139, § 3, effective July 1. **L. 2011:** IP(1), (1)(b), (1)(e), and (4) amended and (5) added, (SB 11-187), ch. 285, p. 1280, § 8, effective July 1.

Editor's note: This section is similar to former § 12-43-503 as it existed prior to 1998.

12-43-505. Rights and privileges of licensure and registration. (1) Any person who possesses a valid, unsuspended, and unrevoked license as a licensed marriage and family therapist pursuant to section 12-43-504 has the right to engage in the private, independent practice of marriage and family therapy and has the right to practice and supervise marriage and family therapy practice and use the title "licensed marriage and family therapist" and the abbreviation "LMFT". No other person shall assume these titles or use these abbreviations on any work or letter, sign, figure, or device to indicate that the person using the same is a licensed marriage and family therapist.

(2) No person may engage in the practice of marriage and family therapy unless such person is licensed pursuant to this part 5.

(3) Any person duly licensed as a licensed marriage and family therapist shall not be required to obtain any other license or certification to practice marriage and family therapy as defined in section 12-43-503 unless otherwise required by the board of marriage and family therapist examiners.

(4) Nothing in this part 5 shall be construed to prevent members of other professions licensed under the laws of this state from rendering services within the scope of practice as set out in the statutes regulating their professional practices, provided that they do not represent themselves to be marriage and family therapists, or their services as marriage and family therapy.

(5) Nothing in this part 5 prevents the practice of psychotherapy by persons registered with the state board of registered psychotherapists pursuant to section 12-43-702.5.

Source: **L. 98:** Entire part R&RE, p. 1145, § 19, effective July 1. **L. 2011:** (5) amended, (SB 11-187), ch. 285, p. 1317, § 52, effective July 1.

Editor's note: This section is similar to former § 12-43-504 as it existed prior to 1998.

12-43-506. Continuing professional competency - board rules - repeal. (1) (a) In accordance with section 12-43-504, the board issues a license to practice marriage and family therapy based on whether the applicant satisfies minimum educational and experience requirements that demonstrate professional competency to practice marriage and family therapy. After a license is issued to an applicant, the licensed marriage and family therapist shall maintain continuing professional competency to practice marriage and family therapy.

(b) The board shall adopt rules establishing a continuing professional competency program that includes, at a minimum, the following elements:

(I) A self-assessment of the knowledge and skills of a licensed marriage and family therapist seeking to renew or reinstate a license;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of activities necessary to ensure at least minimal ability to safely practice the profession. Nothing

in this subparagraph (III) shall require a licensed marriage and family therapist to retake any examination required pursuant to section 12-43-504 in connection with initial licensure.

(c) The board shall establish that a licensed marriage and family therapist is deemed to satisfy the continuing competency requirements of this section if the licensed marriage and family therapist meets the continued professional competence requirements of one of the following entities:

(I) A state department, including continued professional competence requirements imposed through a contractual arrangement with a provider;

(II) An accrediting body recognized by the board; or

(III) An entity approved by the board.

(d) (I) After the program is established, a licensed marriage and family therapist shall satisfy the requirements of the program in order to renew or reinstate a license to practice marriage and family therapy in Colorado.

(II) The requirements of this section apply to individual marriage and family therapists who are licensed pursuant to this part 5, and nothing in this section shall be construed to require a person who employs or contracts with a licensed marriage and family therapist to comply with the requirements of this section.

(2) (a) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a licensed marriage and family therapist. The records or documents shall be used only by the board for purposes of determining whether a licensed marriage and family therapist is maintaining continuing professional competency to engage in the profession.

(b) Subject to the requirements of paragraph (a) of this subsection (2), nothing in this section shall be construed to restrict the discovery of information or documents that are otherwise discoverable under the Colorado rules of civil procedure in connection with a civil action against a licensed marriage and family therapist.

(3) As used in this section, “continuing professional competency” means the ongoing ability of a licensee to learn, integrate, and apply the knowledge, skill, and judgment to practice as a marriage and family therapist according to generally accepted industry standards and professional ethical standards in a designated role and setting.

(4) This section is repealed, effective July 1, 2014.

Source: L. 2009: Entire section added, (HB 09-1086), ch. 304, p. 1643, § 3, effective August 5.

PART 6

LICENSED PROFESSIONAL COUNSELORS

Editor’s note: This article was repealed and reenacted in 1988, and this part 6 was subsequently repealed and reenacted in 1998, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 6 prior to 1998, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor’s note following the article heading. Former C.R.S. section numbers prior to 1998 are shown in editor’s notes following those sections that were relocated.

12-43-601. Definitions. As used in this part 6, unless the context otherwise requires:

(1) “Board” means the state board of licensed professional counselor examiners, created in section 12-43-602.

(2) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1317, § 53, effective July 1, 2011.)

(3) Repealed.

(4) “Licensed professional counselor” means a professional counselor who practices professional counseling and who is licensed pursuant to this part 6.

(5) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1317, § 53, effective July 1, 2011.)

(6) "School or college" means any university or other institution of higher education offering a full-time graduate course of study in professional counseling approved by appropriate national organizations accrediting professional counselor education programs or a substantially equivalent program approved by the board.

Source: L. 98: Entire part R&RE, p. 1146, § 19, effective July 1. L. 2011: (2), (4), and (5) amended and (3) repealed, (SB 11-187), ch. 285, pp. 1317, 1311, §§ 53, 39, effective July 1.

Editor's note: This section is similar to former § 12-43-601 as it existed prior to 1998.

12-43-602. State board of licensed professional counselor examiners. (1) There is hereby created the state board of licensed professional counselor examiners under the supervision and control of the division of professions and occupations of the department of regulatory agencies, created in section 24-1-122 (2) (g), C.R.S. The board shall consist of seven members who are citizens of the United States and residents of the state of Colorado.

(2) (a) The members of the board shall be appointed by the governor as follows:

(I) Three members of the general public who are not regulated under this article; and

(II) Four licensed professional counselors.

(b) The public members shall have never been a licensed professional counselor, an applicant or former applicant for licensure as a licensed professional counselor, a member of another mental health profession, or a member of a household that includes a licensed professional counselor or a member of another mental health profession or otherwise have conflicts of interest or the appearance of such conflicts with his or her duties as a board member.

(c) (Deleted by amendment, L. 2004, p. 917, § 19, effective July 1, 2004.)

(3) (Deleted by amendment, L. 2007, p. 135, § 4, effective August 3, 2007.)

(4) (a) Each member shall hold office until the expiration of his or her appointed term or until a successor is duly appointed. Except as specified in paragraph (b) of this subsection (4), members shall serve terms of four years, and no member shall serve more than two full consecutive terms. When the term of each board member expires, the governor shall appoint his or her successor for a term of four years. Any vacancy occurring in the board membership other than by the expiration of a term shall be filled by the governor by appointment for the unexpired term of such member.

(b) The terms of office of the members on the board are modified as follows in order to ensure staggered terms of office:

(I) The terms of office of the one licensed professional counselor board member and one of the board members representing the general public who, as of September 12, 2010, would have served one full four-year term and one partial four-year term shall expire on August 31, 2008. Each of these board members shall be eligible to serve one additional four-year term, commencing on September 1, 2008, and expiring on August 31, 2012. On and after the expiration of these board members' terms, persons appointed to these positions on the board shall serve terms as described in paragraph (a) of this subsection (4) commencing on September 1 of the applicable year.

(II) The term of office of the one board member representing the public whose initial term would otherwise expire on September 12, 2009, expires on August 31, 2009, and the board member is eligible to serve one additional four-year term, commencing on September 1, 2009, and expiring on August 31, 2013. On and after the expiration of this board member's term or a vacancy in this position, the governor shall appoint a licensed professional counselor to this position on the board, who is eligible to serve terms as described in paragraph (a) of this subsection (4) commencing on September 1 of the applicable year.

(III) The initial term of office of one of the two licensed professional counselor board members whose initial term of office would otherwise expire on September 12, 2010, shall expire on August 31, 2009. This board member shall be eligible to serve one additional

four-year term commencing on September 1, 2009, and expiring on August 31, 2013. On and after the expiration of this board member's term, persons appointed to this position on the board shall serve terms as described in paragraph (a) of this subsection (4) commencing on September 1 of the applicable year.

(IV) The initial terms of office of the two remaining board members representing the general public and the one remaining licensed professional counselor whose initial terms would otherwise expire on September 12, 2010, shall expire on August 31, 2010. Each of these board members shall be eligible to serve one additional four-year term commencing on September 1, 2010, and expiring on August 31, 2014. On and after the expiration of these board members' terms, persons appointed to these positions on the board shall serve terms as described in paragraph (a) of this subsection (4) commencing on September 1 of the applicable year.

(5) The governor may remove any board member for misconduct, incompetence, or neglect of duty after giving the board member a written statement of the charges and an opportunity to be heard thereon. Actions constituting neglect of duty shall include, but not be limited to, the failure of board members to attend three consecutive meetings or at least three quarters of the total meetings in any calendar year.

(6) Each board member shall receive a certificate of appointment from the governor.

Source: L. 98: Entire part R&RE, p. 1147, § 19, effective July 1. L. 2004: (2)(c), (4), and (6) amended, p. 917, § 19, effective July 1. L. 2007: (3) and (4) amended, p. 135, § 4, effective August 3. L. 2011: (2)(a), IP(4)(b), and (4)(b)(II) amended, (SB 11-187), ch. 285, p. 1318, § 54, effective July 1.

Editor's note: This section is similar to former § 12-43-602 as it existed prior to 1998.

12-43-602.5. Practice of licensed professional counseling defined. (1) For purposes of this part 6, "practice of licensed professional counseling" means the application of mental health, psychological, or human development principles through cognitive, affective, behavioral, or systematic intervention strategies that address wellness, personal growth, or career development, as well as pathology. A licensed professional counselor may render the application of these principles to individuals, couples, families, or groups.

(2) The practice of professional counseling may include:

- (a) Evaluation;
- (b) Assessment;
- (c) Testing;
- (d) Diagnosis;
- (e) Treatment or intervention;
- (f) Planning;
- (g) Consultation;
- (h) Case management;
- (i) Education;
- (j) Supervision;
- (k) Psychotherapy;
- (l) Research;
- (m) Referral; and
- (n) Crisis intervention.

Source: L. 2011: Entire section added, (SB 11-187), ch. 285, p. 1318, § 55, effective July 1.

12-43-603. Licensure - examination - licensed professional counselors. (1) The board shall issue a license as a licensed professional counselor to each applicant who files an application in a form and manner required by the board, submits the fee required by the board pursuant to section 12-43-204, and furnishes evidence satisfactory to the board that he or she:

(a) Is at least twenty-one years of age;

(b) Is not in violation of any provision of this article or any rule adopted under this article;

(c) Holds a master's or doctoral degree in professional counseling from an accredited school or college or an equivalent program as determined by the board. Such degree or program shall include a practicum or internship in the principles and the practice of professional counseling.

(d) Has at least two years of post-master's practice or one year of postdoctoral practice in licensed professional counseling under supervision approved by the board; and

(e) Demonstrates professional competence by passing an examination in professional counseling demonstrating special knowledge and skill in licensed professional counseling as prescribed by the board and a jurisprudence examination administered by the division.

(2) (Deleted by amendment, L. 2007, p. 140, § 4, effective July 1, 2007.)

(3) The examination by the board described in paragraph (e) of subsection (1) of this section shall be given not less than twice per year at such time and place and under such supervision as the board may determine.

(4) The board or its designated representatives shall administer and determine the pass or fail status of the examination and take any actions necessary to ensure impartiality. The board shall determine the passing score for the examination based upon a level of minimum competency to engage in the practice of licensed professional counseling.

(5) (a) The board shall register as a licensed professional counselor candidate a person who:

(I) Files an application for registration, accompanied by the fee as required by section 12-43-204;

(II) Submits evidence satisfactory to the board that he or she meets the requirements of paragraphs (a), (b), and (c) of subsection (1) of this section; and

(III) Has not been previously registered as a licensed professional counselor candidate by the board.

(b) A licensed professional counselor candidate who registers with the state board of licensed professional counselor examiners pursuant to this subsection (5) is under the jurisdiction of the board and is not required to register with the database of registered psychotherapists pursuant to section 12-43-702.5.

(c) If a candidate does not meet the requirements of paragraphs (d) and (e) of subsection (1) of this section within four years after initial registration, the candidate's registration expires and is not renewable, unless the board, in its discretion, grants the candidate an extension. A person whose licensed professional counselor candidate registration expires is not precluded from applying to this board or to any other board for licensure or registration in a mental health profession for which the person is qualified.

Source: L. 98: Entire part R&RE, p. 1149, § 19, effective July 1. L. 2004: (1)(e) amended, p. 917, § 20, effective July 1. L. 2007: (2), (3), and (4) amended, p. 140, § 4, effective July 1. L. 2011: IP(1), (1)(b), (1)(d), (1)(e), and (4) amended and (5) added, (SB 11-187), ch. 285, p. 1281, § 9, effective July 1.

Editor's note: This section is similar to former § 12-43-603 as it existed prior to 1998.

12-43-604. Rights and privileges of licensure. (1) Any person who possesses a valid, unsuspended, and unrevoked license as a licensed professional counselor has the right to use the title for which he or she is licensed pursuant to section 12-43-603. A licensed professional counselor licensed pursuant to section 12-43-603 has the right to use the abbreviation "LPC". No other person shall assume this title or use this abbreviation on any work or letter, sign, figure, or device to indicate that the person using the same is a licensed professional counselor.

(2) Any person duly licensed as a licensed professional counselor is not required to obtain any other license or certification to practice professional counseling unless otherwise required by the board of licensed professional counselor examiners.

(3) Nothing in this act shall be construed to prevent members of other professions licensed under the laws of this state from rendering services within the scope of practice as set out in the statutes regulating their professional practices, provided that they do not represent themselves to be professional counselors, or their services as professional counseling.

(4) Nothing in this part 6 prevents the practice of psychotherapy by persons registered with the state board of registered psychotherapists pursuant to section 12-43-702.5.

Source: **L. 98:** Entire part R&RE, p. 1150, § 19, effective July 1. **L. 2011:** (1), (2), and (4) amended, (SB 11-187), ch. 285, p. 1319, § 56, effective July 1.

Editor's note: This section is similar to former § 12-43-604 as it existed prior to 1998.

12-43-605. Continuing professional competency - board rules - repeal. (1) (a) In accordance with section 12-43-603, the board issues a license to practice professional counseling based on whether the applicant satisfies minimum educational and experience requirements that demonstrate professional competency to practice professional counseling. After a license is issued to an applicant, the licensed professional counselor shall maintain continuing professional competency to practice professional counseling.

(b) The board shall adopt rules establishing a continuing professional competency program that includes, at a minimum, the following elements:

(I) A self-assessment of the knowledge and skills of a licensed professional counselor seeking to renew or reinstate a license;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of activities necessary to ensure at least minimal ability to safely practice the profession. Nothing in this subparagraph (III) shall require a licensed professional counselor to retake any examination required pursuant to section 12-43-603 in connection with initial licensure.

(c) The board shall establish that a licensed professional counselor is deemed to satisfy the continuing competency requirements of this section if the licensed professional counselor meets the continued professional competence requirements of one of the following entities:

(I) A state department, including continued professional competence requirements imposed through a contractual arrangement with a provider;

(II) An accrediting body recognized by the board; or

(III) An entity approved by the board.

(d) (I) After the program is established, a licensed professional counselor shall satisfy the requirements of the program in order to renew or reinstate a license to practice professional counseling in Colorado.

(II) The requirements of this section apply to individual professional counselors who are licensed pursuant to this part 6, and nothing in this section shall be construed to require a person who employs or contracts with a licensed professional counselor to comply with the requirements of this section.

(2) (a) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a licensed professional counselor. The records or documents shall be used only by the board for purposes of determining whether a licensed professional counselor is maintaining continuing professional competency to engage in the profession.

(b) Subject to the requirements of paragraph (a) of this subsection (2), nothing in this section shall be construed to restrict the discovery of information or documents that are otherwise discoverable under the Colorado rules of civil procedure in connection with a civil action against a licensed professional counselor.

(3) As used in this section, "continuing professional competency" means the ongoing ability of a licensee to learn, integrate, and apply the knowledge, skill, and judgment to

practice as a professional counselor according to generally accepted industry standards and professional ethical standards in a designated role and setting.

(4) This section is repealed, effective July 1, 2014.

Source: **L. 2009:** Entire section added, (HB 09-1086), ch. 304, p. 1645, § 4, effective August 5.

PART 7

STATE BOARD OF REGISTERED PSYCHOTHERAPISTS

12-43-701. Definitions. As used in this part 7, unless the context otherwise requires:

(1) "Board" means the state board of registered psychotherapists created by section 12-43-702.

(2) Repealed.

(3) and (4) (Deleted by amendment, L. 2011, (SB 11-187), ch. 285, p. 1282, § 10, effective July 1, 2011.)

Source: **L. 88:** Entire article R&RE, p. 557, § 1, effective July 1. **L. 89:** (10) amended, p. 696, § 2, effective April 15. **L. 92:** (8.5) added and (9) amended, p. 2037, § 7, effective July 1. **L. 98:** Entire section amended, p. 1150, § 20, effective July 1. **L. 2000:** (4) amended, p. 1843, § 21, effective August 2. **L. 2011:** (1), (3), and (4) amended and (2) repealed, (SB 11-187), ch. 285, pp. 1282, 1311, §§ 10, 39, effective July 1.

12-43-702. State board of registered psychotherapists - creation - subject to termination. (1) There is hereby created the state board of registered psychotherapists, which shall be under the supervision and control of the division of professions and occupations as provided in section 24-34-102, C.R.S. The board shall consist of seven members who are residents of the state of Colorado.

(2) Three members of the board shall be appointed by the governor from the general public who are not regulated by this article with a good faith effort to achieve broad-based geographical representation. Such members are eligible to serve terms of four years. A member must not have any direct involvement or interest in the provision of psychotherapy; except that such member may be or may have been a consumer of such services.

(3) Four members of the board must be registered psychotherapists. The governor shall appoint members to the board to serve terms of four years.

(4) (Deleted by amendment, L. 2004, p. 917, § 21, effective July 1, 2004.)

(5) Members of the state board of registered psychotherapists appointed under subsection (2) or (3) of this section may serve two full consecutive terms.

(6) (a) Each member is eligible to hold office until the expiration of his or her appointed term or until a successor is duly appointed. When the term of each board member expires, the governor shall appoint his or her successor for a term of four years. Any vacancy occurring in the board membership other than by the expiration of a term shall be filled by the governor by appointment for the unexpired term of such member.

(b) For purposes of appointments to the board made on or after July 1, 2011, upon the occurrence of a vacancy in a position held by a member representing the public or upon the expiration of the second term of office of a member representing the public, whichever occurs first, the governor shall appoint a regulated psychotherapist to that position on the board, who is eligible to serve terms as described in subsections (3) and (5) of this section.

(c) The governor may remove any board member for misconduct, incompetence, or neglect of duty. Actions constituting neglect of duty shall include, but not be limited to, the failure of board members to attend three consecutive meetings or at least three-quarters of the board's meetings in any one calendar year.

(7) A majority of the board shall constitute a quorum for the transaction of all business.

Source: **L. 88:** Entire article R&RE, p. 558, § 1, effective July 1. **L. 89:** (6)(b) amended, p. 701, § 2, effective March 15. **L. 92:** Entire section amended, p. 2037, § 8, effective July 1. **L. 98:** Entire section amended, p. 1151, § 21, effective July 1. **L. 2004:** (2) to (4) amended, p. 917, § 21, effective July 1. **L. 2011:** (1) to (3) and (5) to (7) amended, (SB 11-187), ch. 285, p. 1319, § 57, effective July 1.

12-43-702.5. Database of registered psychotherapists - unauthorized practice - penalties - data collection. (1) The state board of registered psychotherapists shall maintain a database of all registered psychotherapists. The board shall charge a fee in the same manner as authorized in section 24-34-105, C.R.S., for recording information in the database as required by this section. Information in the database maintained pursuant to this section is open to public inspection at all times.

(2) Any person not otherwise licensed, registered, or certified pursuant to this article who is practicing psychotherapy in this state shall register with the board by submitting his or her name, current address, educational qualifications, disclosure statements, therapeutic orientation or methodology, or both, and years of experience in each specialty area. Upon receipt and review of the required information, the board may approve the psychotherapist for registration in the database required by subsection (1) of this section. A registered psychotherapist shall update this information upon renewal of his or her registration and at other times and under conditions specified by the board by rule. At the time of recording the information required by this section, the registered psychotherapist shall indicate whether he or she has been convicted of, or entered a plea of guilty or nolo contendere to, any felony or misdemeanor.

(3) An unlicensed person whose primary practice is psychotherapy or who holds himself or herself out to the public as able to practice psychotherapy for compensation shall not practice psychotherapy unless the person is registered with the board and included in the database required by this section. Notwithstanding the requirements of this section, a registered psychotherapist shall not use the term “licensed”, “certified”, “clinical”, “state-approved”, or any other term or abbreviation that would falsely give the impression that the psychotherapist or the service that is being provided is recommended by the state, based solely on inclusion in the database.

(4) The state board of registered psychotherapists shall not register a person pursuant to this section unless the person has successfully completed a jurisprudence examination developed and approved by the division.

(5) Any unlicensed person who practices psychotherapy without first complying with the registration requirements of this section commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: **L. 98:** Entire section added with relocations, p. 1154, § 22, effective July 1. **L. 2002:** (3) amended, p. 1481, § 89, effective October 1. **L. 2004:** (3) and (4) amended, p. 918, § 22, effective July 1. **L. 2006:** (3) amended and (5) added, p. 94, § 54, effective August 7. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1283, § 11, effective July 1.

Editor’s note: This section is similar to former § 12-43-220 as it existed prior to 1998.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (3), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-43-703. Powers and duties of the grievance board. (Repealed)

Source: **L. 88:** Entire article R&RE, p. 559, § 1, effective July 1. **L. 98:** Entire section repealed, p. 1155, § 23, effective July 1.

Editor’s note: This section was relocated to § 12-43-221 in 1998.

12-43-704. Prohibited activities - related provisions. (Repealed)

Source: **L. 88:** Entire article R&RE, p. 560, § 1, effective July 1. **L. 89:** (1)(b) amended, p. 703, § 1, effective March 21; (1)(l) amended and (1)(s) to (1)(u) added, p. 675, § 23, effective July 1. **L. 92:** (1)(e), (1)(k), and (1)(l) amended and (1)(l.5) added, p. 2040, § 10, effective July 1. **L. 98:** Entire section repealed, p. 1155, § 23, effective July 1.

Editor's note: This section was relocated to § 12-43-222 in 1998.

12-43-704.5. Authority of grievance board - cease-and-desist orders. (Repealed)

Source: **L. 88:** Entire article R&RE, p. 562, § 1, effective July 1. **L. 92:** (3) amended and (4) added, p. 2040, § 11, effective July 1. **L. 98:** Entire section repealed, p. 1155, § 23, effective July 1.

Editor's note: This section was relocated to § 12-43-223 in 1998.

12-43-705. Disciplinary proceedings - judicial review - mental and physical examinations. (Repealed)

Source: **L. 88:** Entire article R&RE, p. 562, § 1, effective July 1. **L. 92:** (2)(f) amended, p. 2041, § 12, effective July 1. **L. 98:** Entire section repealed, p. 1155, § 23, effective July 1.

Editor's note: This section was relocated to § 12-43-224 in 1998.

12-43-706. Reconsideration and review of action of grievance board. (Repealed)

Source: **L. 88:** Entire article R&RE, p. 565, § 1, effective July 1. **L. 98:** Entire section repealed, p. 1155, § 23, effective July 1.

Editor's note: This section was relocated to § 12-43-225 in 1998.

12-43-707. Unlawful acts. (Repealed)

Source: **L. 88:** Entire article R&RE, p. 565, § 1, effective July 1. **L. 98:** Entire section repealed, p. 1155, § 23, effective July 1.

Editor's note: This section was relocated to § 12-43-226 in 1998.

12-43-708. Injunctive proceedings. (Repealed)

Source: **L. 88:** Entire article R&RE, p. 566, § 1, effective July 1. **L. 98:** Entire section repealed, p. 1155, § 23, effective July 1.

Editor's note: This section was relocated to § 12-43-227 in 1998.

12-43-709. Expenses of the board. All reasonable expenses of the board shall be paid as determined by the director of the division of professions and occupations from the fees collected pursuant to section 12-43-204 as provided by law.

Source: **L. 88:** Entire article R&RE, p. 567, § 1, effective July 1. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1320, § 58, effective July 1.

12-43-710. Jurisdiction. If the licensee, registrant, or certificate holder is regulated by more than one board, the investigation or case being adjudicated shall be referred to the board determined appropriate by the director for final adjudication.

Source: L. 88: Entire article R&RE, p. 567, § 1, effective July 1. L. 98: Entire section amended, p. 1155, § 24, effective July 1. L. 2004: Entire section amended, p. 918, § 23, effective July 1. L. 2011: Entire section amended, (SB 11-187), ch. 285, p. 1320, § 59, effective July 1.

12-43-711. Records. (Repealed)

Source: L. 88: Entire article R&RE, p. 567, § 1, effective July 1. L. 2011: Entire section repealed, (SB 11-187), ch. 285, p. 1321, § 60, effective July 1.

12-43-712. Repeal of article. (Repealed)

Source: L. 91: Entire section added, p. 683, § 32, effective April 20. L. 92: Entire section amended, p. 2041, § 13, effective July 1. L. 98: Entire section repealed, p. 1155, § 23, effective July 1.

Editor's note: This section was relocated to § 12-43-229 in 1998.

PART 8

ADDICTION COUNSELORS

Editor's note: This part 8 was added with relocations in 2008. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

12-43-801. Definitions. As used in this part 8, unless the context otherwise requires:

- (1) "Addiction" means a persistent, compulsive dependence on a behavior or substance, including mood-altering behaviors or activities known as process addictions.
- (2) "Administrative supervision" means oversight of treatment agency operations, organization of people and resources, and implementation of policies and procedures in a way that directs activities towards agency goals and objectives.
- (3) "Approved school, college, or university" means any accredited institution of higher education offering a full-time graduate or undergraduate course of study in behavioral health sciences, such as addiction counseling, human services, psychology, rehabilitation, social work, or other behavioral health sciences, that is recognized by an appropriate national organization or is approved by the board.
- (4) "Behavioral health disorders" means both mental and substance use disorders.
- (5) "Board" means the state board of addiction counselor examiners created in section 12-43-802.
- (6) "Certified" means certified as an addiction counselor certified at level I, II, or III.
- (7) "Certified addiction counselor" means an individual who has a certificate issued by the board authorizing the individual to practice addiction counseling commensurate with his or her certification level and scope of practice.
- (8) "Clinical supervision" means:
 - (a) The evaluation and modification or approval by a supervisor of the clinical practice of the person being supervised; and
 - (b) A source of knowledge, expertise, and more advanced skills made available to the person being supervised.
- (9) "Co-occurring disorders" means the existence of one or more substance use disorders, addictive behavioral disorders, or mental disorders presenting concurrently. At the individual level, co-occurring disorders exist when at least one disorder can be established independent of the other, and the disorders are not simply a cluster of symptoms resulting from a single disorder.

(10) “License” means a license issued by the board pursuant to this part 8 to engage in the practice of a licensed addiction counselor.

(11) “Licensed addiction counselor” means a person licensed by the board to provide professional behavioral health disorder treatment.

Source: **L. 2008:** Entire part added, p. 412, § 1, effective August 5. **L. 2011:** Entire section amended, (SB 11-187), ch. 285, p. 1275, § 4, effective July 1.

Editor’s note: This section is similar to the former introductory portion to § 24-34-102 (14)(d) and § 24-34-102 (14)(d)(II) and (14)(d)(III) as they existed prior to 2008.

12-43-802. State board of addiction counselor examiners. (1) There is hereby created a state board of addiction counselor examiners under the supervision and control of the division of professions and occupations in the department of regulatory agencies. Once the governor appoints the board members and the board adopts necessary rules, the board is responsible for regulating addiction counselors pursuant to this part 8 and this article. The director retains the authority to regulate addiction counselors for three months after the date on which all members of the board have been appointed, and the director’s rules adopted pursuant to this part 8 remain in effect until the director repeals the rules.

(2) The board consists of seven members who are citizens of the United States and residents of the state of Colorado. By November 30, 2011, the governor shall appoint the members of the board as follows:

(a) (I) Four board members must be licensed or certified addiction counselors, and except as provided in subparagraph (II) of this paragraph (a), at least two of these four members must be engaged in the direct practice of addiction counseling. The four board members appointed pursuant to this paragraph (a) must include at least one licensed addiction counselor and at least one certified addiction counselor.

(II) If, after a good-faith attempt, the governor determines that a licensed or certified addiction counselor who is engaged in the direct practice of addiction counseling is not available to serve on the board for a particular term, the governor may appoint a licensed or certified addiction counselor who is not engaged in the direct practice of addiction counseling to serve on the board pursuant to this paragraph (a).

(b) Three board members must be representatives of the general public, one of whom may be an addiction counseling consumer or family member of an addiction counseling consumer. These individuals must have never been addiction counselors, applicants, or former applicants for licensure or certification as an addiction counselor, members of another mental health profession, members of households that include addiction counselors or any other mental health professional, or otherwise have conflicts of interest or the appearance of a conflict with their duties as board members.

(3) (a) Each board member shall hold office until the expiration of the member’s appointed term or until a successor is duly appointed. Except as specified in paragraph (b) of this subsection (3), the term of each member is four years, and a board member shall not serve more than two full consecutive terms. The governor shall fill a vacancy occurring in board membership, other than by expiration of a term, by appointment for the unexpired term of the member.

(b) The initial terms of office of the members appointed to the board as of January 1, 2012, are modified as follows in order to ensure staggered terms of office:

(I) The initial term of office of one of the board members representing the general public, whose initial term would otherwise expire on December 31, 2015, expires on December 31, 2013, and this board member is eligible to serve one additional four-year term commencing on January 1, 2014, and expiring on December 31, 2017. On and after the expiration of the board member’s term, the term of a person appointed to this member’s position on the board is as described in paragraph (a) of this subsection (3) commencing on January 1 of the applicable year.

(II) The initial terms of office of two of the licensed or certified addiction counselor board members, whose initial terms would otherwise expire on December 31, 2015, expire on December 31, 2013. These board members are eligible to serve one additional four-year

term, commencing on January 1, 2014, and expiring on December 31, 2017. On and after the expiration of these board members' terms, the terms of persons appointed to the members' positions on the board are as described in paragraph (a) of this subsection (3) commencing on January 1 of the applicable year.

(4) The governor may remove any board member for misconduct, incompetence, or neglect of duty. Actions constituting neglect of duty include the failure of board members to attend three consecutive meetings or at least three-fourths of the total meetings in any calendar year.

Source: **L. 2008:** Entire part added, p. 412, § 1, effective August 5. **L. 2011:** Entire section R&RE, (SB 11-187), ch. 285, p. 1276, § 5, effective July 1.

Editor's note: This section is similar to former § 24-34-102 (14)(d)(I) as it existed prior to 2008.

12-43-803. Practice of addiction counseling defined - scope of practice. (1) For the purposes of this part 8, "addiction counseling" means the application of general counseling theories and treatment methods adapted specifically for working with addictive and other behavioral health disorders. Addiction counselors work in a broad variety of disciplines but share an understanding of the addictive process. An addiction counselor identifies a variety of helping strategies that can be tailored to meet the needs of the client. Addiction counseling relies on the use of evidence-based practices that have been shown to be effective in treating addictive disorders.

(2) The scope of practice of addiction counseling focuses on the following four trans-disciplinary foundations that underlie the work of all addiction counselors:

(a) **Understanding addiction:** Includes knowledge of models and theories of addiction; recognition of social, political, economic, and cultural contexts within which addiction exists; understanding the behavioral, psychological, physical health, and social effects of using addictive substances or engaging in addictive behaviors; and recognizing and understanding co-occurring disorders.

(b) **Treatment knowledge:** Includes the philosophies, practices, policies, and outcomes of the most generally accepted and scientifically supported models, along with research and outcome data, of treatment, recovery, relapse prevention, and continuing care for addictive disorders. Treatment knowledge includes the ability to work effectively with families, significant others, social networks, and community systems in the treatment process and understanding the value of a multidisciplinary approach to addiction treatment.

(c) **Application to practice:** Includes the ability to properly diagnose behavioral health disorders using appropriate assessment and testing instruments and placement criteria; stabilization to reduce negative effects of problematic behaviors; developing helping strategies and treatment levels of care based on the client's stage of readiness for change; cultural competency; and familiarity with medical and pharmacological resources for treatment.

(d) **Professional readiness:** Includes an understanding of diverse cultures; cultivation of a high level of self-awareness; ability to use critical thinking skills; adherence to ethical standards of conduct; ongoing use of clinical supervision and consultation; crisis management; and knowledge of the importance of prevention and recovery management.

(3) The primary practice dimensions of addiction counseling include the following competencies, as appropriate based on the level of certification or licensure and scope of practice:

- (a) Clinical evaluation, including screening and assessment;
- (b) Clinical intake, discharge, discharge planning, and referral;
- (c) Treatment planning;
- (d) Service coordination, including client advocacy, continuing care planning, and collaboration with other behavioral health professionals;
- (e) Counseling of individuals, groups, families, couples, and significant others;
- (f) Recovery management;
- (g) Case management;
- (h) Client, family, and community education;

- (i) Documentation required for a clinical record;
- (j) Professional and ethical practices;
- (k) Clinical supervision; and
- (l) Intervention.

(4) **Scope of practice - licensed addiction counselors.** Based on education, training, knowledge, and experience, the scope of practice of a licensed addiction counselor includes behavioral health counseling and may include the treatment of substance use disorders, addictive behavioral disorders, and co-occurring disorders, including clinical evaluation and diagnosis, treatment planning, service coordination, case management, clinical documentation, professional and ethical responsibilities, education and psychotherapy with clients, family, and community, clinical supervisory responsibilities, and intervention.

Source: L. 2008: Entire part added, p. 414, § 1, effective August 5. **L. 2010:** (1) and (3) amended, (SB 10-175), ch. 188, p. 779, § 13, effective April 29. **L. 2011:** Entire section R&RE, (SB 11-187), ch. 285, p. 1321, § 61, effective July 1.

Editor's note: This section is similar to former § 24-34-102 (14)(a) as it existed prior to 2008.

12-43-804. Requirements for licensure and certification - rules. (1) The board shall issue a license as an addiction counselor to an applicant who files an application in the form and manner required by the board, submits the fee required by the board pursuant to section 12-43-204, and submits evidence satisfactory to the board that he or she:

- (a) Is at least twenty-one years of age;
- (b) Is not in violation of any provision of this article or any rules promulgated by the board;
- (c) Holds a master's or doctorate degree in the behavioral health sciences from an accredited school, college, or university or an equivalent program as determined by the board;
- (d) Demonstrates professional competence by:
 - (I) Passing a national examination demonstrating special knowledge and skills in behavioral health disorders counseling as determined by the division of behavioral health in the department of human services and approved by the board; and
 - (II) Passing a jurisprudence examination administered by the division;
- (e) Has met the requirements for a certificate of addiction counseling, level III;
- (f) Has completed the number of clock hours of addiction-specific training, as specified by the board by rule, including training in evidence-based treatment approaches, clinical supervision, ethics, and co-occurring disorders; and
- (g) Has completed at least five thousand hours of clinically supervised work experience.

(2) The board shall issue a certification as an addiction counselor to an applicant who files an application in the form and manner required by the board, submits the fee required by the board pursuant to section 12-43-204, and submits evidence satisfactory to the board that he or she:

- (a) Is at least eighteen years of age;
- (b) Is not in violation of any provision of this article or any rules promulgated by the board or by the state board of human services in the department of human services pursuant to section 27-80-108 (1) (e), C.R.S.;
- (c) Has met the requirements for certification at a particular certification level as specified in rules adopted pursuant to subsection (3) of this section by the state board of human services in the department of human services.

(3) The state board of human services in the department of human services shall promulgate rules, with approval of the board, for certification of addiction counselors in accordance with section 27-80-108 (1) (e), C.R.S.

(4) Nothing in this part 8 prevents members of other professions licensed under the laws of this state from rendering services within their scope of practice as set forth in the statutes regulating their professional practices so long as they do not represent themselves to be certified or licensed addiction counselors.

Source: L. 2008: Entire part added, p. 415, § 1, effective August 5. L. 2011: Entire section R&RE, (SB 11-187), ch. 285, p. 1322, § 62, effective July 1.

Editor's note: This section is similar to former § 24-34-102 (14)(b) and (14)(c) as they existed prior to 2008.

12-43-804.5. Rights and privileges of certification and licensure. (1) Any person who possesses a valid, unsuspended, and unrevoked certificate as a level I, II, or III certified addiction counselor has the right to practice addiction counseling under supervision or consultation as required by the rules of the state board of human services in the department of human services; a level III certified addiction counselor has the right to supervise addiction counseling practice; and all levels of certification have the right to use the title "certified addiction counselor" and the abbreviations "CAC I", "CAC II", or "CAC III", as applicable. No other person shall assume these titles or use these abbreviations on any work or media to indicate that the person using the title or abbreviation is a certified addiction counselor.

(2) Any person who possesses a valid, unsuspended, and unrevoked license as an addiction counselor has the right to practice addiction counseling and to use the title "licensed addiction counselor" or the abbreviation "LAC". No other person shall assume these titles or use these abbreviations on any work or media to indicate that the person using the title or abbreviation is a licensed addiction counselor.

Source: L. 2011: Entire section added, (SB 11-187), ch. 285, p. 1324, § 63, effective July 1.

12-43-805. Continuing professional competency - rules - repeal. (1) (a) In accordance with sections 12-43-803 and 12-43-804, the board issues a license or certificate to practice addiction counseling based on whether the applicant satisfies minimum educational and experience requirements that demonstrate professional competency to practice addiction counseling. After a license or a certificate as a level II or level III addiction counselor is issued to an applicant, the licensed or level II or level III certified addiction counselor shall maintain continuing professional competency to practice addiction counseling.

(b) The board, in consultation with the division of behavioral health in the department of human services and other stakeholders, shall adopt rules establishing a continuing professional competency program that includes, at a minimum, the following elements:

(I) A self-assessment of the knowledge and skills of a licensed or level II or level III certified addiction counselor seeking to renew or reinstate a license;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of activities necessary to ensure at least minimal ability to safely practice the profession. Nothing in this subparagraph (III) shall require a licensed or level II or level III certified addiction counselor to retake any examination required pursuant to section 12-43-804 in connection with initial licensure or certification.

(c) A licensed or level II or level III certified addiction counselor satisfies the continuing competency requirements of this section if the licensed or level II or level III certified addiction counselor meets the continued professional competence requirements of one of the following entities:

(I) A state department, including continued professional competence requirements imposed through a contractual arrangement with a provider;

(II) An accrediting body recognized by the board; or

(III) An entity approved by the board.

(d) (I) After the program is established, a licensed or level II or level III certified addiction counselor shall satisfy the requirements of the program in order to renew or reinstate a license or certificate to practice addiction counseling in Colorado.

- (II) The requirements of this section apply to individual addiction counselors who are licensed or level II or level III certified pursuant to this part 8, and nothing in this section shall be construed to require a person who employs or contracts with a licensed or level II or level III certified addiction counselor to comply with the requirements of this section.
- (2) (a) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a licensed or certified addiction counselor. The records or documents shall be used only by the board for purposes of determining whether a licensed or level II or level III certified addiction counselor is maintaining continuing professional competency to engage in the profession.
- (b) Subject to the requirements of paragraph (a) of this subsection (2), nothing in this section shall be construed to restrict the discovery of information or documents that are otherwise discoverable under the Colorado rules of civil procedure in connection with a civil action against a licensed or certified addiction counselor.
- (3) As used in this section, “continuing professional competency” means the ongoing ability of a licensed or level II or level III certified addiction counselor to learn, integrate, and apply the knowledge, skill, and judgment to practice as an addiction counselor according to generally accepted industry standards and professional ethical standards in a designated role and setting.
- (4) This section is repealed, effective July 1, 2014.

Source: L. 2009: Entire section added, (HB 09-1086), ch. 304, p. 1646, § 5, effective August 5. **L. 2011:** (1) amended, (SB 11-187), ch. 285, p. 1324, § 64, effective July 1.

ARTICLE 43.2

Surgical Assistants and Surgical Technologists

12-43.2-101.	Definitions.	12-43.2-105.	Grounds for discipline - disciplinary proceedings - judicial review.
12-43.2-102.	Registration - penalty - renewal - database - fees - rules.	12-43.2-106.	Mental and physical examination.
12-43.2-103.	Scope of article - exclusion.	12-43.2-107.	Repeal of article.
12-43.2-104.	Employers - requirements - references.		

- 12-43.2-101. Definitions.** As used in this article, unless the context otherwise requires:
- (1) “Database” means the database required by section 12-43.2-102.
- (2) “Director” means the director of the division of professions and occupations in the department of regulatory agencies or the director’s designee.
- (3) “Employer” means a health care institution as defined in section 13-64-202, C.R.S., a health care professional as defined in section 13-64-202, C.R.S., or an entity who either employs a registrant or who provides a registrant to a health care institution or health care professional on a contractual basis.
- (4) “Register” means to record the information required by section 12-43.2-102 (3) (b) in the database in a form and manner as determined by the director. To be registered does not mean that the registrant:
- (a) Has any particular qualifications or professional competency; or
 - (b) Must be certified as a surgical assistant or surgical technologist.
- (5) “Registrant” means a person required to be registered pursuant to this article.
- (6) “Surgical assistant” means a person who performs certain duties, including:
- (a) Positioning the patient;
 - (b) Providing visualization of the operative site;
 - (c) Utilizing appropriate techniques to assist with hemostasis;
 - (d) Participating in volume replacement or autotransfusion techniques as appropriate;
 - (e) Utilizing appropriate techniques to assist with closure of body planes;

- (f) Selecting and applying appropriate wound dressings;
- (g) Providing assistance in securing drainage systems to tissue; and
- (h) The duties specified in subsection (7) of this section.
- (7) "Surgical technologist" means a person who performs certain duties, including:
 - (a) Preparation of the operating or procedure room and the sterile field for surgical procedures by sterilizing supplies, instruments, and equipment;
 - (b) Preparation of the operating or procedure room for surgical procedures by ensuring that surgical equipment is functioning properly and safely; and
 - (c) Passing instruments, equipment, or supplies to a surgeon; sponging or suctioning an operative site; preparing and cutting suture material; holding retractors; transferring but not administering fluids or drugs; assisting in counting sponges, needles, supplies, and instruments; and performing other similar duties as directed during a surgical procedure.

Source: L. 2010: Entire article added, (HB 10-1415), ch. 339, p. 1553, § 1, effective August 11.

12-43.2-102. Registration - penalty - renewal - database - fees - rules. (1) On and after April 1, 2011:

(a) No person may perform the duties of a surgical assistant or surgical technologist unless the person is registered by the director.

(b) A person who performs the duties of a surgical assistant or surgical technologist without being registered commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and for a second or subsequent offense, the person commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) (a) Registrations made pursuant to this article are valid for the period of time established by the director. Each registrant shall renew his or her registration according to a schedule set by the director. If a registrant does not renew his or her registration according to the schedule, the registration expires. A person whose registration has expired shall not perform the duties of a surgical assistant or surgical technologist until he or she reinstates the registration.

(b) The director shall establish a process for renewal of registrations and reinstatement of expired registrations. A person renewing or reinstating a registration shall submit an application in the form and manner established by the director.

(3) (a) The director shall maintain a database of all registrants. The director shall charge a fee in the same manner as authorized in section 24-34-105, C.R.S., for registration in the database. The director shall transmit the fees to the state treasurer, who shall deposit them in the division of professions and occupations cash fund created in section 24-34-105, C.R.S. The director shall use the fees for the administration of this article.

(b) Each registrant shall provide for registration in the database the registrant's name; current address; educational and training qualifications; all current employers; employers within the previous five years; the jurisdictions other than Colorado in which the registrant is or has been licensed, certified, or registered, if applicable; whether the registrant is currently certified by a nationally accredited certifying organization and, if so, which one; and any civil, criminal, or administrative action relating to performing the duties of a surgical assistant or surgical technologist of which the registrant was the subject in this or any other jurisdiction. Registrants shall update such information in the database within thirty days after any change and give the director written notice of any civil, criminal, or administrative actions. When recording the information required by this section, each registrant shall indicate whether he or she has been convicted of or entered a plea of guilty or nolo contendere to any misdemeanor relating to drugs or alcohol or to any felony.

(c) Information in the database shall be open to the public.

(4) The director shall promulgate rules necessary and convenient for the administration of this article.

Source: L. 2010: Entire article added, (HB 10-1415), ch. 339, p. 1554, § 1, effective August 11.

12-43.2-103. Scope of article - exclusion. (1) This article does not prevent or restrict the practice, services, or activities of:

(a) A person licensed, otherwise regulated, or specifically exempted in this state by any other law from engaging in his or her profession or occupation as defined in the article under which he or she is licensed or otherwise regulated or require a person who is licensed, otherwise regulated, or specifically exempted pursuant to articles 29 to 43.9 of this title to register pursuant to this article; or

(b) A person pursuing a course of study in an accredited educational surgical assistant or surgical technologist program if that person is designated by a title that clearly indicates his or her status as a student and if he or she acts under appropriate instruction and supervision.

Source: L. 2010: Entire article added, (HB 10-1415), ch. 339, p. 1555, § 1, effective August 11.

12-43.2-104. Employers - requirements - references. (1) On and after April 1, 2011, an employer of a registrant shall:

(a) Check the database to verify that the person is registered in the database before the person may perform the duties specified in section 12-43.2-101 (6) or (7); and

(b) Give the director written notice within two weeks after a disciplinary action or investigation that is based on conduct that constitutes a violation of this article. For purposes of this paragraph (b), “disciplinary action” includes termination or resignation of the registrant while under investigation or in lieu of investigation or disciplinary action. The director shall establish a notification form on the department’s web site.

(2) (a) The general assembly hereby finds, determines, and declares that sections 8-2-110 and 8-2-111, C.R.S., which prohibit the maintenance or use of blacklists, were enacted to protect employees from retribution and harassment in the pursuit of their lawful activities. The general assembly further finds, determines, and declares that these prohibitions against blacklisting have in some instances been abused and have been used as a shield by persons responsible for drug violations or patient endangerment.

(b) In response to a request by an employer, it shall not be unlawful nor a violation of the prohibitions against blacklisting specified in section 8-2-110 or 8-2-111, C.R.S., for an employer, when acting in good faith, to disclose information known about any involvement in drug diversion, drug tampering, patient abuse, violation of drug or alcohol policies, or crimes of violence, as listed in section 18-1.3-406 (2) (a), C.R.S., committed by a registrant who is an employee or former employee of the responding employer.

(c) The provision of employment information pursuant to paragraph (b) of this subsection (2) does not constitute a violation of the prohibition against blacklisting as provided in sections 8-2-110 and 8-2-111, C.R.S., nor does it constitute an unfair labor practice in violation of any provision of article 3 of title 8, C.R.S.

(d) (I) An employer who provides information pursuant to this subsection (2) to a prospective employer of the registrant upon request of the prospective employer or the registrant is immune from civil liability and is not liable in civil damages for the disclosure or any consequences of the disclosure; except that this immunity does not apply when the registrant shows by a preponderance of the evidence both of the following:

(A) The information disclosed by the current or former employer was false; and

(B) The employer providing the information knew or reasonably should have known that the information was false.

(II) This subsection (2) applies to any employee, agent, or other representative of the current or former employer who is authorized to provide and who provides information in accordance with this subsection (2).

(e) An employer or any officer, director, or employee thereof who discloses information under this subsection (2) shall be presumed to be acting in good faith unless it is shown by a preponderance of the evidence that the employer, officer, director, or employee intentionally or recklessly disclosed false information about the employee or former employee.

(f) Nothing in this subsection (2) shall be construed to abrogate or contradict the provisions of part 1 of article 2 of title 8, C.R.S.

Source: L. 2010: Entire article added, (HB 10-1415), ch. 339, p. 1556, § 1, effective August 11.

12-43.2-105. Grounds for discipline - disciplinary proceedings - judicial review.

(1) The director may take disciplinary action against a registrant if the director finds that the registrant has represented himself or herself as a registered surgical assistant or technologist after the expiration, suspension, or revocation of his or her registration.

(2) The director may revoke, suspend, deny, or refuse to renew a registration or issue a cease-and-desist order to a registrant in accordance with this section upon proof that the registrant:

(a) Has performed the duties of a surgical assistant or surgical technologist without being registered;

(b) Has falsified information in an application or the database or has attempted to obtain or has obtained a registration by fraud, deception, or misrepresentation;

(c) Is an excessive or habitual user or abuser of alcohol or habit-forming drugs or is a habitual user of a controlled substance, as defined in section 18-18-102, C.R.S., or other drugs having similar effects;

(d) Has a physical or mental condition or disability that renders the registrant unable to perform his or her tasks with reasonable skill and safety or that may endanger the health or safety of individuals receiving services;

(e) Has violated this article or aided or abetted or knowingly permitted any person to violate this article, a rule adopted under this article, or any lawful order of the director;

(f) Had a registration, license, or certification suspended, revoked, or denied by another jurisdiction for actions that are a violation of this article;

(g) Has been convicted of or pled guilty or nolo contendere to a misdemeanor related to drugs or alcohol or a felony. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea shall be conclusive evidence of the conviction or plea. In considering the disciplinary action, the director shall be governed by section 24-5-101, C.R.S.

(h) Has fraudulently obtained, furnished, or sold any surgical assistant or surgical technologist diploma, certificate, registration, renewal of registration, or record or aided or abetted such act;

(i) Has failed to notify the director of the suspension, revocation, or denial of the person's past or currently held license, certificate, or registration required to perform the duties of a surgical assistant or surgical technologist in this or any other jurisdiction;

(j) Has refused to submit to a physical or mental examination when ordered by the director pursuant to section 12-43.2-106; or

(k) Has otherwise violated any provision of this article or lawful order or rule of the director.

(3) (a) Except as otherwise provided in subsection (2) of this section, the director need not find that the actions that are grounds for discipline were willful but may consider whether such actions were willful when determining the nature of disciplinary sanctions to be imposed.

(b) Upon the failure of a registrant to comply with any conditions imposed by the director pursuant to subsection (2) of this section, unless compliance is beyond the control of the registrant, the director may suspend the registration of the registrant until the registrant complies with the conditions of the director.

(4) (a) The director may commence a proceeding to discipline a registrant when the director has reasonable grounds to believe that the registrant has committed an act enumerated in this section or has violated a lawful order or rule of the director.

(b) In any proceeding under this section, the director may accept as evidence of grounds for disciplinary action any disciplinary action taken against a registrant in another jurisdiction if the violation that prompted the disciplinary action in the other jurisdiction would be grounds for disciplinary action under this article.

(5) Disciplinary proceedings shall be conducted in accordance with article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to that article by the director or by an administrative law judge, at the director's discretion. The

director has the authority to exercise all powers and duties conferred by this article during the disciplinary proceedings.

(6) (a) The director may request the attorney general to seek an injunction, in any court of competent jurisdiction, to enjoin a person from committing an act prohibited by this article. When seeking an injunction under this paragraph (a), the attorney general shall not be required to allege or prove the inadequacy of any remedy at law or that substantial or irreparable damage is likely to result from a continued violation of this article.

(b) (I) In accordance with article 4 of title 24, C.R.S., and this article, the director is authorized to investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director.

(II) In order to aid the director in any hearing or investigation instituted pursuant to this section, the director or an administrative law judge appointed pursuant to paragraph (c) of this subsection (6) is authorized to administer oaths, take affirmations of witnesses, and issue subpoenas compelling the attendance of witnesses and the production of all relevant records, papers, books, documentary evidence, and materials in any hearing, investigation, accusation, or other matter before the director or an administrative law judge.

(III) Upon failure of any witness or registrant to comply with a subpoena or process, the district court of the county in which the subpoenaed person or registrant resides or conducts business, upon application by the director with notice to the subpoenaed person or registrant, may issue to the person or registrant an order requiring that person or registrant to appear before the director; produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or give evidence touching the matter under investigation or in question. If the person or registrant fails to obey the order of the court, the person or registrant may be held in contempt of court.

(c) The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings, take evidence, make findings, and report such findings to the director.

(7) (a) The director, the director's staff, any person acting as a witness or consultant to the director, an employer who notifies the director pursuant to section 12-43.2-104 (1) (b), and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, employer, or witness, respectively, if such person was acting in good faith within the scope of his, her, or its respective capacity, made a reasonable effort to obtain the facts of the matter as to which he, she, or it acted, and acted in the reasonable belief that the action taken by him, her, or it was warranted by the facts.

(b) A person participating in good faith in making a complaint or report or in an investigative or administrative proceeding pursuant to this section shall be immune from any civil or criminal liability that otherwise might result by reason of the participation.

(8) A final action of the director is subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S.

(9) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(10) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a registrant is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required registration, the director may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or the performance of unregistered activities immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (10), the respondent may request a hearing on the question of whether acts in violation of this article have occurred. The hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(11) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other provision of this article, in addition to any specific powers granted pursuant to this article, the director may

issue to the person an order to show cause as to why the director should not issue a final order directing the person to cease and desist from the unlawful act or unregistered activity.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (11) shall be notified promptly by the director of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. The notice may be served on the person against whom the order has been issued by personal service, by first-class, postage prepaid United States mail, or in another manner as may be practicable. Personal service or mailing of an order or document pursuant to this paragraph (b) shall constitute notice of the order to the person.

(c) (I) The hearing on an order to show cause shall be held no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (11). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing be held later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (11) does not appear at the hearing, the director may present evidence that notification was properly sent or served on the person pursuant to paragraph (b) of this subsection (11) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the director reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required registration, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing the person to cease and desist from further unlawful acts or unregistered practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (11), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(12) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged or is about to engage in an unregistered act or practice; an act or practice constituting a violation of this article, a rule promulgated pursuant to this article, or an order issued pursuant to this article; or an act or practice constituting grounds for administrative sanction pursuant to this article, the director may enter into a stipulation with the person.

(13) If any person fails to comply with a final cease-and-desist order or a stipulation, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(14) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order as provided in subsection (8) of this section.

(15) The director shall notify the chief medical officer of the department of public health and environment within thirty days after taking action regarding conduct of a registrant that violates either this article or any applicable requirement of title 25, C.R.S., and post a notice of such action on the division's web site.

12-43.2-106. Mental and physical examination. (1) If the director has reasonable cause to believe that a registrant is unable to perform the duties of a surgical assistant or surgical technologist, as appropriate, with reasonable skill and safety, the director may order the registrant to undergo a mental or physical examination administered by a physician or other licensed health care professional designated by the director. Unless due to circumstances beyond the registrant’s control, if the registrant refuses to undergo a mental or physical examination, the director may suspend the registrant’s registration until the results of the examination are known and the director has made a determination of the registrant’s fitness to perform the duties of a surgical assistant or surgical technologist. The director shall proceed with an order for examination and shall make his or her determination in a timely manner.

(2) An order requiring a registrant to undergo a mental or physical examination shall contain the basis of the director’s reasonable cause to believe that the registrant is unable to work with reasonable skill and safety. For purposes of a disciplinary proceeding authorized under this article, the registrant shall be deemed to have waived all objections to the admissibility of the examining physician’s or other licensed health care professional’s testimony or examination reports on the ground that they are privileged communications.

(3) The registrant may submit to the director testimony or examination reports from a physician or other licensed health care professional chosen by the registrant and pertaining to any condition that the director has alleged may preclude the registrant from working with reasonable skill and safety. The testimony and reports submitted by the registrant may be considered by the director in conjunction with, but not in lieu of, testimony and examination reports from the physician or other licensed health care professional designated by the director.

(4) The results of a mental or physical examination ordered by the director shall not be used as evidence in any proceeding other than one before the director and shall not be deemed a public record or made available to the public.

Source: L. 2010: Entire article added, (HB 10-1415), ch. 339, p. 1562, § 1, effective August 11.

12-43.2-107. Repeal of article. This article is repealed, effective September 1, 2016. Prior to such repeal, the registration of surgical assistants and surgical technologists shall be reviewed as provided in section 24-34-104, C.R.S.

Source: L. 2010: Entire article added, (HB 10-1415), ch. 339, p. 1563, § 1, effective August 11.

ARTICLE 43.3

Medical Marijuana

Cross references: For the medical marijuana program and medical review board, see § 25-1.5-106.

Law reviews: For article, “The New, More Regulated Frontier for Medical Marijuana”, see 39 Colo. Law. 29 (November 2010); for article, “Colorado’s Emerging Medical Marijuana Legal Framework and Constitutional Rights”, see 40 Colo. Law. 69 (November 2011); for article, “Employment Law and Medical Marijuana An Uncertain Relationship”, see 41 Colo. Law. 57 (January 2012).

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PART 1

COLORADO MEDICAL MARIJUANA CODE

12-43.3-101. Short title. This article shall be known and may be cited as the “Colorado Medical Marijuana Code”.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1648, § 1, effective July 1.

12-43.3-102. Legislative declaration. (1) The general assembly hereby declares that this article shall be deemed an exercise of the police powers of the state for the protection of the economic and social welfare and the health, peace, and morals of the people of this state.

(2) The general assembly further declares that it is unlawful under state law to cultivate, manufacture, distribute, or sell medical marijuana, except in compliance with the terms,

conditions, limitations, and restrictions in section 14 of article XVIII of the state constitution and this article or when acting as a primary caregiver in compliance with the terms, conditions, limitations, and restrictions of section 25-1.5-106, C.R.S.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1648, § 1, effective July 1.

12-43.3-103. Applicability. (1) (a) On July 1, 2010, a person who is operating an established, locally approved business for the purpose of cultivation, manufacture, or sale of medical marijuana or medical marijuana-infused products or a person who has applied to a local government to operate a locally approved business for the purpose of cultivation, manufacture, or sale of medical marijuana or medical marijuana-infused products which is subsequently granted may continue to operate that business in accordance with any applicable state or local laws. "Established", as used in this paragraph (a), shall mean owning or leasing a space with a storefront and remitting sales taxes in a timely manner on retail sales of the business as required pursuant to section 39-26-105, C.R.S., as well as any applicable local sales taxes.

(b) To continue operating a business or operation as described in paragraph (a) of this subsection (1), the owner shall, on or before August 1, 2010, complete forms as provided by the department of revenue and shall pay a fee, which shall be credited to the medical marijuana license cash fund established pursuant to section 12-43.3-501. The purpose of the fee shall be to pay for the direct and indirect costs of the state licensing authority and the development of application procedures and rules necessary to implement this article. Payment of the fee and completion of the form shall not create a local or state license or a present or future entitlement to receive a license. An owner issued a local license after August 1, 2010, shall complete the forms and pay the fee pursuant to this paragraph (b) within thirty days after issuance of the local license. In addition to any criminal penalties for selling without a license, it shall be unlawful to continue operating a business or operation without filing the forms and paying the fee as described in this paragraph (b), and any violation of this section shall be prima-facie evidence of unsatisfactory character, record, and reputation for any future application for license under this article.

(c) A county, city and county, or municipality shall provide to the state licensing authority, upon request, a list that includes the name and location of each local center or operation licensed in said county, city and county, or municipality so that the state licensing authority can identify any center or operation operating unlawfully.

(2) (a) Prior to July 1, 2011, a county, city and county, or municipality may adopt and enforce a resolution or ordinance licensing, regulating, or prohibiting the cultivation or sale of medical marijuana. In a county, city and county, or municipality where such an ordinance or resolution has been adopted, a person who is not registered as a patient or primary caregiver pursuant to section 25-1.5-106, C.R.S., and who is cultivating or selling medical marijuana shall not be entitled to an affirmative defense to a criminal prosecution as provided for in section 14 of article XVIII of the state constitution unless the person is in compliance with the applicable county or municipal law.

(b) On or before September 1, 2010, a business or operation shall certify that it is cultivating at least seventy percent of the medical marijuana necessary for its operation.

(c) On and after July 1, 2011, all businesses for the purpose of cultivation, manufacture, or sale of medical marijuana or medical marijuana-infused products, as defined in this article, shall be subject to the terms and conditions of this article and any rules promulgated pursuant to this article; except that a person that has met the deadlines set forth in paragraphs (a) and (b) of subsection (1) of this section that has not had its application acted upon by the state licensing authority may continue to operate until action is taken on the application, unless the person is operating in a jurisdiction that has imposed a prohibition on licensure. While continuing to operate prior to the licensing authority acting on the application, the person shall otherwise be subject to the terms and conditions of this article and all rules promulgated pursuant to this article.

(d) (I) On and after July 1, 2012, persons who did not meet all requirements of paragraph (a) of subsection (1) of this section as of July 1, 2010, may begin to apply for a

license pursuant to this article. A business or operation that applies and is approved for its license after July 1, 2012, shall certify to the state licensing authority that it is cultivating at least seventy percent of the medical marijuana necessary for its operation within ninety days after being licensed.

(II) For those persons that are licensed prior to July 1, 2012, the person may apply to the local and state licensing authorities regarding changes to its license and may apply for a new license if the license is for a business that has been licensed and the person is purchasing that business or if the business is changing license type.

(III) For a person who has met the deadlines set forth in paragraphs (a) and (b) of subsection (1) of this section and who has lost his or her location because a city or county has voted pursuant to section 12-43.3-106 to ban his or her operation, the person may apply for a new license with a local licensing authority and transfer the location of its pending application with the state licensing authority.

(e) This article sets forth the exclusive means by which manufacture, sale, distribution, and dispensing of medical marijuana may occur in the state of Colorado. Licensees shall not be subject to the terms of section 14 of article XVIII of the state constitution, except where specifically referenced in this article.

Source: **L. 2010:** Entire article added, (HB 10-1284), ch. 355, p. 1649, § 1, effective July 1. **L. 2011:** (2)(c) amended and (2)(d) and (2)(e) added, (HB 11-1043), ch. 266, p. 1200, § 1, effective July 1.

12-43.3-104. Definitions. As used in this article, unless the context otherwise requires:

(1) “Good cause”, for purposes of refusing or denying a license renewal, reinstatement, or initial license issuance, means:

(a) The licensee or applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of this article, any rules promulgated pursuant to this article, or any supplemental local law, rules, or regulations;

(b) The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license pursuant to an order of the state or local licensing authority;

(c) The licensed premises have been operated in a manner that adversely affects the public health or welfare or the safety of the immediate neighborhood in which the establishment is located.

(1.5) “Immature plant” means a nonflowering medical marijuana plant that is no taller than eight inches and no wider than eight inches produced from a cutting, clipping, or seedling and that is in a growing container that is no larger than two inches wide and two inches tall that is sealed on the sides and bottom.

(2) “License” means to grant a license or registration pursuant to this article.

(3) “Licensed premises” means the premises specified in an application for a license under this article, which are owned or in possession of the licensee and within which the licensee is authorized to cultivate, manufacture, distribute, or sell medical marijuana in accordance with the provisions of this article.

(4) “Licensee” means a person licensed or registered pursuant to this article.

(5) “Local licensing authority” means an authority designated by municipal or county charter, ordinance, or resolution, or the governing body of a municipality, city and county, or the board of county commissioners of a county if no such authority is designated.

(6) “Location” means a particular parcel of land that may be identified by an address or other descriptive means.

(7) “Medical marijuana” means marijuana that is grown and sold pursuant to the provisions of this article and for a purpose authorized by section 14 of article XVIII of the state constitution but shall not be considered a nonprescription drug for purposes of section 12-42.5-102 (21) or 39-26-717, C.R.S., or an over-the-counter medication for purposes of section 25.5-5-322, C.R.S.

(8) “Medical marijuana center” means a person licensed pursuant to this article to operate a business as described in section 12-43.3-402 that sells medical marijuana to registered patients or primary caregivers as defined in section 14 of article XVIII of the state constitution, but is not a primary caregiver.

(9) “Medical marijuana-infused product” means a product infused with medical marijuana that is intended for use or consumption other than by smoking, including but not limited to edible products, ointments, and tinctures. These products, when manufactured or sold by a licensed medical marijuana center or a medical marijuana-infused product manufacturer, shall not be considered a food or drug for the purposes of the “Colorado Food and Drug Act”, part 4 of article 5 of title 25, C.R.S.

(10) “Medical marijuana-infused products manufacturer” means a person licensed pursuant to this article to operate a business as described in section 12-43.3-404.

(11) “Optional premises” means the premises specified in an application for a medical marijuana center license with related growing facilities in Colorado for which the licensee is authorized to grow and cultivate marijuana for a purpose authorized by section 14 of article XVIII of the state constitution.

(12) “Optional premises cultivation operation” means a person licensed pursuant to this article to operate a business as described in section 12-43.3-403.

(13) “Person” means a natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

(14) “Premises” means a distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

(15) “School” means a public or private preschool or a public or private elementary, middle, junior high, or high school.

(16) “State licensing authority” means the authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of medical marijuana in this state, pursuant to section 12-43.3-201.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1650, § 1, effective July 1. **L. 2011:** (1.5) added and (5) and (7) amended, (HB 11-1043), ch. 266, p. 1201, §§ 2, 3, effective July 1. **L. 2012:** (7) amended, (HB 12-1311), ch. 281, p. 1616, § 31, effective July 1.

12-43.3-105. Limited access areas. Subject to the provisions of section 12-43.3-701, a limited access area shall be a building, room, or other contiguous area upon the licensed premises where medical marijuana is grown, cultivated, stored, weighed, displayed, packaged, sold, or possessed for sale, under control of the licensee, with limited access to only those persons licensed by the state licensing authority. All areas of ingress or egress to limited access areas shall be clearly identified as such by a sign as designated by the state licensing authority.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1651, § 1, effective July 1.

12-43.3-106. Local option. The operation of this article shall be statewide unless a municipality, county, city, or city and county, by either a majority of the registered electors of the municipality, county, city, or city and county voting at a regular election or special election called in accordance with the “Colorado Municipal Election Code of 1965”, article 10 of title 31, C.R.S., or the “Uniform Election Code of 1992”, articles 1 to 13 of title 1, C.R.S., as applicable, or a majority of the members of the governing board for the municipality, county, city, or city and county, vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1652, § 1, effective July 1.

PART 2

STATE LICENSING AUTHORITY

12-43.3-201. State licensing authority - creation. (1) For the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of medical marijuana in this state, there is hereby created the state licensing authority, which shall be the executive director of the department of revenue or the deputy director of the department of revenue if the executive director so designates.

(2) The executive director of the department of revenue shall be the chief administrative officer of the state licensing authority and may employ, pursuant to section 13 of article XII of the state constitution, such officers and employees as may be determined to be necessary, which officers and employees shall be part of the department of revenue. The state licensing authority shall, at its discretion, based upon workload, employ no more than one full-time equivalent employee for each ten medical marijuana centers licensed by or making application with the authority. No moneys shall be appropriated to the state licensing authority from the general fund for the operation of this article, nor shall the state licensing authority expend any general fund moneys for the operation of this article.

(3) Repealed.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1652, § 1, effective July 1.

Editor's note: Subsection (3)(c) provided for the repeal of subsection (3), effective July 1, 2011. (See L. 2010, p. 1652.)

12-43.3-202. Powers and duties of state licensing authority. (1) The state licensing authority shall:

(a) Grant or refuse state licenses for the cultivation, manufacture, distribution, and sale of medical marijuana as provided by law; suspend, fine, restrict, or revoke such licenses upon a violation of this article, or a rule promulgated pursuant to this article; and impose any penalty authorized by this article or any rule promulgated pursuant to this article. The state licensing authority may take any action with respect to a registration pursuant to this article as it may with respect to a license pursuant to this article, in accordance with the procedures established pursuant to this article.

(b) (I) Promulgate such rules and such special rulings and findings as necessary for the proper regulation and control of the cultivation, manufacture, distribution, and sale of medical marijuana and for the enforcement of this article. A county, municipality, or city and county that has adopted a temporary moratorium regarding the subject matter of this article shall be specifically authorized to extend the moratorium until June 30, 2012.

(II) Repealed.

(c) Hear and determine at a public hearing any contested state license denial and any complaints against a licensee and administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of any hearing so held, all in accordance with article 4 of title 24, C.R.S. The state licensing authority may, at its discretion, delegate to the department of revenue hearing officers the authority to conduct licensing, disciplinary, and rule-making hearings under section 24-4-105, C.R.S. When conducting such hearings, the hearing officers shall be employees of the state licensing authority under the direction and supervision of the executive director and the state licensing authority.

(d) Maintain the confidentiality of reports or other information obtained from a licensee showing the sales volume or quantity of medical marijuana sold, or revealing any patient information, or any other records that are exempt from public inspection pursuant to state law. Such reports or other information may be used only for a purpose authorized by this article or for any other state or local law enforcement purpose. Any information released related to patients may be used only for a purpose authorized by this article or to verify that

a person who presented a registry identification card to a state or local law enforcement official is lawfully in possession of such card.

(e) Develop such forms, licenses, identification cards, and applications as are necessary or convenient in the discretion of the state licensing authority for the administration of this article or any of the rules promulgated under this article;

(f) Prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to section 24-1-136, C.R.S., a report accounting to the governor for the efficient discharge of all responsibilities assigned by law or directive to the state licensing authority; and

(g) In recognition of the potential medicinal value of medical marijuana, make a request by January 1, 2012, to the federal drug enforcement administration to consider rescheduling, for pharmaceutical purposes, medical marijuana from a schedule I controlled substance to a schedule II controlled substance.

(2) (a) Rules promulgated pursuant to paragraph (b) of subsection (1) of this section may include, but need not be limited to, the following subjects:

(I) Compliance with, enforcement of, or violation of any provision of this article, section 18-18-406.3 (7), C.R.S., or any rule issued pursuant to this article, including procedures and grounds for denying, suspending, fining, restricting, or revoking a state license issued pursuant to this article;

(II) Specifications of duties of officers and employees of the state licensing authority;

(III) Instructions for local licensing authorities and law enforcement officers;

(IV) Requirements for inspections, investigations, searches, seizures, forfeitures, and such additional activities as may become necessary from time to time;

(V) Creation of a range of penalties for use by the state licensing authority;

(VI) Prohibition of misrepresentation and unfair practices;

(VII) Control of informational and product displays on licensed premises;

(VIII) Development of individual identification cards for owners, officers, managers, contractors, employees, and other support staff of entities licensed pursuant to this article, including a fingerprint-based criminal history record check as may be required by the state licensing authority prior to issuing a card;

(IX) Identification of state licensees and their owners, officers, managers, and employees;

(X) Security requirements for any premises licensed pursuant to this article, including, at a minimum, lighting, physical security, video, alarm requirements, and other minimum procedures for internal control as deemed necessary by the state licensing authority to properly administer and enforce the provisions of this article, including reporting requirements for changes, alterations, or modifications to the premises;

(XI) Regulation of the storage of, warehouses for, and transportation of medical marijuana;

(XII) Sanitary requirements for medical marijuana centers, including but not limited to sanitary requirements for the preparation of medical marijuana-infused products;

(XIII) The specification of acceptable forms of picture identification that a medical marijuana center may accept when verifying a sale;

(XIV) Labeling standards;

(XIV.5) Prohibiting the sale of medical marijuana-infused products unless the product is packaged:

(A) In special packaging that is designed or constructed to be significantly difficult for children under five years of age to open and not difficult for normal adults to use properly and that does not allow the product to be seen without opening the packaging material; or

(B) In packaging that is labeled "Medicinal product - keep out of reach of children";

(XV) Records to be kept by licensees and the required availability of the records;

(XVI) State licensing procedures, including procedures for renewals, reinstatements, initial licenses, and the payment of licensing fees;

(XVII) The reporting and transmittal of monthly sales tax payments by medical marijuana centers;

(XVIII) Authorization for the department of revenue to have access to licensing information to ensure sales and income tax payment and the effective administration of this article;

(XIX) Authorization for the department of revenue to issue administrative citations and procedures for issuing, appealing, and creating a citation violation list and schedule of penalties; and

(XX) Such other matters as are necessary for the fair, impartial, stringent, and comprehensive administration of this article.

(b) Nothing in this article shall be construed as delegating to the state licensing authority the power to fix prices for medical marijuana.

(c) Nothing in this article shall be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer. A law enforcement agency shall have the authority to run a Colorado crime information center criminal history record check of a primary caregiver, licensee, or employee of a licensee during an investigation of unlawful activity related to medical marijuana.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1653, § 1, effective July 1. **L. 2011:** (2)(a)(XIV.5) added, (HB 11-1250), ch. 272, p. 1233, § 1, effective June 2; (1)(b)(I), (1)(c), (1)(d), (2)(a)(I), and (2)(a)(IV) amended, (HB11-1043), ch. 266, pp. 1201, 1214, §§ 4, 26, effective July 1.

Editor's note: Subsection (1)(b)(II)(B) provided for the repeal of subsection (1)(b)(II), effective July 1, 2011. (See L. 2010, p. 1653.)

PART 3

STATE AND LOCAL LICENSING

12-43.3-301. Local licensing authority - applications - licenses. (1) A local licensing authority may issue only the following medical marijuana licenses upon payment of the fee and compliance with all local licensing requirements to be determined by the local licensing authority:

- (a) A medical marijuana center license;
- (b) An optional premises cultivation license;
- (c) A medical marijuana-infused products manufacturing license.

(2) (a) A local licensing authority shall not issue a local license within a municipality, city and county, or the unincorporated portion of a county unless the governing body of the municipality or city and county has adopted an ordinance, or the governing body of the county has adopted a resolution, containing specific standards for license issuance, or if no such ordinance or resolution is adopted prior to July 1, 2012, then a local licensing authority shall consider the minimum licensing requirements of this part 3 when issuing a license.

(b) In addition to all other standards applicable to the issuance of licenses under this article, the local governing body may adopt additional standards for the issuance of medical marijuana center, optional premises cultivation, or medical marijuana-infused products manufacturer licenses consistent with the intent of this article that may include, but need not be limited to:

- (I) Distance restrictions between premises for which local licenses are issued;
- (II) Reasonable restrictions on the size of an applicant's licensed premises; and
- (III) Any other requirements necessary to ensure the control of the premises and the ease of enforcement of the terms and conditions of the license.

(3) An application for a license specified in subsection (1) of this section shall be filed with the appropriate local licensing authority on forms provided by the state licensing authority and shall contain such information as the state licensing authority may require and any forms as the local licensing authority may require. Each application shall be verified by the oath or affirmation of the persons prescribed by the state licensing authority.

(4) An applicant shall file, at the time of application for a local license, plans and specifications for the interior of the building if the building to be occupied is in existence at the time. If the building is not in existence, the applicant shall file a plot plan and a detailed sketch for the interior and submit an architect's drawing of the building to be constructed. In its discretion, the local or state licensing authority may impose additional requirements necessary for the approval of the application.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1656, § 1, effective July 1. **L. 2011:** (2)(a) amended, (HB 11-1043), ch. 266, p. 1202, § 5, effective July 1.

12-43.3-302. Public hearing notice - posting and publication. (1) Upon receipt of an application for a local license, except an application for renewal or for transfer of ownership, a local licensing authority may schedule a public hearing upon the application to be held not less than thirty days after the date of the application. If the local licensing authority schedules a hearing for a license application, it shall post and publish public notice thereof not less than ten days prior to the hearing. The local licensing authority shall give public notice by posting a sign in a conspicuous place on the license applicant's premises for which license application has been made and by publication in a newspaper of general circulation in the county in which the applicant's premises are located.

(2) Public notice given by posting shall include a sign of suitable material, not less than twenty-two inches wide and twenty-six inches high, composed of letters not less than one inch in height and stating the type of license applied for, the date of the application, the date of the hearing, the name and address of the applicant, and such other information as may be required to fully apprise the public of the nature of the application. The sign shall contain the names and addresses of the officers, directors, or manager of the facility to be licensed.

(3) Public notice given by publication shall contain the same information as that required for signs.

(4) If the building in which medical marijuana is to be cultivated, manufactured, or distributed is in existence at the time of the application, a sign posted as required in subsections (1) and (2) of this section shall be placed so as to be conspicuous and plainly visible to the general public. If the building is not constructed at the time of the application, the applicant shall post a sign at the premises upon which the building is to be constructed in such a manner that the notice shall be conspicuous and plainly visible to the general public.

(5) (a) A local licensing authority, or a license applicant with local licensing authority approval, may request that the state licensing authority conduct a concurrent review of a new license application prior to the local licensing authority's final approval of the license application. Local licensing authorities who permit a concurrent review will continue to independently review the applicant's license application.

(b) When conducting a concurrent application review, the state licensing authority may advise the local licensing authority of any items that it finds that could result in the denial of the license application. Upon correction of the noted discrepancies, if the correction is permitted by the state licensing authority, the state licensing authority shall notify the local licensing authority of its conditional approval of the license application subject to the final approval by the local licensing authority. The state licensing authority shall then issue the applicant's state license upon receiving evidence of final approval by the local licensing authority.

(c) All applications submitted for concurrent review shall be accompanied by all applicable state license and application fees. Any applications that are later denied or withdrawn may allow for a refund of license fees only. All application fees provided by an applicant shall be retained by the respective licensing authority.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1657, § 1, effective July 1. **L. 2011:** (1) and (4) amended, (HB 11-1043), ch. 266, p. 1203, § 6, effective July 1.

12-43.3-303. Results of investigation - decision of authorities. (1) Not less than five days prior to the date of the public hearing authorized in section 12-43.3-302, the local licensing authority shall make known its findings, based on its investigation, in writing to the applicant and other parties of interest. The local licensing authority has authority to refuse to issue a license provided for in this section for good cause, subject to judicial review.

(2) Before entering a decision approving or denying the application for a local license, the local licensing authority may consider, except where this article specifically provides otherwise, the facts and evidence adduced as a result of its investigation, as well as any other facts pertinent to the type of license for which application has been made, including the number, type, and availability of medical marijuana centers, optional premises cultivation operations, or medical marijuana-infused products manufacturers located in or near the premises under consideration, and any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed.

(3) Within thirty days after the public hearing or completion of the application investigation, a local licensing authority shall issue its decision approving or denying an application for local licensure. The decision shall be in writing and shall state the reasons for the decision. The local licensing authority shall send a copy of the decision by certified mail to the applicant at the address shown in the application.

(4) After approval of an application, a local licensing authority shall not issue a local license until the building in which the business to be conducted is ready for occupancy with such furniture, fixtures, and equipment in place as are necessary to comply with the applicable provisions of this article, and then only after the local licensing authority has inspected the premises to determine that the applicant has complied with the architect's drawing and the plot plan and detailed sketch for the interior of the building submitted with the application.

(5) After approval of an application for local licensure, the local licensing authority shall notify the state licensing authority of such approval, who shall investigate and either approve or disapprove the application for state licensure.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1658, § 1, effective July 1. L. 2011: (2) amended, (HB 11-1043), ch. 266, p. 1203, § 7, effective July 1.

12-43.3-304. Medical marijuana license bond. (1) Before the state licensing authority issues a state license to an applicant, the applicant shall procure and file with the state licensing authority evidence of a good and sufficient bond in the amount of five thousand dollars with corporate surety thereon duly licensed to do business with the state, approved as to form by the attorney general of the state, and conditioned that the applicant shall report and pay all sales and use taxes due to the state, or for which the state is the collector or collecting agent, in a timely manner, as provided in law.

(2) A corporate surety shall not be required to make payments to the state claiming under such bond until a final determination of failure to pay taxes due to the state has been made by the state licensing authority or a court of competent jurisdiction.

(3) All bonds required pursuant to this section shall be renewed at such time as the bondholder's license is renewed. The renewal may be accomplished through a continuation certificate issued by the surety.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1659, § 1, effective July 1.

12-43.3-305. State licensing authority - application and issuance procedures. (1) Applications for a state license under the provisions of this article shall be made to the state licensing authority on forms prepared and furnished by the state licensing authority and shall set forth such information as the state licensing authority may require to enable the state licensing authority to determine whether a state license should be granted. The information shall include the name and address of the applicant, the names and addresses

of the officers, directors, or managers, and all other information deemed necessary by the state licensing authority. Each application shall be verified by the oath or affirmation of such person or persons as the state licensing authority may prescribe.

(2) The state licensing authority shall not issue a state license pursuant to this section until the local licensing authority has approved the application for a local license and issued a local license as provided for in sections 12-43.3-301 to 12-43.3-303.

(3) Nothing in this article shall preempt or otherwise impair the power of a local government to enact ordinances or resolutions concerning matters authorized to local governments.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1659, § 1, effective July 1.

12-43.3-306. Denial of application. (1) The state licensing authority shall deny a state license if the premises on which the applicant proposes to conduct its business does not meet the requirements of this article or for reasons set forth in section 12-43.3-104 (1) (c) or 12-43.3-305, and the state licensing authority may deny a license for good cause as defined by section 12-43.3-104 (1) (a) or (1) (b).

(2) If the state licensing authority denies a state license pursuant to subsection (1) of this section, the applicant shall be entitled to a hearing pursuant to section 24-4-104 (9), C.R.S., and judicial review pursuant to section 24-4-106, C.R.S. The state licensing authority shall provide written notice of the grounds for denial of the state license to the applicant and to the local licensing authority at least fifteen days prior to the hearing.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1659, § 1, effective July 1. **L. 2011:** Entire section amended, (HB 11-1043), ch. 266, p. 1203, § 8, effective July 1.

12-43.3-307. Persons prohibited as licensees. (1) A license provided by this article shall not be issued to or held by:

- (a) A person until the annual fee therefore has been paid;
- (b) A person whose criminal history indicates that he or she is not of good moral character;
- (c) A corporation, if the criminal history of any of its officers, directors, or stockholders indicates that the officer, director, or stockholder is not of good moral character;
- (d) A licensed physician making patient recommendations;
- (e) A person employing, assisted by, or financed in whole or in part by any other person whose criminal history indicates he or she is not of good character and reputation satisfactory to the respective licensing authority;
- (f) A person under twenty-one years of age;
- (g) A person licensed pursuant to this article who, during a period of licensure, or who, at the time of application, has failed to:
 - (I) Provide a surety bond or file any tax return with a taxing agency;
 - (II) Pay any taxes, interest, or penalties due;
 - (III) Pay any judgments due to a government agency;
 - (IV) Stay out of default on a government-issued student loan;
 - (V) Pay child support; or
 - (VI) Remedy an outstanding delinquency for taxes owed, an outstanding delinquency for judgments owed to a government agency, or an outstanding delinquency for child support;

(h) A person who has discharged a sentence in the five years immediately preceding the application date for a conviction of a felony or a person who at any time has been convicted of a felony pursuant to any state or federal law regarding the possession, distribution, manufacturing, cultivation, or use of a controlled substance; except that the licensing authority may grant a license to an employee if the employee has a state felony conviction

based on possession or use of a controlled substance that would not be a felony if the person were convicted of the offense on the date he or she applied for licensure;

(i) A person who employs another person at a medical marijuana facility who has not passed a criminal history record check;

(j) A sheriff, deputy sheriff, police officer, or prosecuting officer, or an officer or employee of the state licensing authority or a local licensing authority;

(k) A person whose authority to be a primary caregiver as defined in section 25-1.5-106 (2), C.R.S., has been revoked by the state health agency;

(l) A person for a license for a location that is currently licensed as a retail food establishment or wholesale food registrant; or

(m) An owner, as defined by rule of the state licensing authority, who has not been a resident of Colorado for at least two years prior to the date of the owner's application; except that:

(I) Repealed.

(2) (a) In investigating the qualifications of an applicant or a licensee, the state and local licensing authorities may have access to criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency. In the event the state or local licensing authority considers the applicant's criminal history record, the state or local licensing authority shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a state license.

(b) As used in paragraph (a) of this subsection (2), "criminal justice agency" means any federal, state, or municipal court or any governmental agency or subunit of such agency that administers criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice.

(c) At the time of filing an application for issuance or renewal of a state medical marijuana center license, medical marijuana-infused product manufacturer license, or optional premises cultivation license, an applicant shall submit a set of his or her fingerprints and file personal history information concerning the applicant's qualifications for a state license on forms prepared by the state licensing authority. The state or local licensing authority shall submit the fingerprints to the Colorado bureau of investigation for the purpose of conducting fingerprint-based criminal history record checks. The Colorado bureau of investigation shall forward the fingerprints to the federal bureau of investigation for the purpose of conducting fingerprint-based criminal history record checks. The state or local licensing authority may acquire a name-based criminal history record check for an applicant or a license holder who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. An applicant who has previously submitted fingerprints for state licensing purposes may request that the fingerprints on file be used. The state or local licensing authority shall use the information resulting from the fingerprint-based criminal history record check to investigate and determine whether an applicant is qualified to hold a state license pursuant to this article. The state or local licensing authority may verify any of the information an applicant is required to submit.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1660, § 1, effective July 1. L. 2011: (1)(h), (1)(m), (2)(a), and (2)(c) amended, (HB 11-1043), ch. 266, p. 1204, § 9, effective July 1.

Editor's note: (1) The provisions of subsection (1) were renumbered and relettered on revision to conform to statutory format.

(2) Subsection (1)(m)(I)(B) provided for the repeal of subsection (1)(m)(I), effective July 1, 2012. (See L. 2011, p. 1204.)

12-43.3-308. Restrictions for applications for new licenses. (1) The state or a local licensing authority shall not receive or act upon an application for the issuance of a state or local license pursuant to this article:

(a) If the application for a state or local license concerns a particular location that is the same as or within one thousand feet of a location for which, within the two years immediately preceding the date of the application, the state or a local licensing authority denied an application for the same class of license due to the nature of the use or other concern related to the location;

(b) Until it is established that the applicant is, or will be, entitled to possession of the premises for which application is made under a lease, rental agreement, or other arrangement for possession of the premises or by virtue of ownership of the premises;

(c) For a location in an area where the cultivation, manufacture, and sale of medical marijuana as contemplated is not permitted under the applicable zoning laws of the municipality, city and county, or county;

(d) (I) If the building in which medical marijuana is to be sold is located within one thousand feet of a school, an alcohol or drug treatment facility, the principal campus of a college, university, or seminary, or a residential child care facility. The provisions of this section shall not affect the renewal or reissuance of a license once granted or apply to licensed premises located or to be located on land owned by a municipality, nor shall the provisions of this section apply to an existing licensed premises on land owned by the state, or apply to a license in effect and actively doing business before said principal campus was constructed. The local licensing authority of a city and county, by rule or regulation, the governing body of a municipality, by ordinance, and the governing body of a county, by resolution, may vary the distance restrictions imposed by this subparagraph (I) for a license or may eliminate one or more types of schools, campuses, or facilities from the application of a distance restriction established by or pursuant to this subparagraph (I).

(II) The distances referred to in this paragraph (d) are to be computed by direct measurement from the nearest property line of the land used for a school or campus to the nearest portion of the building in which medical marijuana is to be sold, using a route of direct pedestrian access.

(III) In addition to the requirements of section 12-43.3-303 (2), the local licensing authority shall consider the evidence and make a specific finding of fact as to whether the building in which the medical marijuana is to be sold is located within any distance restrictions established by or pursuant to this paragraph (d).

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1662, § 1, effective July 1.

12-43.3-309. Transfer of ownership. (1) A state or local license granted under the provisions of this article shall not be transferable except as provided in this section, but this section shall not prevent a change of location as provided in section 12-43.3-310 (13).

(2) For a transfer of ownership, a license holder shall apply to the state and local licensing authorities on forms prepared and furnished by the state licensing authority. In determining whether to permit a transfer of ownership, the state and local licensing authorities shall consider only the requirements of this article, any rules promulgated by the state licensing authority, and any other local restrictions. The local licensing authority may hold a hearing on the application for transfer of ownership. The local licensing authority shall not hold a hearing pursuant to this subsection (2) until the local licensing authority has posted a notice of hearing in the manner described in section 12-43.3-302 (2) on the licensed medical marijuana center premises for a period of ten days and has provided notice of the hearing to the applicant at least ten days prior to the hearing. Any transfer of ownership hearing by the state licensing authority shall be held in compliance with the requirements specified in section 12-43.3-302.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1663, § 1, effective July 1.

12-43.3-310. Licensing in general. (1) This article authorizes a county, municipality, or city and county to prohibit the operation of medical marijuana centers, optional premises

cultivation operations, and medical marijuana-infused products manufacturers' licenses and to enact reasonable regulations or other restrictions applicable to medical marijuana centers, optional premises cultivation licenses, and medical marijuana-infused products manufacturers' licenses based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana that are more restrictive than this article.

(2) A medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer may not operate until it has been licensed by the local licensing authority and the state licensing authority pursuant to this article. In connection with a license, the applicant shall provide a complete and accurate list of all owners, officers, and employees who work at, manage, own, or are otherwise associated with the operation and shall provide a complete and accurate application as required by the state licensing authority.

(3) A medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer shall notify the state licensing authority in writing within ten days after an owner, officer, or employee ceases to work at, manage, own, or otherwise be associated with the operation. The owner, officer, or employee shall surrender his or her identification card to the state licensing authority on or before the date of the notification.

(4) A medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer shall notify the state licensing authority in writing of the name, address, and date of birth of an owner, officer, manager, or employee before the new owner, officer, or employee begins working at, managing, owning, or being associated with the operation. The owner, officer, manager, or employee shall pass a fingerprint-based criminal history record check as required by the state licensing authority and obtain the required identification prior to being associated with, managing, owning, or working at the operation.

(5) A medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer shall not acquire, possess, cultivate, deliver, transfer, transport, supply, or dispense marijuana for any purpose except to assist patients, as defined by section 14 (1) of article XVIII of the state constitution.

(6) All officers, managers, and employees of a medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer shall be residents of Colorado upon the date of their license application. An owner shall meet the residency requirements in section 12-43.3-307 (1) (m). A local licensing authority shall not issue a license provided for in this article until that share of the license application fee due to the state has been received by the department of revenue. All licenses granted pursuant to this article shall be valid for a period not to exceed two years after the date of issuance unless revoked or suspended pursuant to this article or the rules promulgated pursuant to this article.

(7) Before granting a local or state license, the respective licensing authority may consider, except where this article specifically provides otherwise, the requirements of this article and any rules promulgated pursuant to this article, and all other reasonable restrictions that are or may be placed upon the licensee by the licensing authority. With respect to a second or additional license for the same licensee or the same owner of another licensed business pursuant to this article, each licensing authority shall consider the effect on competition of granting or denying the additional licenses to such licensee and shall not approve an application for a second or additional license that would have the effect of restraining competition.

(8) (a) Each license issued under this article is separate and distinct. It is unlawful for a person to exercise any of the privileges granted under a license other than the license that the person holds or for a licensee to allow any other person to exercise the privileges granted under the licensee's license. A separate license shall be required for each specific business or business entity and each geographical location.

(b) At all times, a licensee shall possess and maintain possession of the premises or optional premises for which the license is issued by ownership, lease, rental, or other arrangement for possession of the premises.

(9) (a) The licenses provided pursuant to this article shall specify the date of issuance, the period of licensure, the name of the licensee, and the premises or optional premises licensed. The licensee shall conspicuously place the license at all times on the licensed premises or optional premises.

(b) A local licensing authority shall not transfer location of or renew a license to sell medical marijuana until the applicant for the license produces a license issued and granted by the state licensing authority covering the whole period for which a license or license renewal is sought.

(10) In computing any period of time prescribed by this article, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Saturdays, Sundays, and legal holidays shall be counted as any other day.

(11) A licensee shall report each transfer or change of financial interest in the license to the state and local licensing authorities thirty days prior to any transfer or change pursuant to section 12-43.3-309. A report shall be required for transfers of capital stock of any corporation regardless of size.

(12) Each licensee shall manage the licensed premises himself or herself or employ a separate and distinct manager on the premises and shall report the name of the manager to the state and local licensing authorities. The licensee shall report any change in manager to the state and local licensing authorities thirty days prior to the change pursuant to section 12-43.3-309.

(13) (a) A licensee may move his or her permanent location to any other place in the same municipality or city and county for which the license was originally granted, or in the same county if the license was granted for a place outside the corporate limits of a municipality or city and county, but it shall be unlawful to cultivate, manufacture, distribute, or sell medical marijuana at any such place until permission to do so is granted by the state and local licensing authorities provided for in this article.

(b) In permitting a change of location, the state and local licensing authorities shall consider all reasonable restrictions that are or may be placed upon the new location by the governing board or local licensing authority of the municipality, city and county, or county and any such change in location shall be in accordance with all requirements of this article and rules promulgated pursuant to this article.

(14) Repealed.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1663, § 1, effective July 1. **L. 2011:** (6) amended and (14) repealed, (HB 11-1043), ch. 266, p. 1205, §§ 10, 11, effective July 1.

Cross references: For the “Colorado Open Records Act”, see part 2 of article 72 of title 24.

12-43.3-311. License renewal. (1) Ninety days prior to the expiration date of an existing license, the state licensing authority shall notify the licensee of the expiration date by first class mail at the licensee’s address of record with the state licensing authority. A licensee shall apply for the renewal of an existing license to the local licensing authority not less than forty-five days and to the state licensing authority not less than thirty days prior to the date of expiration. A local licensing authority shall not accept an application for renewal of a license after the date of expiration, except as provided in subsection (2) of this section. The state licensing authority may extend the expiration date of the license and accept a late application for renewal of a license provided that the applicant has filed a timely renewal application with the local licensing authority. All renewals filed with the local licensing authority and subsequently approved by the local licensing authority shall next be processed by the state licensing authority. The state or the local licensing authority, in its discretion, subject to the requirements of this subsection (1) and subsection (2) of this section and based upon reasonable grounds, may waive the forty-five-day or thirty-day time requirements set forth in this subsection (1). The local licensing authority may hold a hearing on the application for renewal only if the licensee has had complaints filed against it, has a history of violations, or there are allegations against the licensee that would constitute good cause. The local licensing authority shall not hold a renewal hearing

provided for by this subsection (1) for a medical marijuana center until it has posted a notice of hearing on the licensed medical marijuana center premises in the manner described in section 12-43.3-302 (2) for a period of ten days and provided notice to the applicant at least ten days prior to the hearing. The local licensing authority may refuse to renew any license for good cause, subject to judicial review.

(2) (a) Notwithstanding the provisions of subsection (1) of this section, a licensee whose license has been expired for not more than ninety days may file a late renewal application upon the payment of a nonrefundable late application fee of five hundred dollars to the local licensing authority. A licensee who files a late renewal application and pays the requisite fees may continue to operate until both the state and local licensing authorities have taken final action to approve or deny the licensee's late renewal application unless the state or local licensing authority summarily suspends the license pursuant to article 4 of title 24, C.R.S., this article, and rules promulgated pursuant to this article.

(b) The state and local licensing authorities may not accept a late renewal application more than ninety days after the expiration of a licensee's permanent annual license. A licensee whose permanent annual license has been expired for more than ninety days shall not cultivate, manufacture, distribute, or sell any medical marijuana until all required licenses have been obtained.

(c) Notwithstanding the amount specified for the late application fee in paragraph (a) of this subsection (2), the state licensing authority by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., by reducing the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state licensing authority by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1666, § 1, effective July 1.

12-43.3-312. Inactive licenses. The state or local licensing authority, in its discretion, may revoke or elect not to renew any license if it determines that the licensed premises have been inactive, without good cause, for at least one year.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1667, § 1, effective July 1.

12-43.3-313. Unlawful financial assistance. (1) The state licensing authority, by rule and regulation, shall require a complete disclosure of all persons having a direct or indirect financial interest, and the extent of such interest, in each license issued under this article.

(2) A person shall not have an unreported financial interest in a license pursuant to this article unless that person has undergone a fingerprint-based criminal history record check as provided for by the state licensing authority in its rules; except that this subsection (2) shall not apply to banks, savings and loan associations, or industrial banks supervised and regulated by an agency of the state or federal government, or to FHA-approved mortgagees, or to stockholders, directors, or officers thereof.

(3) This section is intended to prohibit and prevent the control of the outlets for the sale of medical marijuana by a person or party other than the persons licensed pursuant to the provisions of this article.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1667, § 1, effective July 1.

PART 4

LICENSE TYPES

12-43.3-401. Classes of licenses. (1) For the purpose of regulating the cultivation, manufacture, distribution, and sale of medical marijuana, the state licensing authority in its

discretion, upon application in the prescribed form made to it, may issue and grant to the applicant a license from any of the following classes, subject to the provisions and restrictions provided by this article:

- (a) Medical marijuana center license;
- (b) Optional premises cultivation license;
- (c) Medical marijuana-infused products manufacturing license; and
- (d) Occupational licenses and registrations for owners, managers, operators, employees, contractors, and other support staff employed by, working in, or having access to restricted areas of the licensed premises, as determined by the state licensing authority. The state licensing authority may take any action with respect to a registration pursuant to this article as it may with respect to a license pursuant to this article, in accordance with the procedures established pursuant to this article.

(2) All persons licensed pursuant to this article shall collect sales tax on all sales made pursuant to the licensing activities.

(3) A state chartered bank or a credit union may loan money to any person licensed pursuant to this article for the operation of a licensed business.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1667, § 1, effective July 1.

12-43.3-402. Medical marijuana center license. (1) A medical marijuana center license shall be issued only to a person selling medical marijuana pursuant to the terms and conditions of this article.

(2) (a) Notwithstanding the provisions of this section, a medical marijuana center licensee may also sell medical marijuana-infused products that are prepackaged and labeled so as to clearly indicate all of the following:

- (I) That the product contains medical marijuana;
- (II) That the product is manufactured without any regulatory oversight for health, safety, or efficacy; and
- (III) That there may be health risks associated with the consumption or use of the product.

(b) A medical marijuana licensee may contract with a medical marijuana-infused products manufacturing licensee for the manufacture of medical marijuana-infused products upon a medical marijuana-infused products manufacturing licensee's licensed premises.

(3) Every person selling medical marijuana as provided for in this article shall sell only medical marijuana grown in its medical marijuana optional premises licensed pursuant to this article. In addition to medical marijuana, a medical marijuana center may sell no more than six immature plants to a patient; except that a medical marijuana center may sell more than six immature plants, but may not exceed half the recommended plant count, to a patient who has been recommended an expanded plant count by his or her recommending physician. A medical marijuana center may sell immature plants to a primary caregiver, another medical marijuana center, or a medical marijuana-infused product manufacturer pursuant to rules promulgated by the state licensing authority. The provisions of this subsection (3) shall not apply to medical marijuana-infused products.

(4) Notwithstanding the requirements of subsection (3) of this section to the contrary, a medical marijuana licensee may purchase not more than thirty percent of its total on-hand inventory of medical marijuana from another licensed medical marijuana center in Colorado. A medical marijuana center may sell no more than thirty percent of its total on-hand inventory to another Colorado licensed medical marijuana licensee; except that the director of the division that regulates medical marijuana may grant a temporary waiver:

(a) To a medical marijuana center or applicant if the medical marijuana center or applicant suffers a catastrophic event related to its inventory; or

(b) To a new medical marijuana center licensee for a period not to exceed ninety days so the new licensee can cultivate the necessary medical marijuana to comply with this subsection (4).

(5) Prior to initiating a sale, the employee of the medical marijuana center making the sale shall verify that the purchaser has a valid registration card issued pursuant to section

25-1.5-106, C.R.S., or a copy of a current and complete new application for the medical marijuana registry administered by the department of public health and environment that is documented by a certified mail return receipt as having been submitted to the department of public health and environment within the preceding thirty-five days, and a valid picture identification card that matches the name on the registration card. A purchaser may not provide a copy of a renewal application in order to make a purchase at a medical marijuana center. A purchaser may only make a purchase using a copy of his or her application from 8 a.m. to 5 p.m., Monday through Friday. If the purchaser presents a copy of his or her application at the time of purchase, the employee must contact the department of public health and environment to determine whether the purchaser's application has been denied. The employee shall not complete the transaction if the purchaser's application has been denied. If the purchaser's application has been denied, the employee shall be authorized to confiscate the purchaser's copy of the application and the documentation of the certified mail return receipt, if possible, and shall, within seventy-two hours after the confiscation, turn it over to the department of public health and environment or local law enforcement agency. The failure to confiscate the copy of the application and document of the certified mail return receipt or to turn it over to the state health department or a state or local law enforcement agency within seventy-two hours after the confiscation shall not constitute a criminal offense.

(5.5) Transactions for the sale of medical marijuana or a medical marijuana-infused product at a medical marijuana center may be completed by using an automated machine that is in a restricted access area of the center if the machine complies with the rules promulgated by the state licensing authority regarding the transaction of sale of product at a medical marijuana center and the transaction complies with subsection (5) of this section.

(6) A medical marijuana center may provide a sample of its products to a laboratory that has an occupational license from the state licensing authority for testing and research purposes. The laboratory may develop, test, and produce medical marijuana-based products. The laboratory may contract method or product development with a licensed medical marijuana center or licensed medical marijuana infused-product manufacturer. The state licensing authority shall promulgate rules pursuant to its authority in section 12-43.3-202 (1) (b) related to acceptable testing and research practices, including but not limited to testing, standards, quality control analysis, equipment certification and calibration, and chemical identification and other substances used in bona fide research methods. A laboratory that has an occupational license from the state licensing authority for testing purposes shall not have any interest in a licensed medical marijuana center or a licensed medical marijuana-infused products manufacturer.

(7) All medical marijuana sold at a licensed medical marijuana center shall be labeled with a list of all chemical additives, including but not limited to nonorganic pesticides, herbicides, and fertilizers, that were used in the cultivation and the production of the medical marijuana.

(8) A licensed medical marijuana center shall comply with all provisions of article 34 of title 24, C.R.S., as the provisions relate to persons with disabilities.

(9) Notwithstanding the provisions of section 12-43.3-901 (4) (m), a medical marijuana center may sell below cost or donate to a patient who has been designated indigent by the state health agency or who is in hospice care:

(a) Medical marijuana; or

(b) No more than six immature plants; except that a medical marijuana center may sell or donate more than six immature plants, but may not exceed half the recommended plant count, to a patient who has been recommended an expanded plant count by his or her recommending physician; or

(c) Medical marijuana-infused products to patients.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1668, § 1, effective July 1. L. 2011: (3), (4), (5), and (6) amended and (5.5) and (9) added, (HB 11- 1043), ch. 266, p. 1205, § 12, effective July 1.

12-43.3-403. Optional premises cultivation license. (1) An optional premises cultivation license may be issued only to a person licensed pursuant to section 12-43.3-402 (1)

or 12-43.3-404 (1) who grows and cultivates medical marijuana at an additional Colorado licensed premises contiguous or not contiguous with the licensed premises of the person's medical marijuana center license or the person's medical marijuana-infused products manufacturing license.

(2) Optional premises cultivation licenses may be combined in a common area solely for the purposes of growing and cultivating medical marijuana and used to provide medical marijuana to more than one licensed medical marijuana center or licensed medical marijuana-infused product manufacturer so long as the holder of the optional premise cultivation license is also a common owner of each licensed medical marijuana center or licensed medical marijuana-infused product manufacturer to which medical marijuana is provided. In accordance with promulgated rules relating to plant and product tracking requirements, each optional premises cultivation licensee shall supply medical marijuana only to its associated licensed medical marijuana centers or licensed medical marijuana-infused product manufacturers.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1669, § 1, effective July 1. **L. 2011:** Entire section amended, (HB 11-1043), ch. 266, p. 1207, § 13, effective July 1.

12-43.3-404. Medical marijuana-infused products manufacturing license. (1) A medical marijuana-infused products manufacturing license may be issued to a person who manufactures medical marijuana-infused products, pursuant to the terms and conditions of this article.

(2) Medical marijuana-infused products shall be prepared on a licensed premises that is used exclusively for the manufacture and preparation of medical marijuana-infused products and using equipment that is used exclusively for the manufacture and preparation of medical marijuana-infused products.

(3) A medical marijuana-infused products licensee shall have a written agreement or contract with a medical marijuana center licensee, which contract shall at a minimum set forth the total amount of medical marijuana obtained from a medical marijuana center licensee to be used in the manufacturing process, and the total amount of medical marijuana-infused products to be manufactured from the medical marijuana obtained from the medical marijuana center. A medical marijuana-infused products licensee shall not use medical marijuana from more than five different medical marijuana centers in the production of one medical marijuana-infused product. The medical marijuana-infused products manufacturing licensee may sell its products to any licensed medical marijuana center.

(4) All licensed premises on which medical marijuana-infused products are manufactured shall meet the sanitary standards for medical marijuana-infused product preparation promulgated pursuant to section 12-43.3-202 (2) (a) (XII).

(5) The medical marijuana-infused product shall be sealed and conspicuously labeled in compliance with this article and any rules promulgated pursuant to this article. The labeling of medical marijuana-infused products is a matter of statewide concern.

(6) Medical marijuana-infused products may not be consumed on a premises licensed pursuant to this article.

(7) Notwithstanding any other provision of state law, sales of medical marijuana-infused products shall not be exempt from state or local sales tax.

(8) A medical marijuana-infused products licensee that has an optional premises cultivation license shall not sell any of the medical marijuana that it cultivates except for the medical marijuana that is contained in medical marijuana-infused products.

(9) (a) A medical marijuana-infused products licensee may not have more than five hundred medical marijuana plants on its premises or at its optional premises cultivation operation; except that the director of the division that regulates medical marijuana may grant a waiver in excess of five hundred marijuana plants based on the consideration of the factors in paragraph (b) of this subsection (9).

(b) The director of the division that regulates medical marijuana shall consider the following factors in determining whether to grant the waiver described in paragraph (a) of this subsection (9):

- (I) The nature of the products manufactured;
- (II) The business need;
- (III) Existing business contracts with licensed medical marijuana centers for the production of medical marijuana-infused products; and
- (IV) The ability to contract with licensed medical marijuana centers for the production of medical marijuana-infused products.

(10) A medical marijuana-infused products manufacturer may provide a sample of its products to a laboratory that has an occupational license from the state licensing authority for testing and research purposes. The state licensing authority shall promulgate rules pursuant to its authority in section 12-43.3-202 (1) (b) related to acceptable testing and research practices. A laboratory that has an occupational license from the state licensing authority for testing purposes shall not have any interest in a licensed medical marijuana center or a licensed medical marijuana-infused products manufacturer.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1669, § 1, effective July 1. **L. 2011:** (5) and (8) amended and (9) and (10) added, (HB 11-1043), ch. 266, p. 1208, § 14, effective July 1.

PART 5

FEES

12-43.3-501. Medical marijuana license cash fund. (1) All moneys collected by the state licensing authority pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the medical marijuana license cash fund, which fund is hereby created and referred to in this section as the “fund”. The moneys in the fund shall be subject to annual appropriation by the general assembly to the department of revenue for the direct and indirect costs associated with implementing this article. Any moneys in the fund not expended for the purpose of this article may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

(2) The executive director of the department of revenue by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(3) (a) The state licensing authority shall establish fees for processing the following types of applications, licenses, notices, or reports required to be submitted to the state licensing authority:

- (I) Applications for licenses listed in section 12-43.3-401 and rules promulgated pursuant to that section;
- (II) Applications to change location pursuant to section 12-43.3-310 and rules promulgated pursuant to that section;
- (III) Applications for transfer of ownership pursuant to section 12-43.3-310 and rules promulgated pursuant to that section;
- (IV) License renewal and expired license renewal applications pursuant to section 12-43.3-311; and
- (V) Licenses as listed in section 12-43.3-401.

(b) The amounts of such fees, when added to the other fees transferred to the fund pursuant to this section, shall reflect the actual direct and indirect costs of the state licensing authority in the administration and enforcement of this article so that the fees avoid exceeding the statutory limit on uncommitted reserves in administrative agency cash funds as set forth in section 24-75-402 (3), C.R.S.

(c) The state licensing authority may charge applicants licensed under this article a fee for the cost of each fingerprint analysis and background investigation undertaken to qualify new officers, directors, managers, or employees.

(d) At least annually, the state licensing authority shall review the amounts of the fees and, if necessary, adjust the amounts to reflect the direct and indirect costs of the state licensing authority.

(4) Except as provided in subsection (5) of this section, the state licensing authority shall establish a basic fee that shall be paid at the time of service of any subpoena upon the state licensing authority, plus a fee for meals and a fee for mileage at the rate prescribed for state officers and employees in section 24-9-104, C.R.S., for each mile actually and necessarily traveled in going to and returning from the place named in the subpoena. If the person named in the subpoena is required to attend the place named in the subpoena for more than one day, there shall be paid, in advance, a sum to be established by the state licensing authority for each day of attendance to cover the expenses of the person named in the subpoena.

(5) The subpoena fee established pursuant to subsection (4) of this section shall not be applicable to any federal, state or local governmental agency.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1670, § 1, effective July 1.

12-43.3-502. Fees - allocation. (1) Except as otherwise provided, all fees and fines provided for by this article shall be paid to the department of revenue, which shall transmit the fees to the state treasurer. The state treasurer shall credit the fees to the medical marijuana license cash fund created in section 12-43.3-501.

(2) The expenditures of the state licensing authority shall be paid out of appropriations from the medical marijuana license cash fund created in section 12-43.3-501.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1671, § 1, effective July 1.

12-43.3-503. Local license fees. (1) Each application for a local license provided for in this article filed with a local licensing authority shall be accompanied by an application fee in an amount determined by the local licensing authority.

(2) License fees as determined by the local licensing authority shall be paid to the treasurer of the municipality, city and county, or county where the licensed premises is located in advance of the approval, denial, or renewal of the license.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1672, § 1, effective July 1.

PART 6

DISCIPLINARY ACTIONS

12-43.3-601. Suspension - revocation - fines. (1) In addition to any other sanctions prescribed by this article or rules promulgated pursuant to this article, the state licensing authority or a local licensing authority has the power, on its own motion or on complaint, after investigation and opportunity for a public hearing at which the licensee shall be afforded an opportunity to be heard, to suspend or revoke a license issued by the respective authority for a violation by the licensee or by any of the agents or employees of the licensee of the provisions of this article, or any of the rules promulgated pursuant to this article, or of any of the terms, conditions, or provisions of the license issued by the state or local licensing authority. The state licensing authority or a local licensing authority has the power to administer oaths and issue subpoenas to require the presence of persons and the

production of papers, books, and records necessary to the determination of a hearing that the state or local licensing authority is authorized to conduct.

(2) The state or local licensing authority shall provide notice of suspension, revocation, fine, or other sanction, as well as the required notice of the hearing pursuant to subsection (1) of this section, by mailing the same in writing to the licensee at the address contained in the license. Except in the case of a summary suspension, a suspension shall not be for a longer period than six months. If a license is suspended or revoked, a part of the fees paid therefore shall not be returned to the licensee. Any license or permit may be summarily suspended by the issuing licensing authority without notice pending any prosecution, investigation, or public hearing pursuant to the terms of section 24-4-104 (4), C.R.S. Nothing in this section shall prevent the summary suspension of a license pursuant to section 24-4-104 (4), C.R.S. Each patient registered with a medical marijuana center that has had its license summarily suspended may immediately transfer his or her primary center to another licensed medical marijuana center.

(3) (a) Whenever a decision of the state licensing authority or a local licensing authority suspending a license for fourteen days or less becomes final, the licensee may, before the operative date of the suspension, petition for permission to pay a fine in lieu of having the license suspended for all or part of the suspension period. Upon the receipt of the petition, the state or local licensing authority may, in its sole discretion, stay the proposed suspension and cause any investigation to be made which it deems desirable and may, in its sole discretion, grant the petition if the state or local licensing authority is satisfied that:

(I) The public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes;

(II) The books and records of the licensee are kept in such a manner that the loss of sales that the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy; and

(III) The licensee has not had his or her license suspended or revoked, nor had any suspension stayed by payment of a fine, during the two years immediately preceding the date of the motion or complaint that resulted in a final decision to suspend the license or permit.

(b) The fine accepted shall be not less than five hundred dollars nor more than one hundred thousand dollars.

(c) Payment of a fine pursuant to the provisions of this subsection (3) shall be in the form of cash or in the form of a certified check or cashier's check made payable to the state or local licensing authority, whichever is appropriate.

(4) Upon payment of the fine pursuant to subsection (3) of this section, the state or local licensing authority shall enter its further order permanently staying the imposition of the suspension. If the fine is paid to a local licensing authority, the governing body of the authority shall cause the moneys to be paid into the general fund of the local licensing authority. Fines paid to the state licensing authority pursuant to subsection (3) of this section shall be transmitted to the state treasurer, who shall credit the same to the medical marijuana license cash fund created in section 12-43.3-501.

(5) In connection with a petition pursuant to subsection (3) of this section, the authority of the state or local licensing authority is limited to the granting of such stays as are necessary for the authority to complete its investigation and make its findings and, if the authority makes such findings, to the granting of an order permanently staying the imposition of the entire suspension or that portion of the suspension not otherwise conditionally stayed.

(6) If the state or local licensing authority does not make the findings required in paragraph (a) of subsection (3) of this section and does not order the suspension permanently stayed, the suspension shall go into effect on the operative date finally set by the state or local licensing authority.

(7) Each local licensing authority shall report all actions taken to impose fines, suspensions, and revocations to the state licensing authority in a manner required by the state licensing authority. No later than January 15 of each year, the state licensing authority

shall compile a report of the preceding year's actions in which fines, suspensions, or revocations were imposed by local licensing authorities and by the state licensing authority. The state licensing authority shall file one copy of the report with the chief clerk of the house of representatives, one copy with the secretary of the senate, and six copies in the joint legislative library.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1672, § 1, effective July 1.

12-43.3-602. Disposition of unauthorized marijuana or marijuana-infused products and related materials. (1) The provisions of this section shall apply in addition to any criminal, civil, or administrative penalties and in addition to any other penalties prescribed by this article or any rules promulgated pursuant to this article. Any provisions in this article related to law enforcement shall be considered a cumulative right of the people in the enforcement of the criminal laws.

(2) Every licensee licensed under this article shall be deemed, by virtue of applying for, holding, or renewing such person's license, to have expressly consented to the procedures set forth in this section.

(3) A state or local agency shall not be required to cultivate or care for any marijuana or marijuana-infused product belonging to or seized from a licensee. A state or local agency shall not be authorized to sell marijuana, medical or otherwise.

(4) If the state or local licensing authority issues a final agency order imposing a disciplinary action against a licensee pursuant to section 12-43.3-601, then, in addition to any other remedies, the licensing authority's final agency order may specify that some or all of the licensee's marijuana or marijuana-infused product is not medical marijuana or a medical marijuana-infused product and is an illegal controlled substance. The order may further specify that the licensee shall lose any interest in any of the marijuana or marijuana-infused product even if the marijuana or marijuana-infused product previously qualified as medical marijuana or a medical marijuana-infused product. The final agency order may direct the destruction of any such marijuana and marijuana-infused products, except as provided in subsections (5) and (6) of this section. The authorized destruction may include the incidental destruction of any containers, equipment, supplies, and other property associated with the marijuana or marijuana-infused product.

(5) Following the issuance of a final agency order by the licensing authority imposing a disciplinary action against a licensee and ordering destruction authorized by subsection (4) of this section, a licensee shall have fifteen days within which to file a petition for stay of agency action with the district court. The action shall be filed in the city and county of Denver, which shall be deemed to be the residence of the state licensing authority for purposes of this section. The licensee shall serve the petition in accordance with the rules of civil procedure. The district court shall promptly rule upon the petition and shall determine whether the licensee has a substantial likelihood of success on judicial review so as to warrant delay of the destruction authorized by subsection (4) of this section or whether other circumstances, including but not limited to the need for preservation of evidence, warrant delay of such destruction. If destruction is so delayed pursuant to judicial order, the court shall issue an order setting forth terms and conditions pursuant to which the licensee may maintain the marijuana and marijuana-infused product pending judicial review, and prohibiting the licensee from using or distributing the marijuana or marijuana-infused product pending the review. The licensing authority shall not carry out the destruction authorized by subsection (4) of this section until fifteen days have passed without the filing of a petition for stay of agency action, or until the court has issued an order denying stay of agency action pursuant to this subsection (5).

(6) The licensing authority shall not carry out the destruction authorized by subsection (4) of this section until it has notified the district attorney for the judicial district in which the marijuana is located to determine whether the marijuana or product constitutes evidence in a criminal proceeding such that it should not be destroyed, and until fifteen days have passed from the date of the issuance of such notice.

(7) On or before January 1, 2012, the state licensing authority shall promulgate rules governing the implementation of this section.

Source: L. 2011: Entire section added, (HB 11-1043), ch. 266, p. 1209, § 15, effective July 1.

PART 7

INSPECTION OF BOOKS AND RECORDS

12-43.3-701. Inspection procedures. (1) Each licensee shall keep a complete set of all records necessary to show fully the business transactions of the licensee, all of which shall be open at all times during business hours for the inspection and examination of the state licensing authority or its duly authorized representatives. The state licensing authority may require any licensee to furnish such information as it considers necessary for the proper administration of this article and may require an audit to be made of the books of account and records on such occasions as it may consider necessary by an auditor to be selected by the state licensing authority who shall likewise have access to all books and records of the licensee, and the expense thereof shall be paid by the licensee.

(2) The licensed premises, including any places of storage where medical marijuana is grown, stored, cultivated, sold, or dispensed, shall be subject to inspection by the state or local licensing authorities and their investigators, during all business hours and other times of apparent activity, for the purpose of inspection or investigation. For examination of any inventory or books and records required to be kept by the licensees, access shall be required during business hours. Where any part of the licensed premises consists of a locked area, upon demand to the licensee, such area shall be made available for inspection without delay, and, upon request by authorized representatives of the state or local licensing authority, the licensee shall open the area for inspection.

(3) Each licensee shall retain all books and records necessary to show fully the business transactions of the licensee for a period of the current tax year and the three immediately prior tax years.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1674, § 1, effective July 1.

PART 8

JUDICIAL REVIEW

12-43.3-801. Judicial review. Decisions by the state licensing authority or a local licensing authority shall be subject to judicial review pursuant to section 24-4-106, C.R.S.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1674, § 1, effective July 1.

PART 9

UNLAWFUL ACTS - ENFORCEMENT

12-43.3-901. Unlawful acts - exceptions. (1) Except as otherwise provided in this article, it is unlawful for a person:

(a) To consume medical marijuana in a licensed medical marijuana center, and it shall be unlawful for a medical marijuana licensee to allow medical marijuana to be consumed upon its licensed premises;

(b) With knowledge, to permit or fail to prevent the use of his or her registry identification by any other person for the unlawful purchasing of medical marijuana.

(c) and (d) (Deleted by amendment, L. 2011, (HB 11-1043), ch. 266, p. 1210, § 16, effective July 1, 2011.)

(2) It is unlawful for a person to buy, sell, transfer, give away, or acquire medical marijuana except as allowed pursuant to this article.

(3) It is unlawful for a person licensed pursuant to this article:

(a) To be within a limited-access area unless the person's license badge is displayed as required by this article, except as provided in section 12-43.3-701;

(b) To fail to designate areas of ingress and egress for limited-access areas and post signs in conspicuous locations as required by this article;

(c) To fail to report a transfer required by section 12-43.3-310 (11); or

(d) To fail to report the name of or a change in managers as required by section 12-43.3-310 (12).

(4) It is unlawful for any person licensed to sell medical marijuana pursuant to this article:

(a) To display any signs that are inconsistent with local laws or regulations;

(b) To use advertising material that is misleading, deceptive, or false, or that is designed to appeal to minors;

(c) To provide public premises, or any portion thereof, for the purpose of consumption of medical marijuana in any form;

(d) (I) To sell medical marijuana to a person not licensed pursuant to this article or to a person not able to produce a valid patient registry identification card, unless the person has a copy of a current and complete new application for the medical marijuana registry administered by the department of public health and environment that is documented by a certified mail return receipt as having been submitted to the department of public health and environment within the preceding thirty-five days and the employee assisting the person has contacted the department of public health and environment and, as a result, determined the person's application has not been denied. Notwithstanding any provision in this subparagraph (I) to the contrary, a person under twenty-one years of age shall not be employed to sell or dispense medical marijuana at a medical marijuana center or grow or cultivate medical marijuana at an optional premises cultivation operation.

(II) If a licensee or a licensee's employee has reasonable cause to believe that a person is exhibiting a fraudulent patient registry identification card in an attempt to obtain medical marijuana, the licensee or employee shall be authorized to confiscate the fraudulent patient registry identification card, if possible, and shall, within seventy-two hours after the confiscation, turn it over to the state health department or local law enforcement agency. The failure to confiscate the fraudulent patient registry identification card or to turn it over to the state health department or a state or local law enforcement agency within seventy-two hours after the confiscation shall not constitute a criminal offense.

(e) To possess more than six medical marijuana plants and two ounces of medical marijuana for each patient who has registered the center as his or her primary center pursuant to section 25-1.5-106 (8) (f), C.R.S.; except that a medical marijuana center may have an amount that exceeds the six-plant and two-ounce product per patient limit if the center sells to patients that are authorized to have more than six plants and two ounces of product. In the case of a patient authorized to exceed the six-plant and two-ounce limit, the center shall obtain documentation from the patient's physician that the patient needs more than six plants and two ounces of product.

(f) To offer for sale or solicit an order for medical marijuana in person except within the licensed premises;

(g) To have in possession or upon the licensed premises any medical marijuana, the sale of which is not permitted by the license;

(h) To buy medical marijuana from a person not licensed to sell as provided by this article;

(i) To sell medical marijuana except in the permanent location specifically designated in the license for sale;

(j) To have on the licensed premises any medical marijuana or marijuana paraphernalia that shows evidence of the medical marijuana having been consumed or partially consumed;

(k) To require a medical marijuana center or medical marijuana center with an optional premises cultivation license to make delivery to any premises other than the specific licensed premises where the medical marijuana is to be sold;

(l) To sell, serve, or distribute medical marijuana at any time other than between the hours of 8 a.m. and 7 p.m. Monday through Sunday;

(m) To violate the provisions of section 6-2-103 or 6-2-105, C.R.S.;

(n) To burn or otherwise destroy marijuana or any substance containing marijuana for the purpose of evading an investigation or preventing seizure; or

(o) To abandon a licensed premises or otherwise cease operation without notifying the state and local licensing authorities at least forty-eight hours in advance and without accounting for and forfeiting to the state licensing authority for destruction all marijuana or products containing marijuana.

(5) Except as provided in sections 12-43.3-402 (4), 12-43.3-403, and 12-43.3-404, it is unlawful for a medical marijuana center, medical marijuana-infused products manufacturing operation with an optional premises cultivation license, or medical marijuana center with an optional premises cultivation license to sell, deliver, or cause to be delivered to a licensee any medical marijuana not grown upon its licensed premises, or for a licensee or medical marijuana center with an optional premises cultivation license or medical marijuana-infused products manufacturing operation with an optional premises cultivation license to sell, possess, or permit sale of medical marijuana not grown upon its licensed premises. A violation of the provisions of this subsection (5) by a licensee shall be grounds for the immediate revocation of the license granted under this article.

(6) It shall be unlawful for a physician who makes patient referrals to a licensed medical marijuana center to receive anything of value from the medical marijuana center licensee or its agents, servants, officers, or owners or anyone financially interested in the licensee, and it shall be unlawful for a licensee licensed pursuant to this article to offer anything of value to a physician for making patient referrals to the licensed medical marijuana center.

(6.5) A peace officer or a law enforcement agency shall not use any patient information to make traffic stops pursuant to section 42-4-1302, C.R.S.

(7) A person who commits any acts that are unlawful pursuant to this article or the rules authorized and adopted pursuant to this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., except for violations that would also constitute a violation of title 18, C.R.S., which violation shall be charged and prosecuted pursuant to title 18, C.R.S.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1675, § 1, effective July 1. **L. 2011:** (1)(c), (1)(d), (4)(d)(I), (4)(I), and (7) amended and (4)(n), (4)(o), and (6.5) added, (HB 11-1043), ch. 266, pp. 1210, 1211, §§ 16, 17, effective July 1.

PART 10

SUNSET REVIEW

12-43.3-1001. Sunset review - article repeal. (1) This article is repealed, effective July 1, 2015.

(2) Prior to the repeal of this article, the department of regulatory agencies shall conduct a sunset review as described in section 24-34-104 (8), C.R.S.

Source: L. 2010: Entire article added, (HB 10-1284), ch. 355, p. 1677, § 1, effective July 1.

ARTICLE 43.5

Professional Review - Health Care

12-43.5-101 to 12-43.5-103. (Repealed)

Source: L. 89: Entire article repealed, p. 689, § 6, effective July 1, 1989.

Editor's note: This article was added in 1975. For amendments to this article prior to its repeal in 1989, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 43.7

Speech-language Pathologists

Editor's note: This article was numbered as article 43.5 in House Bill 12-1303 but has been renumbered on revision for ease of location.

12-43.7-101.	Short title.	12-43.7-112.	Unauthorized practice - penalties.
12-43.7-102.	Legislative declaration.	12-43.7-113.	Rule-making authority.
12-43.7-103.	Definitions.	12-43.7-114.	Mental and physical examination of certificate holders.
12-43.7-104.	Use of titles restricted.	12-43.7-115.	Confidential agreement to limit practice - violation grounds for discipline.
12-43.7-105.	Certification required - exception.	12-43.7-116.	Protection of medical records - certificate holder's obligations - verification of compliance - noncompliance grounds for discipline - rules.
12-43.7-106.	Certification - application - qualifications - provisional certification - renewal - fees - rules.	12-43.7-117.	Severability.
12-43.7-107.	Continuing professional competency - rules.	12-43.7-118.	Repeal of article - review of functions.
12-43.7-108.	Scope of article - exclusions.		
12-43.7-109.	Limitations on authority.		
12-43.7-110.	Grounds for discipline.		
12-43.7-111.	Disciplinary actions - judicial review.		

12-43.7-101. Short title. This article shall be known and may be cited as the "Speech-language Pathology Practice Act".

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1360, § 1, effective August 8.

12-43.7-102. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) Speech-language pathology services are provided for the purpose of improving the abilities of those who have congenital or acquired speech, language, cognitive, feeding, and swallowing deficits;

(b) Speech-language pathologists provide specific therapy and treatments that are related to the effects of medical or dental diagnoses or congenital, genetic, or developmental conditions but do not provide medical or dental procedures, medications, or interventions that constitute the practice of medicine or dentistry;

(c) The professional roles and activities in speech-language pathology include clinical and educational services, which include evaluation, assessment, planning, and treatment; prevention and advocacy; education; administration; and research;

(d) This article is necessary to safeguard public health, safety, and welfare and to protect the public from incompetent, unethical, or unauthorized persons.

(2) The general assembly further determines that it is the purpose of this article to:

(a) Regulate persons who are representing or holding themselves out as speech-language pathologists or who are performing services that constitute speech-language pathology; and

(b) Exclude from regulation under this article those school speech-language pathologists who are paid solely by an administrative unit or state-operated program.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1360, § 1, effective August 8.

12-43.7-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Administrative unit” has the same meaning as set forth in section 22-20-103 (1), C.R.S.

(2) “Department” means the department of regulatory agencies.

(3) “Director” means the director of the division of professions and occupations or the director’s designee.

(4) “Division” means the division of professions and occupations in the department created in section 24-34-102, C.R.S.

(5) “School speech-language pathologist” means a person licensed by the department of education to provide speech-language pathology services that are paid for by an administrative unit or a state-operated program. “School speech-language pathologist” includes a school speech-language pathology assistant authorized by the department of education pursuant to section 22-60.5-111 (10), C.R.S., to provide speech-language pathology services that are paid for by an administrative unit or a state-operated program.

(6) “Speech-language pathologist” or “certificate holder” means a person certified to practice speech-language pathology under this article.

(7) (a) “Speech-language pathology” means the application of principles, methods, and procedures related to the development, disorders, and effectiveness of human communication and related functions, which includes providing prevention, screening, consultation, assessment or evaluation, treatment, intervention, management, counseling, collaboration, and referral services for disorders of:

(I) Speech, such as speech sound production, fluency, resonance, and voice;

(II) Language, such as phonology, morphology, syntax, semantics, pragmatic and social communication skills, and literacy skills;

(III) Feeding and swallowing; and

(IV) Cognitive aspects of communication, such as attention, memory, executive functioning, and problem solving.

(b) “Speech-language pathology” also includes establishing augmentative and alternative communication techniques and strategies, including the following:

(I) Developing, selecting, and prescribing augmentative or alternative communication systems and devices, such as speech generating devices;

(II) Providing services to individuals with hearing loss and their families, such as auditory training, speech reading, or speech and language intervention secondary to hearing loss;

(III) Screening individuals for hearing loss or middle ear pathology using conventional pure-tone air conduction methods, including otoscopic inspection, otoacoustic emissions, or screening tympanometry;

(IV) Using instrumentation such as videofluoroscopy, endoscopy, or stroboscopy to observe, collect data, and measure parameters of communication and swallowing;

(V) Selecting, fitting, and establishing effective use of prosthetic or adaptive devices for communication, swallowing, or other upper aerodigestive functions, not including sensory devices used by individuals with hearing loss or the orthodontic movement of teeth for the purpose of correction of speech pathology conditions; and

(VI) Providing services to modify or enhance communication performance, such as accent modification and personal or professional communication efficacy.

(8) “State-operated program” has the same meaning as set forth in section 22-20-103 (28), C.R.S.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1361, § 1, effective August 8.

12-43.7-104. Use of titles restricted. (1) Only a person required to be and who is certified as a speech-language pathologist under this article or licensed by the Colorado department of education to provide speech-language pathology services may advertise as or use the title “speech-language pathologist”, “speech pathologist”, “speech therapist”, “speech correctionist”, “speech clinician”, “language pathologist”, “voice therapist”,

“voice pathologist”, “aphasiologist”, or any other generally accepted terms, letters, or figures that indicate that the person is a certified speech-language pathologist.

(2) For a certificate holder who has successfully completed a doctoral degree in communication sciences and disorders as described in section 12-43.7-106 (1) (a), a certification to practice speech-language pathology issued pursuant to this article entitles the certificate holder to use the title “Doctor” or “Dr.” when accompanied by the terms “speech-language pathology” or the letters “S.L.P.”

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1362, § 1, effective August 8.

12-43.7-105. Certification required - exception. (1) Except as otherwise provided in this article, on and after July 1, 2013, a person shall not practice speech-language pathology or represent or hold himself or herself out as being able to practice speech-language pathology in this state without possessing a valid certification issued by the director in accordance with this article and any rules adopted under this article.

(2) A person described in section 12-43.7-108 (1) is not required to obtain certification under this article.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1363, § 1, effective August 8.

12-43.7-106. Certification - application - qualifications - provisional certification - renewal - fees - rules. (1) **Educational and experiential requirements.** Every applicant for a certification as a speech-language pathologist must have:

(a) Successfully completed a master’s or higher degree in communication sciences and disorders granted by an accredited institution of higher education recognized by the United States department of education;

(b) Successfully completed a speech-language pathology clinical fellowship approved by the director, as documented by the supervising clinician or a national certifying body approved by the director; and

(c) Passed the national examination adopted by the American speech-language-hearing association or its successor association or any other examination approved by the director.

(2) **Application.** When an applicant has fulfilled the requirements of subsection (1) of this section, the applicant may apply for certification in the manner required by the director. The applicant shall submit an application fee with his or her application in an amount determined by the director. Additionally, if the applicant will provide speech-language pathology services to patients, the applicant shall submit to the director proof that the applicant has purchased and is maintaining or is covered by professional liability insurance in an amount determined by the director by rule.

(3) **Certification.** (a) Except as provided in paragraph (b) of this subsection (3), when an applicant has fulfilled the requirements of subsections (1) and (2) of this section, the director shall issue a certification to the applicant.

(b) The director may deny a certification if the applicant has committed any act that would be grounds for disciplinary action under section 12-43.7-110.

(4) **Certification by endorsement.** (a) An applicant for certification by endorsement shall file an application and pay a fee as determined by the director and shall hold a current, valid license or certification in a jurisdiction that requires qualifications substantially equivalent to those required for certification by subsection (1) of this section.

(b) An applicant for certification by endorsement shall submit with the application verification that the applicant has actively practiced for a period of time determined by rules of the director or otherwise maintained competency as determined by the director. Additionally, if the applicant will provide speech-language pathology services to patients, the applicant shall submit to the director proof that the applicant has purchased and is maintaining or is covered by professional liability insurance in an amount determined by the director by rule.

(c) Upon receipt of all documents required by paragraphs (a) and (b) of this subsection (4), the director shall review the application and make a determination of the applicant's qualification to be certified by endorsement.

(d) The director may deny the certification by endorsement if the applicant has committed an act that would be grounds for disciplinary action under section 12-43.7-110.

(5) **Certification renewal.** (a) A certificate holder shall renew the certification issued under this article according to a schedule of renewal dates established by the director. The certificate holder shall submit an application in the manner required by the director and shall pay a renewal fee in an amount determined by the director.

(b) Certifications shall be renewed or reinstated in accordance with the schedule established by the director, and the renewal or reinstatement shall be granted pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a certificate holder fails to renew his or her certification pursuant to the schedule established by the director, the certification expires. Any person whose certification has expired and who continues to practice speech-language pathology is subject to the penalties provided in this article or section 24-34-102 (8), C.R.S., for reinstatement.

(6) **Fees.** (a) The director shall establish and collect fees under this article pursuant to section 24-34-105, C.R.S., and shall base the fees charged to speech-language pathologists certified under this article on the cost to administer the program divided by the total number of speech-language pathologists, as required by section 24-34-105, C.R.S. All fees collected under this article shall be determined, collected, and appropriated in the same manner as set forth in section 24-34-105, C.R.S., and periodically adjusted in accordance with section 24-75-402, C.R.S.

(b) Except as otherwise provided in this article, the division shall transmit all fees collected pursuant to this article to the state treasurer, who shall credit the fees to the division of professions and occupations cash fund created pursuant to section 24-34-105 (2) (b), C.R.S. The general assembly shall make annual appropriations from the division of professions and occupations cash fund for expenditures of the division incurred in the performance of its duties under this article.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1363, § 1, effective August 8.

12-43.7-107. Continuing professional competency - rules. (1) (a) A speech-language pathologist shall maintain continuing professional competency to practice.

(b) The director shall establish a continuing professional competency program that includes, at a minimum, the following elements:

(I) A self-assessment of the knowledge and skills of a speech-language pathologist seeking to renew or reinstate a certification;

(II) Development, execution, and documentation of a learning plan based on the assessment; and

(III) Periodic demonstration of knowledge and skills through documentation of activities necessary to ensure at least minimal ability to safely practice the profession; except that a speech-language pathologist certified pursuant to this article need not retake any examination required by section 12-43.7-106 for initial certification.

(2) The director shall establish that a speech-language pathologist satisfies the continuing competency requirements of this section if the speech-language pathologist meets the continuing professional competency requirements of one of the following entities:

(a) An accrediting body approved by the director; or

(b) An entity approved by the director.

(3) (a) After the program is established, a speech-language pathologist shall satisfy the requirements of the program in order to renew or reinstate a certification to practice speech-language pathology.

(b) The requirements of this section apply to individual speech-language pathologists, and nothing in this section requires a person who employs or contracts with a speech-language pathologist to comply with this section.

(4) Records of assessments or other documentation developed or submitted in connection with the continuing professional competency program are confidential and not subject to inspection by the public or discovery in connection with a civil action against a speech-language pathologist or other professional regulated under this title. A person or the director shall not use the records or documents unless used by the director to determine whether a speech-language pathologist is maintaining continuing professional competency to engage in the profession.

(5) As used in this section, "continuing professional competency" means the ongoing ability of a speech-language pathologist to learn, integrate, and apply the knowledge, skill, and judgment to practice as a speech-language pathologist according to generally accepted standards and professional ethical standards.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1365, § 1, effective August 8.

12-43.7-108. Scope of article - exclusions. (1) This article does not prevent or restrict the practice, services, or activities of:

(a) A school speech-language pathologist whose compensation for speech-language pathology services is paid solely by an administrative unit or state-operated program;

(b) A person licensed or otherwise regulated in this state by any other law from engaging in his or her profession or occupation as defined in the law under which he or she is regulated;

(c) A person pursuing a course of study leading to a degree in speech-language pathology at an educational institution with an accredited speech-language pathology program if that person is designated by a title that clearly indicates his or her status as a student and if he or she acts under appropriate instruction and supervision;

(d) A person participating in good faith in a clinical fellowship if the experience constitutes a part of the experience necessary to meet the requirement of section 12-43.7-106 (1) and the person acts under appropriate supervision; or

(e) Any legally qualified speech-language pathologist from another state or country when providing services on behalf of a temporarily absent speech-language pathologist certified in this state, so long as the uncertified speech-language pathologist is acting in accordance with rules adopted by the director. The uncertified practice must not occur more than once in any twelve-month period.

(2) Nothing in this article requires or allows the department of education, the department of health care policy and financing, or any other state department to adopt or apply the standards contained in this article:

(a) As the standards for endorsing or otherwise authorizing school speech-language pathologists to provide speech-language pathology services that are paid for by an administrative unit or state-operated program; or

(b) For purposes of determining whether medicaid reimbursement may be obtained for speech-language pathology services.

(3) Nothing in this article requires a professional licensed, certified, registered, or otherwise regulated under this title or title 22, C.R.S., to obtain certification under this article, or subjects the professional to discipline under this article, for engaging in activities that are within his or her professional scope of practice.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1366, § 1, effective August 8.

12-43.7-109. Limitations on authority. Nothing in this article authorizes a speech-language pathologist to engage in the practice of medicine, as defined in section 12-36-106, dentistry, as defined in sections 12-35-103 (5) and 12-35-113, or any other profession for which licensure, certification, or registration is required by this article.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1367, § 1, effective August 8.

12-43.7-110. Grounds for discipline. (1) The director may take disciplinary action against a certificate holder pursuant to section 12-43.7-111 if the director finds that the certificate holder has represented or held himself or herself out as a certified speech-language pathologist after the expiration, suspension, or revocation of his or her certification.

(2) The director may revoke, suspend, or deny a certification, place a certificate holder on probation, issue a letter of admonition or a confidential letter of concern, impose a fine against a certificate holder, or issue a cease-and-desist order to a certificate holder in accordance with section 12-43.7-111 upon proof that the certificate holder:

(a) Has engaged in a sexual act with a person receiving services while a therapeutic relationship existed or within six months immediately following termination of the therapeutic relationship in writing. For the purposes of this paragraph (a):

(I) "Sexual act" means sexual contact, sexual intrusion, or sexual penetration, as defined in section 18-3-401, C.R.S.

(II) "Therapeutic relationship" means the period beginning with the initial evaluation and ending upon the written termination of treatment.

(b) Has falsified information in an application or has attempted to obtain or has obtained a certification by fraud, deception, or misrepresentation;

(c) Excessively or habitually uses or abuses alcohol or habit-forming drugs or habitually uses a controlled substance, as defined in section 18-18-102, C.R.S., or other drugs having similar effects; except that the director has the discretion not to discipline the certificate holder if he or she is participating in good faith in a program approved by the director designed to end the use or abuse;

(d) (I) Failed to notify the director, as required by section 12-43.7-115, of a physical or mental illness or condition that impacts the speech-language pathologist's ability to perform speech-language pathology with reasonable skill and safety to patients;

(II) Failed to act within the limitations created by a physical or mental illness or condition that renders the certificate holder unable to perform speech-language pathology with reasonable skill and safety to the patient; or

(III) Failed to comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-43.7-115;

(e) Has violated this article or aided or abetted or knowingly permitted any person to violate this article, a rule adopted under this article, or any lawful order of the director;

(f) Has failed to respond to a request or order of the director;

(g) Has been convicted of or pled guilty or nolo contendere to a felony or any crime related to the certificate holder's practice of speech-language pathology or has committed an act specified in section 12-43.7-112. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea is conclusive evidence of the conviction or plea. In considering the disciplinary action, the director is governed by section 24-5-101, C.R.S.

(h) Has fraudulently obtained, furnished, or sold any speech-language pathology diploma, certificate, certification, renewal of certification, or record or aided or abetted such act;

(i) Has failed to notify the director of the suspension or revocation of the person's past or currently held license, certificate, or certification required to practice speech-language pathology in this or any other jurisdiction;

(j) Has failed to respond in an honest, materially responsive, and timely manner to a complaint against the certificate holder;

(k) Has resorted to fraud, misrepresentation, or deception in applying for, securing, renewing, or seeking reinstatement of a certification in this or any other state, in applying for professional liability coverage, or in taking the examination required by this article;

(l) Has failed to refer a patient to the appropriate licensed, certified, or registered health care professional when the services required by the patient are beyond the level of competence of the speech-language pathologist or beyond the scope of speech-language pathology practice;

(m) Has refused to submit to a physical or mental examination when ordered by the director pursuant to section 12-43.7-114;

- (n) Has failed to maintain or is not covered by professional liability insurance as required by section 12-43.7-106 (2) or (4) in the amount determined by the director by rule;
 - (o) Has willfully or negligently acted in a manner inconsistent with the health or safety of persons under his or her care;
 - (p) Has negligently or willfully practiced speech-language pathology in a manner that fails to meet generally accepted standards for speech-language pathology practice;
 - (q) Has failed to make essential entries on patient records or falsified or made incorrect entries of an essential nature on patient records; or
 - (r) Has otherwise violated any provision of this article or lawful order or rule of the director.
- (3) Except as otherwise provided in subsection (2) of this section, the director need not find that the actions that are grounds for discipline were willful but may consider whether the actions were willful when determining the nature of disciplinary sanctions to impose.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1367, § 1, effective August 8.

12-43.7-111. Disciplinary actions - judicial review. (1) (a) The director may commence a proceeding to discipline a certificate holder when the director has reasonable grounds to believe that the certificate holder has committed an act enumerated in section 12-43.7-110 or has violated a lawful order or rule of the director.

(b) In any proceeding under this section, the director may accept as evidence of grounds for disciplinary action any disciplinary action taken against a certificate holder in another jurisdiction if the violation that prompted the disciplinary action in the other jurisdiction would be grounds for disciplinary action under this article.

(2) The director shall conduct disciplinary proceedings in accordance with article 4 of title 24, C.R.S., and the director or an administrative law judge, as determined by the director, shall conduct the hearing and opportunity for review pursuant to that article. The director may exercise all powers and duties conferred by this article during the disciplinary proceedings.

(3) (a) The director may request the attorney general to seek an injunction, in any court of competent jurisdiction, to enjoin a person from committing an act prohibited by this article. When seeking an injunction under this paragraph (a), the attorney general is not required to allege or prove the inadequacy of any remedy at law or that substantial or irreparable damage is likely to result from a continued violation of this article.

(b) (I) In accordance with article 4 of title 24, C.R.S., and this article, the director may investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director.

(II) In order to aid the director in any hearing or investigation instituted pursuant to this section, the director or an administrative law judge appointed pursuant to paragraph (c) of this subsection (3) may administer oaths, take affirmations of witnesses, and issue subpoenas compelling the attendance of witnesses and the production of all relevant records, papers, books, documentary evidence, and materials in any hearing, investigation, accusation, or other matter before the director or an administrative law judge.

(III) Upon failure of any witness or certificate holder to comply with a subpoena or process and upon application by the director with notice to the subpoenaed person or certificate holder, the district court of the county in which the subpoenaed person or certificate holder resides or conducts business may issue an order requiring the person or certificate holder to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials; or to give evidence touching the matter under investigation or in question. If the person or certificate holder fails to obey the order of the court, the district court may hold the person or certificate holder in contempt of court.

(c) The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings, take evidence, and make and report findings to the director.

(4) (a) The director, the director's staff, any person acting as a witness or consultant to the director, any witness testifying in a proceeding authorized under this article, and any

person who lodges a complaint pursuant to this article is immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, witness, or complainant, respectively, if the individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that his or her action was warranted by the facts.

(b) A person participating in good faith in making a complaint or report or in an investigative or administrative proceeding pursuant to this section is immune from any civil or criminal liability that otherwise might result by reason of the participation.

(5) A final action of the director is subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S. The director may institute a judicial proceeding in accordance with section 24-4-106, C.R.S., to enforce an order of the director.

(6) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the director shall not resolve the complaint by a deferred settlement, action, judgment, or prosecution.

(7) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, the complaint should be dismissed, but the director has noticed indications of possible errant conduct by the certificate holder that could lead to serious consequences if not corrected, the director may send a confidential letter of concern to the certificate holder.

(8) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action but should not be dismissed as being without merit, the director may send a letter of admonition to the certificate holder.

(b) When the director sends a letter of admonition to a certificate holder, the director shall notify the certificate holder of his or her right to request in writing, within twenty days after receipt of the letter, that the director initiate formal disciplinary proceedings to adjudicate the propriety of the conduct described in the letter of admonition.

(c) If the certificate holder timely requests adjudication, the director shall vacate the letter of admonition and shall process the matter by means of formal disciplinary proceedings.

(9) The director may include in a disciplinary order that allows the certificate holder to continue to practice on probation any conditions the director deems appropriate to assure that the certificate holder is physically, mentally, morally, and otherwise qualified to practice speech-language pathology in accordance with generally accepted professional standards of practice. If the certificate holder fails to comply with any conditions imposed by the director pursuant to this subsection (9), and the failure to comply is not due to conditions beyond the certificate holder's control, the director may order suspension of the certificate holder's certification to practice speech-language pathology in this state until the certificate holder complies with the conditions.

(10) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a certificate holder is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required certification, the director may issue an order to cease and desist the activity. The order must set forth the statutes and rules alleged to have been violated, the facts alleged to constitute the violation, and the requirement that all unlawful acts or uncertified practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (10), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. The director shall conduct the hearing pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(11) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other provision of this article, in addition to any specific powers granted pursuant to this article, the director may issue to the person an order to show cause as to why the director should not issue a final order directing the person to cease and desist from the unlawful act or uncertified practice.

(b) The director shall promptly notify a person against whom he or she issues an order to show cause pursuant to paragraph (a) of this subsection (11) and shall include in the

notice a copy of the order, a statement of the factual and legal basis for the order, and the date set by the director for a hearing on the order. The director may serve the notice on the person against whom the order has been issued by personal service, by first-class, postage prepaid United States mail, or in another manner as may be practicable. Personal service or mailing of an order or document pursuant to this paragraph (b) constitutes notice of the order to the person.

(c) (I) The director shall conduct the hearing on an order to show cause no sooner than ten and no later than forty-five calendar days after the date the director transmits or serves the notification as provided in paragraph (b) of this subsection (11). The director may continue the hearing by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the director conduct the hearing later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (11) does not appear at the hearing, the director may present evidence that notification was properly sent or served on the person pursuant to paragraph (b) of this subsection (11) and any other evidence related to the matter that the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order becomes final as to that person by operation of law. The director shall conduct the hearing pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the director reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required certification, or has or is about to engage in acts or practices constituting a violation of this article, the director may issue a final cease-and-desist order directing the person to cease and desist from further unlawful acts or uncertified practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (11), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order is issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) is effective when issued and is a final order for purposes of judicial review.

(12) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged or is about to engage in an uncertified act or practice; an act or practice constituting a violation of this article, a rule promulgated pursuant to this article, or an order issued pursuant to this article; or an act or practice constituting grounds for administrative sanction pursuant to this article, the director may enter into a stipulation with the person.

(13) If any person fails to comply with a final cease-and-desist order or a stipulation, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested the attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(14) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order as provided in subsection (5) of this section.

(15) Any person whose certification is revoked or who surrenders his or her certification to avoid discipline is ineligible to apply for certification under this article for at least two years after the date of revocation of the certification. The director shall treat a subsequent application for certification from a person whose certification was revoked as an application for a new certification under this article.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1369, § 1, effective August 8.

12-43.7-112. Unauthorized practice - penalties. A person who practices or offers or attempts to practice speech-language pathology without an active certification issued under this article commits a class 2 misdemeanor and shall be punished as provided in section

18-1.3-501, C.R.S., for the first offense. For the second or any subsequent offense, the person commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1373, § 1, effective August 8.

12-43.7-113. Rule-making authority. The director shall promulgate rules as necessary for the administration of this article.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1373, § 1, effective August 8.

12-43.7-114. Mental and physical examination of certificate holders. (1) If the director has reasonable cause to believe that a certificate holder is unable to practice with reasonable skill and safety, the director may order the certificate holder to take a mental or physical examination administered by a physician or other licensed health care professional designated by the director. Except where due to circumstances beyond the certificate holder's control, if the certificate holder fails or refuses to undergo a mental or physical examination, the director may suspend the certificate holder's certification until the director has made a determination of the certificate holder's fitness to practice. The director shall proceed with an order for examination and shall make his or her determination in a timely manner.

(2) The director shall include in an order requiring a certificate holder to undergo a mental or physical examination the basis of the director's reasonable cause to believe that the certificate holder is unable to practice with reasonable skill and safety. For purposes of a disciplinary proceeding authorized under this article, the certificate holder is deemed to have waived all objections to the admissibility of the examining physician's or licensed health care professional's testimony or examination reports on the grounds that they are privileged communication.

(3) The certificate holder may submit to the director testimony or examination reports from a physician chosen by the certificate holder and pertaining to any condition that the director has alleged may preclude the certificate holder from practicing with reasonable skill and safety. The director may consider the testimony and reports submitted by the certificate holder in conjunction with, but not in lieu of, the testimony and examination reports of the physician designated by the director.

(4) The results of a mental or physical examination ordered by the director shall not be used as evidence in any proceeding other than one before the director, are not a public record, and are not available to the public.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1373, § 1, effective August 8.

12-43.7-115. Confidential agreement to limit practice - violation grounds for discipline. (1) If a speech-language pathologist suffers from a physical or mental illness or condition that renders the person unable to practice speech-language pathology or practice as a speech-language pathologist with reasonable skill and patient safety, the speech-language pathologist shall notify the director of the illness or condition in a manner and within a period of time determined by the director. The director may require the speech-language pathologist to submit to an examination to evaluate the extent of the illness or condition and its impact on the speech-language pathologist's ability to practice with reasonable skill and safety to patients.

(2) (a) Upon determining that a speech-language pathologist with a physical or mental illness or condition is able to render limited speech-language pathology services with reasonable skill and patient safety, the director may enter into a confidential agreement with the speech-language pathologist in which the speech-language pathologist agrees to limit

his or her practice based on the restrictions imposed by the illness or condition, as determined by the director.

(b) The agreement must specify that the speech-language pathologist is subject to periodic reevaluations or monitoring as determined appropriate by the director.

(c) The parties may modify or dissolve the agreement as necessary based on the results of a reevaluation or of monitoring.

(d) By entering into an agreement with the director pursuant to this section to limit his or her practice, the speech-language pathologist is not engaging in activities that constitute grounds for discipline pursuant to section 12-43.7-110. The agreement is an administrative action and does not constitute a restriction or discipline by the director. However, if the speech-language pathologist fails to comply with the terms of an agreement entered into pursuant to this section, the failure constitutes grounds for disciplinary action under section 12-43.7-110 (2) (d), and the speech-language pathologist is subject to discipline in accordance with section 12-43.7-111.

(3) This section does not apply to a licensee subject to discipline under section 12-43.7-110 (2) (c).

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1374, § 1, effective August 8.

12-43.7-116. Protection of medical records - certificate holder's obligations - verification of compliance - noncompliance grounds for discipline - rules. (1) Each speech-language pathologist responsible for patient records shall develop a written plan to ensure the security of patient medical records. The plan must address at least the following:

(a) The storage and proper disposal of patient medical records;

(b) The disposition of patient medical records in the event the certificate holder dies, retires, or otherwise ceases to practice or provide speech-language pathology services to patients; and

(c) The method by which patients may access or obtain their medical records promptly if any of the events described in paragraph (b) of this subsection (1) occur.

(2) Upon initial certification under this article and upon renewal of a certification, the applicant or certificate holder shall attest to the director that he or she has developed a plan in compliance with this section.

(3) A certificate holder shall inform each patient in writing of the method by which the patient may access or obtain his or her medical records if an event described in paragraph (b) of subsection (1) of this section occurs.

(4) A speech-language pathologist who fails to comply with this section is subject to discipline in accordance with section 12-43.7-111.

(5) The director may adopt rules reasonably necessary to implement this section.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1375, § 1, effective August 8.

12-43.7-117. Severability. If any provision of this article is held invalid, the invalidity does not affect other provisions of this article that can be given effect without the invalid provision.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1376, § 1, effective August 8.

12-43.7-118. Repeal of article - review of functions. This article is repealed, effective September 1, 2017. Prior to the repeal, the director's powers, duties, and functions under this article shall be reviewed as provided in section 24-34-104, C.R.S.

Source: L. 2012: Entire article added, (HB 12-1303), ch. 263, p. 1376, § 1, effective August 8.

ARTICLE 43.9

Colorado Hospital Commission

12-43.9-101 to 12-43.9-115. (Repealed)

Source: L. 79: Entire article repealed, p. 553, § 1, effective March 1, 1980.

Editor’s note: This article was added in 1977. For amendments to this article prior to its repeal in 1979, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

GENERAL - Continued

ARTICLE 44

Hotels and Food Service Establishments

Cross references: For definition of hotels and restaurants as vendors of alcohol beverages, see § 12-47-103.

	PART 1	12-44-110.	Liability for baggage left by guest.
	HOTELS	12-44-111.	Liability in case of fire or accident.
12-44-101.	Definitions - evidence of intent.	12-44-112.	Liability limited to damages.
12-44-101.5.	Public establishment - vendor contract.		
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12-44-103.	Notice prerequisite to conviction.		FOOD SERVICE ESTABLISHMENTS
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12-44-106.	Maximum amount landlord bound to receive.		PART 3
12-44-107.	Landlord not responsible - when.		INNKEEPERS’ RIGHTS
12-44-108.	Responsibility when key furnished.	12-44-301.	Definitions.
12-44-109.	Maximum liability for articles lost from rooms.	12-44-302.	Innkeepers’ right to refuse accommodations - exceptions.

PART 1

HOTELS

12-44-101. Definitions - evidence of intent. As used in this part 1, unless the context otherwise requires:

- (1) “Agreement with such public establishment” means any written or verbal agreement as to the price to be charged for, and the acceptance of, food, beverage, service, or accommodations where the price to be charged therefor is printed on a menu or schedule of rates shown to or made available by a public establishment to the patron and includes the acceptance of such food, beverage, service, or accommodations for which a reasonable charge is made.
- (2) “Notice”, as used in section 12-44-103, shall be given by posting a printed copy of sections 12-44-101 to 12-44-103 at any conspicuous place within the sleeping accommodations.
- (3) “Public establishment” means any establishment selling or offering for sale prepared food or beverages to the public generally, or any establishment leasing or renting

overnight sleeping accommodations to the public generally, including, but not exclusively, restaurants, cafes, dining rooms, lunch counters, coffee shops, boarding houses, hotels, motor hotels, motels, and rooming houses, unless the rental thereof is on a month-to-month basis or a longer period of time.

(4) It shall be evidence of an intent to defraud that food, service, or accommodations were given to any person who gave false information concerning his name or address, or both, in obtaining such food, service, or accommodations, or that such person removed or attempted to remove his baggage from the premises of such public establishment without giving notice of his intent to do so to such public establishment. These provisions shall not constitute the sole means of establishing evidence that a person accused under this part 1 had an intent to defraud. Proof of such intent to defraud may be made by any facts or circumstances sufficient to establish such intent to defraud beyond a reasonable doubt as provided by law.

(5) If any person, partnership, or corporation shall by written or verbal complaint, or otherwise, institute or cause to be instituted any prosecution for any violation of this section and shall thereafter, whether or not restitution is sought or received from the alleged offender, fail to cooperate in the full prosecution of the alleged offender without reasonable cause, the court having jurisdiction, on motion of the prosecuting attorney appearing therein and, after notice to such person, partnership, or corporation and an opportunity to be heard, may give judgment against such person, partnership, or corporation and in favor of the county wherein prosecution was commenced for all costs of the prosecution, including a reasonable allowance for the time of the prosecuting attorney.

Source: L. 1893: p. 121, § 2. R.S. 08: § 3003. C.L. § 4139. CSA: C. 81, § 2. CRS 53: § 68-1-2. C.R.S. 1963: § 68-1-2. L. 65: p. 724, § 1.

12-44-101.5. Public establishment - vendor contract. A contract between a vendor and a public establishment shall be invalid unless the vendor enters into the contract directly with the public establishment's owner, general manager, or a person with authority to enter into a contract as specifically designated in writing by such owner or general manager. The acceptance of delivered items by a public establishment from a vendor that includes an invoice stating the terms of a contract shall not constitute acceptance of such terms and the contract shall be void.

Source: L. 2003: Entire section added, p. 851, § 1, effective April 7.

12-44-102. Defrauding an innkeeper. A person who, with intent to defraud, procures food or accommodations from a public establishment without making payment therefor in accordance with his or her agreement with the public establishment is guilty of a misdemeanor if the total amount due under the agreement is one thousand dollars or less and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment; and, if the amount due under the agreement is more than one thousand dollars, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 1893: p. 121, § 1. R.S. 08: § 3002. C.L. § 4138. CSA: C. 81, § 1. CRS 53: § 68-1-1. C.R.S. 1963: § 68-1-1. L. 65: p. 724, § 1. L. 77: Entire section amended, p. 876, § 40, effective July 1, 1979. L. 87: Entire section amended, p. 608, § 17, effective July 1. L. 89: Entire section amended, p. 826, § 26, effective July 1. L. 98: Entire section amended, p. 798, § 13, effective July 1. L. 2002: Entire section amended, p. 1481, § 90, effective October 1. L. 2007: Entire section amended, p. 1690, § 2, effective July 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See *People v. McKenna*, 199, Colo. 452, 611 P.2d 574 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration contained in the 2007 act amending this section, see section 1 of chapter 384, Session Laws of Colorado 2007.

ANNOTATION

This section does not deny equal protection because it makes the prosecution of the crime dependent upon the willingness of the innkeeper to accept late payment. *People v. Ausley*, 185 Colo. 256, 523 P.2d 460 (1974).

Dividing line between felonies and misdemeanors of \$50 is constitutional. *People v. Ausley*, 185 Colo. 256, 523 P.2d 460 (1974).

Section is not unconstitutional because it makes failure to pay a contractual debt a crime. *People v. Ausley*, 185 Colo. 256, 523 P.2d 460 (1974).

Section specifically requires intent to defraud. *People v. Ausley*, 185 Colo. 256, 523 P.2d 460 (1974).

Intent cannot be inferred solely from fact of nonpayment. *People v. Ausley*, 185 Colo. 256, 523 P.2d 460 (1974).

Guilty plea to violation of this statute held voluntary. *People v. McClellan*, 183 Colo. 176, 515 P.2d 1127 (1973).

The enactment of this section does not preclude prosecution for theft pursuant to § 18-4-401 because it does not present a comprehensive regulatory scheme intended to limit prosecution under the general theft statute. *People v. Sharp*, 104 P.3d 252 (Colo. App. 2004).

Applied in *People v. Piskula*, 197 Colo. 148, 595 P.2d 219 (1979).

12-44-103. Notice prerequisite to conviction. No conviction shall be had under section 12-44-102, unless it is made to appear upon the trial for a violation of section 12-44-102 that the person charged with such violation was given notice of the terms and provisions of sections 12-44-101 to 12-44-103.

Source: L. 1893: p. 121, § 3. R.S. 08: § 3004. C.L. § 4140. CSA: C. 81, § 3. CRS 53: § 68-1-3. C.R.S. 1963: § 68-1-3. L. 65: p. 725, § 1.

12-44-104. Jurisdiction. Jurisdiction of cases arising under sections 12-44-101 to 12-44-103 and appeals from judgments in such cases shall be as provided by statute.

Source: L. 1893: p. 122, § 4. R.S. 08: § 3005. C.L. § 4141. CSA: C. 81, § 4. CRS 53: § 68-1-4. C.R.S. 1963: § 68-1-4. L. 64: p. 273, § 180. L. 75: Entire section R&RE, p. 468, § 1, effective July 1.

12-44-105. Safe for valuables - notice. Every landlord or keeper of a hotel or public inn in this state who provides in the office of his hotel, inn, or other convenient place a safe, vault, or other suitable receptacle, for the secure custody of money, jewelry, ornaments, or other valuable articles other than necessary baggage belonging to the guests or patrons of such hotel or public inn, and who keeps posted in a public and conspicuous place in the office, public room, and public parlors of such hotel or public inn, and upon the inside entrance door of every public sleeping room in such hotel or public inn a notice printed in English stating such fact, shall not be liable for the loss of any money, jewelry, ornaments, or other valuable articles, other than necessary baggage, sustained by such guest or patron by theft or otherwise, unless such guest or patron delivers such money, jewelry, ornaments, or other valuable articles, other than necessary baggage, to the landlord or keeper of such hotel or public inn, or person in charge of the office of such hotel or public inn, for deposit in such safe, vault, or other receptacle. Such liability shall not be greater than the amount at the time of deposit declared by the guest or patron to be the value of the article deposited.

Source: L. 07: p. 428, § 1. R.S. 08: § 3007. C.L. § 4142. CSA: C. 81, § 5. CRS 53: § 68-1-5. C.R.S. 1963: § 68-1-5.

12-44-106. Maximum amount landlord bound to receive. No landlord or keeper of any hotel or public inn is obliged to receive such property from any guest or patron for such custody under the provisions of section 12-44-105, exceeding in value the sum of five thousand dollars, nor is he liable for any loss thereof by theft or otherwise in any sum exceeding the sum of five thousand dollars, unless the landlord or keeper of such hotel or public inn, or person in charge of the office, assumes in writing a greater liability.

Source: L. 07: p. 429, § 2. R.S. 08: § 3008. C.L. § 4143. CSA: C. 81, § 6. CRS 53: § 68-1-6. C.R.S. 1963: § 68-1-6.

12-44-107. Landlord not responsible - when. The landlord or keeper of any hotel or public inn shall not be liable to any guest or patron of such hotel or public inn for the loss within his hotel or public inn of any article of wearing apparel or other necessary baggage belonging to any guest or patron, unless the same had been left within a room assigned to such guest or patron, or had been especially entrusted to the care or custody of the landlord or keeper of such hotel or public inn, or to an employee or servant thereof entrusted with the duty of receiving or caring for such article in the hotel or public inn.

Source: L. 07: p. 429, § 3. R.S. 08: § 3009. C.L. § 4144. CSA: C. 81, § 7. CRS 53: § 68-1-7. C.R.S. 1963: § 68-1-7.

12-44-108. Responsibility when key furnished. When the landlord or keeper of any hotel or public inn provides the doors of the rooms or sleeping apartments in such hotel or public inn with locks and keys in good order and repair and such room or sleeping apartment is turned over to the possession of any guest or patron together with the key to the door thereof, the landlord or keeper of such hotel or public inn shall not be liable to any guest or patron thereof occupying such room or apartment for loss of any article of personal property left within such room or apartment by such guest or patron while in possession thereof, unless the door in such room or apartment was left locked when unoccupied, and after being locked the key thereto was delivered to the person in charge of the office of such hotel or public inn. If any article of personal property is taken by an employee or servant of the landlord or keeper of such hotel or public inn, then the provisions of this section shall not prevent such guest or patron from recovering the value of such article, not to exceed the sum of two hundred dollars for all such articles.

Source: L. 07: p. 429, § 4. R.S. 08: § 3010. C.L. § 4145. CSA: C. 81, § 8. CRS 53: § 68-1-8. C.R.S. 1963: § 68-1-8.

12-44-109. Maximum liability for articles lost from rooms. The landlord or keeper of any hotel or public inn shall not be liable for the loss of any article left by any guest or patron in any room assigned to or occupied by such guest or patron, greater, in any event, than the sum of two hundred dollars for all articles which may be lost by said guest or patron, except by an agreement in writing made by the landlord or keeper of such hotel or public inn, or person in charge of the office, assuming a greater liability.

Source: L. 07: p. 430, § 5. R.S. 08: § 3011. C.L. § 4146. CSA: C. 81, § 9. CRS 53: § 68-1-9. C.R.S. 1963: § 68-1-9.

12-44-110. Liability for baggage left by guest. In case any person who has been the guest or patron of any hotel or public inn ceases to be such guest or patron and leaves with the landlord or keeper of such hotel or public inn any baggage or other personal property for safekeeping, and the landlord or keeper accepts and receives the same for safekeeping, and makes no charge for services or storage in keeping such property, then such landlord or keeper of a hotel or public inn shall be liable only as a gratuitous bailee and as such shall be liable for no sum greater than fifty dollars.

Source: L. 07: p. 430, § 6. **R.S. 08:** § 3012. **C.L.** § 4147. **CSA:** C. 81, § 10. **CRS 53:** § 68-1-10. **C.R.S. 1963:** § 68-1-10.

ANNOTATION

This section applies to baggage left for safe-keeping only, not to that in pledge. *Dutton Hotel Co. v. Fitzpatrick*, 69 Colo. 229, 193 P. 549 (1920).

Where a guest, having paid her bill at defendant's hotel, was told by the clerk that her baggage would be sent to her residence as she

had requested, and the baggage was then brought by a servant to the baggage room, and while the servant was looking for an expressman it was stolen, it was held that the case was not within this section and that defendant was liable for the full value. *New Albany Hotel Co. v. Dingman*, 66 Colo. 306, 181 P. 126 (1919).

12-44-111. Liability in case of fire or accident. The landlord or keeper of any hotel or public inn shall not be liable for loss of or damage to the property of any guest or patron of such hotel or public inn by fire or by any unforeseen causes or by inevitable accident, unless such loss or damage occurs on account of his negligence or the negligence of his servants or employees.

Source: L. 07: p. 430, § 7. **R.S. 08:** § 3013. **C.L.** § 4148. **CSA:** C. 81, § 11. **CRS 53:** § 68-1-11. **C.R.S. 1963:** § 68-1-11.

ANNOTATION

Law reviews. For comment on *Bidlake v. Shirley Hotel Co.*, appearing below, see 29 *Rocky Mt. L. Rev.* 136 (1956). For article, "One Year Review of Torts", see 34 *Dicta* 115 (1957).

"Unforeseen causes", within this section, cannot be anticipated as likely to occur, and thus the theft of the baggage of a guest at an inn, or an ordinary burglary, is not an unforeseen cause. *New Albany Hotel Co. v. Dingman*, 66 Colo. 306, 181 P. 126 (1919).

Where a hotel's uniformed employee, after inquiry and consent, assumed custody and

control of guest's automobile with the understanding that it was to be stored in a nearby garage overnight, but instead such employee used the automobile for a "joy ride" and left it on a public street in a damaged condition, and articles of personal property were removed or stolen from the glove compartment, the hotel was liable for the loss and damage resulting from its employee's conduct. *Bidlake v. Shirley Hotel Co.*, 133 Colo. 166, 292 P.2d 749 (1956).

12-44-112. Liability limited to damages. None of the provisions of sections 12-44-105 to 12-44-112 shall be construed to render the landlord or keeper of a hotel or public inn in this state liable in a greater sum than the actual loss or damage sustained.

Source: L. 07: p. 431, § 8. **R.S. 08:** § 3014. **C.L.** § 4149. **CSA:** C. 81, § 12. **CRS 53:** § 68-1-12. **C.R.S. 1963:** § 68-1-12.

PART 2

FOOD SERVICE ESTABLISHMENTS

12-44-201 to 12-44-213. (Repealed)

Source: L. 98: Entire part repealed, p. 1256, § 2, effective July 1.

Editor's note: This part 2 was numbered as article 2 of chapter 68, C.R.S. 1963. For amendments to this part 2 prior to its repeal in 1998, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 3

INNKEEPERS' RIGHTS

12-44-301. Definitions. As used in this part 3, unless the context otherwise requires:

- (1) "Innkeeper" means the owner, operator, or manager of a lodging establishment.
- (2) "Lodging establishment" means a bed and breakfast, as defined in section 12-47-103 (3), or a hotel, motel, resort, or public inn, as defined in section 12-44-101 (3).
- (3) "Minor" means a person under eighteen years of age.
- (4) "Resort" means a hotel with related sports and recreational facilities for the convenience of its guests or the general public located contiguous or adjacent to the hotel.

Source: L. 95: Entire part added, p. 241, § 1, effective July 1. **L. 97:** (2) amended, p. 301, § 10, effective July 1.

12-44-302. Innkeepers' right to refuse accommodations - exceptions. (1) An innkeeper has the right to refuse or deny accommodations, facilities, and the privileges of a lodging establishment to any person who is not willing or able to pay for such accommodations, facilities, and services. The innkeeper shall have the right to require a prospective guest to demonstrate his or her ability to pay by cash, valid credit card, or a validated check, and if the prospective guest is a minor, the innkeeper may require a parent or legal guardian of such minor or other responsible adult:

- (a) To provide a valid credit card number or agree, in writing, to pay for the cost of:
 - (I) The guest room, including applicable taxes;
 - (II) All charges made by the minor; and
 - (III) Any damages caused by the minor or the minor's guests to the guest room or its furnishings; or
- (b) To provide an advance cash payment to cover the cost of the guest room for all nights reserved, including applicable taxes, plus a cash deposit to be held toward the payment of any charges made by the minor and any damages to the guest room or its furnishings. The cash deposit shall be refunded, unless applied to charges or damages, following a joint inspection of the room. It is the obligation of the guest to join the innkeeper during the inspection. Should the guest fail to join the innkeeper, the guest thereby waives his or her right to the joint inspection. Such refund, if any, shall immediately be made to the extent it is not used to cover the described charges or damages.

Source: L. 95: Entire part added, p. 241, § 1, effective July 1.

ARTICLE 44.5

Indian Arts and Crafts Sales

12-44.5-101.	Short title.	12-44.5-105.	Unlawful acts.
12-44.5-102.	Legislative declaration.	12-44.5-106.	Unfair trade practices.
12-44.5-103.	Definitions.	12-44.5-107.	Violations - penalty.
12-44.5-104.	Inquiry as to producer.	12-44.5-108.	Right of action - damages.

12-44.5-101. Short title. This article shall be known and may be cited as the "Indian Arts and Crafts Sales Act".

Source: L. 75: Entire article added, p. 469, § 1, effective July 18.

12-44.5-102. Legislative declaration. The purpose of this article is to protect the public from false representation in the sale or offering for sale of authentic Indian and other arts and crafts.

Source: L. 75: Entire article added, p. 469, § 1, effective July 18.

12-44.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Authentic Indian arts and crafts" means any product which is handcrafted by Indian labor or workmanship and is not made from synthetic or artificial materials.

(2) "Findings" means the smaller component parts of a handcrafted item, such as clasps, glass, silver, or synthetic beads, stamped parts not used as a major part of a handcrafted item, leather backings, binding materials, and other ingredient parts not a major part of a handcrafted item.

(3) "Handcrafted" means the production of a product wholly by hand tools, with the exception of buffing or polishing and the findings used upon such products.

(4) "Other arts and crafts" means any product which is represented as an Indian design or product but is not handcrafted by Indian labor or workmanship or which is made by machine or from synthetic or artificial materials.

(5) "Imitation turquoise" means any artificial compound or mineral manufactured or treated so as to closely approximate turquoise in composition or color or any other mineral represented as turquoise when in fact it is not.

(6) "Indian" means any person who is enrolled or is a lineal descendent of one enrolled upon an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian tribe domiciled in the United States or a person recognized by any Indian tribe as being Indian.

(7) "Indian tribe" means any Indian tribe, organized band, or pueblo which is domiciled in the United States.

(8) "Natural" means the status of a mineral component, used in the preparation of authentic Indian arts and crafts, which does not include any chemical alteration or discoloration.

(9) "Plasticized" means the process through which natural turquoise of a soft, porous nature is altered by impregnating it with acrylic resin or any other substance of a similar nature to produce a change in coloration of the turquoise and allow it to accept a polished finish.

(10) "Represented" means the presentation of a product in words, description, state of being, or symbols when said product is offered for sale, trade, exchange, or purchase.

(11) "Spin cast" means the casting of jewelry components, other than findings, by means of centrifugal force.

(12) "Stabilized" means the chemical process through which natural turquoise of a soft, porous nature is altered to produce a change in the coloration of the natural mineral.

(13) "Treated" means any chemical process through which a natural turquoise is altered to produce a change in coloration of the natural mineral.

(14) "Turquoise" means a blue, green, greenish-blue, or sky-blue mineral, containing phosphorus, aluminum, copper, and iron, used as a gemstone in its cut and polished form.

(15) "Unnatural" means the status of any mineral compound or substance which is not natural or which has been chemically altered, including a stabilized, plasticized, or treated mineral and imitation turquoise.

Source: L. 75: Entire article added, p. 469, § 1, effective July 18.

12-44.5-104. Inquiry as to producer. (1) It is the duty of every person selling or offering for sale at retail authentic Indian arts and crafts or other arts and crafts to the general public to make due inquiry of their suppliers concerning the methods used in producing such arts and crafts and to determine whether such arts and crafts are in fact authentic.

(2) It is hereby made the duty of every person selling or offering for sale at retail to the general public natural or unnatural turquoise to make due inquiry of their suppliers concerning the source, grade, and quality of the turquoise for resale.

(3) If the supplier cannot authenticate to the seller the origin and process of manufacture regarding the Indian arts and crafts to be sold or traded to the seller, the seller shall not sell said arts and crafts to the general public as authentic Indian arts and crafts.

Source: L. 75: Entire article added, p. 470, § 1, effective July 18.

12-44.5-105. Unlawful acts. (1) A person shall not knowingly:

(a) Sell or offer for sale any products represented as authentic Indian arts and crafts unless such products are in fact authentic Indian arts and crafts;

(b) Sell or offer to sell any authentic Indian arts and crafts purporting to be silver unless such products are made of coin silver or sterling silver which is not less than ninety percent pure silver by weight or unless said person provides a statement to the purchaser at retail concerning the content of the silver used in such arts or crafts;

(c) Sell or offer to sell any authentic Indian arts and crafts that are not separately displayed from other arts and crafts and the authentic Indian arts and crafts are not clearly designated with a tag attached to each product and containing the words "Authentic Indian" in letters not less than one-quarter inch high or, if the authentic Indian arts and crafts can clearly be labeled by the use of a display card, then in lieu of tagging each article the person may label the authentic Indian arts and crafts with a printed display card in letters not less than one-half inch in height and containing the words "Authentic Indian". The label or display card shall be maintained with the related crafts in an area separate from other arts and crafts so as to clearly designate the authentic Indian arts and crafts.

(d) Sell or offer to sell spin cast components of authentic Indian jewelry, other than findings, or use spin cast components in authentic Indian jewelry unless such jewelry is labeled as being so cast in its manufacture.

Source: L. 75: Entire article added, p. 471, § 1, effective July 18.

12-44.5-106. Unfair trade practices. (1) A person shall not:

(a) Use a false or misleading statement, written or oral, or the lack thereof, a visual description or the lack thereof, or any representation or lack thereof made in connection with the sale or trade of Indian arts and crafts in the regular course of trade or commerce with the intent to deceive or mislead any person;

(b) Falsely represent turquoise being sold as having characteristics, elements, or qualities it does not have;

(c) Falsely represent turquoise being sold as natural turquoise if in fact it is in an unnatural state;

(d) Make a false or misleading statement of fact concerning the price or value for the purpose of selling or trading turquoise.

Source: L. 75: Entire article added, p. 471, § 1, effective July 18.

12-44.5-107. Violations - penalty. Any person who knowingly violates any of the provisions of section 12-44.5-105 or 12-44.5-106 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 75: Entire article added, p. 471, § 1, effective July 18. **L. 2002:** Entire section amended, p. 1482, § 91, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-44.5-108. Right of action - damages. In addition to any judicial relief, any person who suffers financial injury or damages by reason of anything forbidden in this article may sue in district court and may recover actual damages sustained by him and the cost of suit, including reasonable attorney's fees.

Source: L. 75: Entire article added, p. 472, § 1, effective July 18.

ARTICLE 45

Landscape Architects

Editor’s note: This article was numbered as article 2 of chapter 10, C.R.S. 1963. This article was repealed in 1977 and was subsequently recreated and reenacted in 2007, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers prior to 1977 are shown in editor’s notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

Cross references: For regulatory provisions for architects, see part 3 of article 25 of this title.

12-45-101.	Short title.	12-45-112.	Professional liability.
12-45-102.	Legislative declaration.	12-45-113.	Grounds for disciplinary action.
12-45-103.	Definitions.		
12-45-104.	License required.	12-45-114.	Disciplinary actions by board
12-45-105.	Board - composition - appointments - terms.		- licenses denied, suspended, or revoked - cease-and-desist orders.
12-45-106.	Immunity.	12-45-115.	Unauthorized practice - penalties.
12-45-107.	Powers and duties of board - rules.	12-45-116.	Judicial review.
12-45-108.	Management of fees and expenses of board.	12-45-117.	Landscape architects’s stamp.
12-45-109.	Records.	12-45-118.	Exemptions.
12-45-110.	Licensure - application - qualifications - rules.	12-45-119.	Architecture, engineering, and surveying.
12-45-111.	Fees.	12-45-120.	Repeal of article.

12-45-101. Short title. This article shall be known and may be cited as the “Landscape Architects Professional Licensing Act”.

Source: L. 2007: Entire article RC&RE, p. 1424, § 1, effective August 3.

12-45-102. Legislative declaration. The general assembly hereby finds and declares that the regulatory authority established in this article is necessary to safeguard the health, safety, and welfare of the people of Colorado by preventing the improper design of public domain landscape infrastructure by unauthorized, unqualified, and incompetent persons.

Source: L. 2007: Entire article RC&RE, p. 1424, § 1, effective August 3.

- 12-45-103. Definitions.** As used in this article, unless the context otherwise requires:
- (1) “Board” or “state board” means the state board of landscape architects, created in section 12-45-105.
 - (2) “Director” means the director of the division of professions and occupations in the department of regulatory agencies.
 - (3) “Division” means the division of professions and occupations in the department of regulatory agencies.
 - (4) “Habit-forming drug” means a drug or medicine required to be labeled under section 25-5-415, C.R.S., or the “Federal Food, Drug, and Cosmetic Act”, 21 U.S.C. sec. 301 et seq., as a habit-forming drug.
 - (5) “Infrastructure” means elements of the public domain that support developments such as roads, streets, parks, plazas, and other places that are not privately owned and managed.
 - (6) “Landscape architect” means a person who engages in the practice of landscape architecture.

(7) "Planning" means preparing layouts and schemes for land areas, infrastructure systems, facilities, or objects. "Planning" includes technical documentation.

(8) (a) "Practice of landscape architecture" means:

(I) The application of landscape architectural higher education, training, and experience as well as required mathematical, physical, and social science skills to consult, evaluate, plan, and design projects and improvements principally directed at the functional and aesthetic uses of land;

(II) Collaboration with architects and engineers during the design of public infrastructure projects such as roads, bridges, buildings, and other structures, concerning the functional and aesthetic requirements of the area and project site; or

(III) Assistance in the preparation and administration of construction documents, contracts, and contract offers related to site landscape improvements.

(b) "Practice of landscape architecture" does not include acts exempted by section 12-45-118.

(9) "Substantial gift" means a gift, donation, or other consideration sufficient to influence a person to act in a specific manner. The term does not include a gift of nominal value such as reasonable entertainment or hospitality or an employer's reward to an employee for work performed.

(10) "Supervision" means the actions taken by a landscape architect in directing, personally reviewing, correcting, or approving the work performed by an employee or subcontractor of the landscape architect.

Source: L. 2007: Entire article RC&RE, p. 1424, § 1, effective August 3.

12-45-104. License required. On and after January 1, 2008, a person shall not practice landscape architecture or represent himself or herself as a landscape architect unless the person has a license issued by the board. A person licensed by the board is entitled to use the stamp specified in section 12-45-117, which shall constitute a professional credential attesting to the minimum competence of the landscape architect.

Source: L. 2007: Entire article RC&RE, p. 1425, § 1, effective August 3.

Editor's note: This section is similar to former § 12-45-102 as it existed prior to 1977.

12-45-105. Board - composition - appointments - terms. (1) There is hereby created in the division the Colorado state board of landscape architects. The board shall consist of five members who shall have the following qualifications:

(a) Three members shall:

(I) Be licensed landscape architects in Colorado or persons who are eligible to be licensed in Colorado as landscape architects at the time of the formation of the board;

(II) Have at least three years of experience in the practice of landscape architecture; and

(III) Be residents of the state of Colorado.

(b) (I) Two members shall:

(A) Not be licensed landscape architects nor practice landscape architecture in any jurisdiction;

(B) Not have a current or prior significant personal or financial interest in the practice of landscape architecture; and

(C) Be residents of the state of Colorado.

(II) Of the two members appointed pursuant to this paragraph (b), one member shall be a building or landscape contractor in Colorado.

(2) Appointments to the board shall be made by the governor and shall be made to provide for staggering of terms of members so that not more than two members' terms expire each year. Thereafter appointments shall be for terms of four years. Each board member shall hold office until the expiration of the term for which the member is appointed or until a successor has been duly appointed and qualified. Appointees shall be limited to two full terms. The governor may remove a member of the board for misconduct,

incompetence, neglect of duty, or an act that would justify the revocation of the board member's license to practice landscape architecture, if applicable.

(3) The board shall meet on or before August 30 of each year and elect from its members a chair and vice-chair. The board shall meet at such other times as it deems necessary, but not less than twice a year.

Source: L. 2007: Entire article RC&RE, p. 1426, § 1, effective August 3.

Editor's note: This section is similar to former § 12-45-103 as it existed prior to 1977.

12-45-106. Immunity. (1) A member of the board or the board's staff, a person acting as a witness or consultant to the board, and a witness testifying in a proceeding authorized under this article shall be immune from liability in a civil action for acts occurring while acting in his or her capacity as a board member, member of the board's staff, consultant, or witness if the person acting in good faith within the scope of his or her respective capacity made a reasonable effort to obtain the facts of the matter as to which he or she acted and acted with the reasonable belief that the action was warranted by the facts.

(2) Any person participating in good faith in making a complaint or participating in an investigation or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 2007: Entire article RC&RE, p. 1427, § 1, effective August 3.

12-45-107. Powers and duties of board - rules. (1) The board shall have the following powers and duties:

- (a) To promulgate rules necessary to effectuate this article;
- (b) To examine license applicants for qualifications;
- (c) To review special cases as authorized in this article;
- (d) To grant the licenses of duly qualified applicants to practice landscape architecture in accordance with this article;

(e) (I) To administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to perform the functions of this paragraph (e) and to take evidence and to make findings and report them to the board.

(II) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

- (f) To adopt and use a seal;

(g) To conduct hearings in accordance with section 24-4-105, C.R.S., upon complaints concerning the conduct of landscape architects; except that the board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct such hearings;

(h) To refer for prosecution by the district attorney or the attorney general persons violating this article;

(i) To require a licensed landscape architect to have a stamp as prescribed by the board; and

(j) To deny the issuance or renewal of, suspend for a specified period, or revoke a license; issue a letter of admonition to or censure or place on probation any person who,

while holding a landscape architect license, violates any provision of this article; issue confidential letters of concern; issue cease-and-desist orders; or impose other conditions or limitations on a licensee.

Source: L. 2007: Entire article RC&RE, p. 1427, § 1, effective August 3.

Editor's note: This section is similar to former § 12-45-103 as it existed prior to 1977.

12-45-108. Management of fees and expenses of board. (1) Fees collected pursuant to section 12-45-111 shall be transmitted to the state treasurer, who shall credit the same in accordance with section 24-34-105, C.R.S. The general assembly shall make annual appropriations pursuant to said section for the expenditures of the board.

(2) The board may employ such technical, clerical, investigative, or other assistance necessary for the proper performance of the board's duties, subject to the provisions of section 13 of article XII of the state constitution, and may make expenditures that are necessary for the proper performance of the board's duties under this article.

Source: L. 2007: Entire article RC&RE, p. 1428, § 1, effective August 3.

Editor's note: This section is similar to former §§ 12-45-111 and 12-45-112 as they existed prior to 1977.

12-45-109. Records. (1) The board shall keep a record of its proceedings, a register of all applications for licensing, and other information deemed necessary by the board.

(2) The records of the board shall be public records pursuant to article 72 of title 24, C.R.S. Copies of records and papers of the board or the department of regulatory agencies concerning the administration of this article, when certified and authenticated by seal, shall be received by a court in the same manner as original documents.

Source: L. 2007: Entire article RC&RE, p. 1428, § 1, effective August 3.

Editor's note: This section is similar to former § 12-45-103 as it existed prior to 1977.

12-45-110. Licensure - application - qualifications - rules. (1) **Application.** (a) An application for licensure shall include evidence of the education and practical experience required by this section and the rules of the board.

(b) A person applying for licensure under this article shall disclose whether he or she has been denied licensure or disciplined as a landscape architect or practiced landscape architecture in violation of this article. If an applicant has violated this article, the board may deny an application for licensure. When determining whether a person has violated this article, section 24-5-101, C.R.S., shall govern the board's actions.

(c) Applicants may seek licensure in one of the following manners:

(I) Licensure by examination as described in subsection (3) of this section;

(II) Licensure by endorsement as described in subsection (4) of this section; or

(III) Licensure by prior practice as described in subsection (5) of this section.

(2) **Education and experience.** The board shall set minimum educational and experience requirements for licensure by examination, subject to the following guidelines:

(a) The board may require either:

(I) (A) Practical experience for a specified period, not to exceed three years, or education or experience determined by the board to be substantially equivalent; and

(B) A professional degree from a program accredited by the landscape architectural accreditation board, or any successor organization, or education or experience determined by the board to be substantially equivalent; or

(II) Practical experience for a specified period, not to exceed ten years, under the direct supervision of a licensed landscape architect or a landscape architect with an equivalent level of competence as defined by rules of the board; or

(III) A combination of such practical experience and education, not to exceed ten years.

(b) One year of the experience required by this subsection (2) may be practical field experience in construction techniques, teaching, or research in a program accredited by the landscape architectural accreditation board or an equivalent successor organization.

(c) Subject to review and approval by the board pursuant to rules, a graduate of an unaccredited program of landscape architecture or a related field shall be eligible to substitute education for the practical experience required by the board pursuant to this subsection (2).

(d) (I) Prior to licensure, an applicant by examination shall pass an examination developed or adopted by the board that measures the minimum level of competence necessary to be a licensed landscape architect. The board shall designate and notify applicants of the time and location for examinations. The board may engage a private contractor to administer the examinations.

(II) The board may adopt the examinations, recommended grading procedures, and educational and practical experience requirements and equivalents of the council of landscape architectural registration boards or a successor organization if such examinations, procedures, and requirements and equivalents do not conflict with the requirements of this article.

(3) **Licensure by examination.** (a) Before being licensed pursuant to this subsection (3), an applicant for licensure by examination shall pass an examination developed or adopted by the board to measure the minimum level of competence.

(b) The board shall designate a time and location for examinations and shall notify applicants of this time and location in a timely manner. The board may contract for assistance in administering the examinations.

(c) The board may adopt the examinations, recommended grading procedures, and educational and practical experience requirements of the council of landscape architectural registration boards or any substantially equivalent successor organization if such examinations, procedures, and requirements do not conflict with the requirements of this article.

(4) **Licensure by endorsement.** (a) An applicant for licensure by endorsement shall file an application as prescribed by the board and shall hold a current valid license or registration in a jurisdiction requiring qualifications substantially equivalent to those required for licensure by subsections (2) and (3) of this section.

(b) The board shall provide procedures for an applicant to apply directly to the board for a license by endorsement. A certified record from the council of landscape architectural registration boards, or its successor organization, shall qualify a candidate to submit an application to the board for licensure by endorsement.

(c) The board may develop or adopt a supplementary examination to measure the minimum competence of applicants for licensure by endorsement. The supplementary examination shall be administered at the discretion of the board when an applicant for licensure by endorsement has otherwise failed to sufficiently demonstrate minimum competence.

(5) **Licensure by prior practice.** (a) The board shall adopt rules authorizing the issuance of a license to qualified candidates who practiced landscape architecture before January 1, 2008.

(b) The following evidence, as verified by the board, shall be acceptable as proof that a candidate is qualified for licensure by prior practice:

(I) (A) A diploma or certificate of graduation from a landscape architecture degree program accredited by the landscape architecture accreditation board or its successor organization; and

(B) Evidence of at least six years of practical experience in the practice of landscape architecture sufficient to satisfy the board that the applicant has minimum competence in the practice of landscape architecture; or

(II) Evidence that the applicant has at least ten years of practical experience in the practice of landscape architecture sufficient to satisfy the board that the applicant has minimum competence in the practice of landscape architecture.

(c) All experience required to qualify for licensure by prior practice shall be obtained before January 1, 2008; except that one year of required experience for licensure by prior practice may accrue after January 1, 2008.

(d) The board may develop or adopt a supplementary examination to measure the minimum competence of applicants for licensure by prior practice. The supplementary examination shall be administered at the discretion of the board when an applicant for licensure by prior practice has otherwise failed to sufficiently demonstrate minimum competence.

(6) **Issuance of license.** Upon application and satisfaction of the requirements of this section, the board shall issue a license to practice landscape architecture. The board is not required to issue a license if the applicant is subject to discipline pursuant to this article.

(7) **Lapse of application.** If an applicant fails to meet the licensing requirements within three years after filing an application, the application shall be void. The board may authorize an applicant for licensure by examination to reattempt the examination without limitation and may exempt an applicant from this subsection (7) so long as the applicant reattempts the examination within thirty-one months after the last examination.

(8) **Renewal and reinstatement.** All licenses shall expire pursuant to a schedule established by the director. Licenses shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director, the license shall expire. Any person whose license has expired shall be subject to penalties provided in this article or in section 24-34-102 (8), C.R.S. All fees collected under this article shall be deposited in accordance with section 12-45-111.

Source: L. 2007: Entire article RC&RE, p. 1428, § 1, effective August 3.

Editor's note: This section is similar to former §§ 12-45-104 and 12-45-105 as they existed prior to 1977.

12-45-111. Fees. The director shall establish a schedule of reasonable fees for applications, licenses, renewal of licenses, inactive status, and late fees. The fees shall be set, collected, and credited pursuant to section 24-34-105, C.R.S.

Source: L. 2007: Entire article RC&RE, p. 1431, § 1, effective August 3.

Editor's note: This section is similar to former § 12-45-111 as it existed prior to 1977.

12-45-112. Professional liability. (1) The shareholders, members, or partners of an entity that practices landscape architecture are liable for the acts, errors, and omissions of the employees, members, and partners of the entity, except when the entity maintains a qualifying policy of professional liability insurance as set forth in subsection (2) of this section.

(2) (a) A qualifying policy of professional liability insurance shall meet the following minimum standards:

(I) The policy shall insure the entity against liability imposed upon it by law for damages arising out of the negligent acts, errors, and omissions of all professional and nonprofessional employees, members, and partners; and

(II) The insurance shall be in a policy amount of at least seventy-five thousand dollars multiplied by the total number of landscape architects in or employed by the entity, up to a maximum of five hundred thousand dollars.

(b) In addition, the policy may include:

(I) A provision stating that the policy shall not apply to the following:

(A) A dishonest, fraudulent, criminal, or malicious act or omission of the insured entity or of any stockholder, employee, member, or partner of the insured entity;

(B) The conduct of a business enterprise that is not the practice of landscape architecture by the insured entity;

(C) The conduct of a business enterprise in which the insured entity may be a partner or that may be controlled, operated, or managed by the insured entity in its own or in a fiduciary capacity, including, but not limited to, the ownership, maintenance, or use of property;

(D) Bodily injury, sickness, disease, or death of a person; or

(E) Damage to, or destruction of, tangible property owned by the insured entity;

(II) Any other reasonable provisions with respect to policy periods, territory, claims, conditions, and ministerial matters.

Source: L. 2007: Entire article RC&RE, p. 1431, § 1, effective August 3.

12-45-113. Grounds for disciplinary action. (1) The board shall investigate the activities of a licensee or other person upon its own motion or upon the receipt of a written, signed complaint alleging grounds for disciplinary action under this article.

(2) Grounds for disciplinary action shall include:

(a) Fraud or a material misstatement of fact made in procuring or attempting to procure a license;

(b) An act or omission that fails to meet the generally accepted standards of the practice of landscape architecture and that endangers life, health, property, or the public welfare;

(c) Fraud or deceit in the practice of landscape architecture;

(d) Affixing a seal or authorizing a seal to be affixed to a document if such act misleads another into incorrectly believing that a licensed landscape architect was the document's author or was responsible for its preparation;

(e) Violation of or aiding or abetting in the violation of this article, a rule promulgated by the board under this article, or an order of the board issued under this article;

(f) Being convicted of or pleading nolo contendere to a felony in Colorado or to any crime outside Colorado that would constitute a felony in Colorado, if the felony or other crime concerns the practice of landscape architecture. A certified copy of the judgment of a court of competent jurisdiction of a conviction or plea shall be presumptive evidence of the conviction or plea in any hearing under this article. The board shall be governed by section 24-5-101, C.R.S., when considering the conviction or plea.

(g) Use of false, deceptive, or misleading advertising;

(h) Habitual or excessive use or abuse of alcohol or a habit-forming drug or habitual use of a controlled substance, as defined in section 18-18-102 (5), C.R.S., or other drug having similar effects, when the use or abuse renders the landscape architect unfit to engage in the practice of landscape architecture;

(i) Use of a schedule I controlled substance, as defined in section 18-18-203, C.R.S.;

(j) Failure to report to the board a landscape architect known to have violated this article or any board order or rule. Potential violations of this paragraph (j) include knowledge of an action or arbitration in which claims regarding the life and safety of the users of a site are alleged.

(k) Making or offering a substantial gift to influence a prospective or existing client or employer to use or refrain from using a specific landscape architect;

(l) Failure to exercise adequate professional supervision of persons assisting in the practice of landscape architecture under a licensed landscape architect;

(m) Performing services beyond the competence, training, or education of a landscape architect;

(n) Selling, fraudulently obtaining, or fraudulently furnishing a license or renewal of a license to practice landscape architecture;

(o) Practicing landscape architecture or advertising, representing, or holding oneself out as a licensed landscape architect or using the title "landscape architect" or "licensed landscape architect" unless the person is licensed pursuant to this article; or

(p) Otherwise violating any provision of this article.

(3) A disciplinary action in another state or jurisdiction taken on grounds that would constitute a violation under this article shall be prima facie evidence of grounds for disciplinary action under this section.

Source: L. 2007: Entire article RC&RE, p. 1432, § 1, effective August 3.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1977. For a detailed comparison, see the comparative tables located in the back of the index.

12-45-114. Disciplinary actions by board - licenses denied, suspended, or revoked - cease-and-desist orders. (1) The board may deny, refuse to renew, suspend, or revoke any license, may place a licensee on probation, may place conditions or limitations on the license, or may impose a censure or fine if, after notice and hearing, the board determines that the licensee has committed any of the acts specified in section 12-45-113.

(2) (a) When a complaint or investigation discloses an instance of misconduct that, in the board's opinion, does not warrant formal action but that should not be dismissed as being without merit, the board may issue and send to the licensee, by certified mail, a written letter of admonition.

(b) When a letter of admonition is sent by the board, the licensee shall be advised that he or she has the right to request, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) Upon receipt of a timely request for adjudication pursuant to paragraph (b) of this subsection (2), the board shall void the letter of admonition and shall institute formal disciplinary proceedings to address the matter.

(3) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued to the licensee. The confidential letter of concern and notice of the issuance of the letter shall be sent to the licensee by certified mail. Issuance of a confidential letter of concern shall not be construed to be discipline.

(4) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(5) If the board determines that a person licensed to practice landscape architecture pursuant to this article is subject to disciplinary action under this section, the board may, in lieu of or in addition to other discipline, require a licensee to take courses of professional training or education. The board shall determine the educational conditions to be imposed on the licensee, including, but not limited to, the type and number of hours of training or education. All training or education courses are subject to approval by the board, and the licensee shall furnish proof of satisfactory completion of the training or education.

(6) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required license, the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (6), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(7) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the board may issue to

such person an order to show cause as to why the board should not issue a final order directing the person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (7) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom the order is issued. Personal service or mailing of an order or document pursuant to this subsection (7) shall constitute notice of the order and hearing to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (7). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (7) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (7) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing the person to cease and desist from further unlawful acts or unlicensed practice.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (7), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(8) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the board may enter into a stipulation with such person.

(9) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(10) Any disciplinary action taken by the board and judicial review of such action shall be in accordance with the provisions of article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to said article by the board or an administrative law judge at the board's discretion.

(11) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-45-116.

(12) (a) In addition to the penalties provided for in this section, and in lieu of revoking a license upon a finding of misconduct by the board, a person who violates this article or rules promulgated pursuant to this article may be punished by a fine not to exceed five thousand dollars.

(b) A fine collected pursuant to this subsection (12) shall be transmitted to the state treasurer, who shall credit the same to the general fund.

(13) Except as provided in subsection (14) of this section, a license that is revoked shall not be reinstated within two years after the effective date of the revocation.

(14) On its own motion or upon application after the imposition of discipline, the board may reconsider its prior action and reinstate a license, terminate suspension or probation, or reduce the severity of its prior disciplinary action.

Source: L. 2007: Entire article RC&RE, p. 1434, § 1, effective August 3.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1977. For a detailed comparison, see the comparative tables located in the back of the index.

12-45-115. Unauthorized practice - penalties. (1) Any person who practices or offers or attempts to practice landscape architecture without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and, for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) A violation of this section may be prosecuted by the district attorney of the judicial district in which the offense was committed or by the attorney general of the state of Colorado in the name of the people of the state of Colorado. In such action, the court may issue an order, enter judgment, or issue a preliminary or final injunction.

Source: L. 2007: Entire article RC&RE, p. 1437, § 1, effective August 3.

Editor's note: This section is similar to former §§ 12-45-109 and 12-45-110 as they existed prior to 1977.

12-45-116. Judicial review. A person aggrieved by a final action or order of the board may seek judicial review pursuant to section 24-4-106, C.R.S.

Source: L. 2007: Entire article RC&RE, p. 1437, § 1, effective August 3.

12-45-117. Landscape architect's stamp. (1) A licensed landscape architect shall obtain a stamp of a design authorized by the board. The stamp shall bear the name, date of licensing, and license number of the landscape architect, together with the legend "Colorado - Licensed Landscape Architect".

(2) A landscape architect's records and documents shall be prepared, recorded, and retained in the following manner:

(a) The stamp, signature of the landscape architect whose name appears on the stamp, and date of the landscape architect's signature shall be placed on reproductions of drawings to establish a record set of contract documents.

(b) The record set shall be prominently identified and shall be for the permanent record of the landscape architect, the project owner, and the regulatory authorities who have jurisdiction over the project.

(c) The stamp and the date the document is stamped shall be placed on the cover, title page, and table of contents of specifications and on each reproduction of drawings prepared under the direct supervision of the landscape architect.

(d) Subsequently issued addenda, revisions, clarifications, or other modifications shall be properly identified and dated for the record set.

(e) Where consultant drawings and specifications are incorporated into the record set, their origin shall be clearly identified and dated to distinguish them from stamped documents.

(f) Except as required for compliance with a federal contract, the landscape architect shall not stamp reproductions or copies that are transferred from the landscape architect's possession or supervision.

(g) A record set shall be retained by the landscape architect for a minimum of three years after beneficial occupancy or beneficial use of the project.

(h) One original document may be stamped, signed, and dated as required for federal government contracts.

(3) The board, by rule, may authorize the use of an electronic stamp, an electronic seal, and recording of electronic records in a manner substantially equivalent to the requirements of subsections (1) and (2) of this section.

Source: L. 2007: Entire article RC&RE, p. 1437, § 1, effective August 3.

Editor's note: This section is similar to former § 12-45-102 as it existed prior to 1977.

12-45-118. Exemptions. (1) The following shall be exempt from the provisions of this article:

(a) The practice of architecture by licensed architects pursuant to part 3 of article 25 of this title;

(b) The practice of professional engineering by registered professional engineers pursuant to part 1 of article 25 of this title;

(c) The practice of professional land surveying by licensed land surveyors pursuant to part 2 of article 25 of this title;

(d) Residential landscape design, consisting of landscape design services for single- and multi-family residential properties of four or fewer units not including common areas;

(e) The design of irrigation systems by professionals qualified by appropriate experience or certification; and

(f) Landscape installation and construction services, including, but not limited to, all contracting services not within the scope of the practice of landscape architecture.

(2) Nothing in this article shall prohibit or limit a municipality or county of this state, in the reasonable exercise of its police power, from adopting codes that may be necessary for the protection of the inhabitants of the municipality or county.

(3) Nothing in this article shall be construed to limit or extend the rights of another profession or craft.

(4) Nothing in this article shall be construed to prohibit the practice of landscape architecture by any employee of the United States government or any bureau, division, or agency of the United States while discharging his or her official duties.

Source: L. 2007: Entire article RC&RE, p. 1438, § 1, effective August 3.

Editor's note: This section is similar to former § 12-45-106 as it existed prior to 1977.

12-45-119. Architecture, engineering, and surveying. Nothing in this article shall be construed to authorize a landscape architect to engage in the practice of architecture, as defined in part 3 of article 25 of this title, the practice of engineering, as defined in part 1 of article 25 of this title, or professional land surveying, as defined in part 2 of article 25 of this title.

Source: L. 2007: Entire article RC&RE, p. 1439, § 1, effective August 3.

12-45-120. Repeal of article. This article is repealed, effective July 1, 2017. Prior to such repeal, the licensing of landscape architects by the board shall be reviewed as provided in section 24-34-104, C.R.S.

Source: L. 2007: Entire article RC&RE, p. 1439, § 1, effective August 3.

ARTICLE 46

Fermented Malt Beverages

Editor’s note: This article was numbered as article 1 of chapter 75, C.R.S. 1963. This article was repealed and reenacted in 1976 and was subsequently amended with relocations in 1997, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1997, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers prior to 1997 are shown in editor’s notes following those sections that were relocated. For a detailed comparison of this article for 1997, see the comparative tables located in the back of the index.

12-46-101.	Short title.	12-46-105.	Fees and taxes - allocation.
12-46-102.	Legislative declaration.	12-46-106.	Lawful acts.
12-46-103.	Definitions.	12-46-107.	Local licensing authority -
12-46-104.	Licenses - state license fees - requirements.		application - fees.

12-46-101. Short title. This article shall be known and may be cited as the “Colorado Beer Code”.

Source: L. 97: Entire article amended with relocations, p. 217, § 1, effective July 1.

Editor’s note: This section is similar to former § 12-46-101 as it existed prior to 1997.

ANNOTATION

Annotator’s note. Since § 12-46-101 is similar to § 12-46-101 as it existed prior to the 1997 amendment of title 12, article 46, which resulted in the relocation of provisions, relevant cases construing that provision have been included in the annotations to this section.

Applied in *Adams County Golf, Inc. v. Colo. Dept. of Rev.*, 199 Colo. 423, 610 P.2d 97 (1980).

12-46-102. Legislative declaration. (1) The general assembly hereby declares that it is in the public interest that fermented malt beverages shall be manufactured, imported, and sold only by persons licensed as provided in this article. The general assembly further declares that it is lawful to manufacture and sell fermented malt beverages containing not more than three and two-tenths percent alcohol by weight subject to the provisions of this article and applicable provisions of articles 47 and 48 of this title.

(2) The general assembly recognizes that fermented malt beverages are separate and distinct from malt, vinous, and spirituous liquors, and as such require a separate and distinct regulatory framework under this article. To aid administrative efficiency, however, the provisions in article 47 of this title shall apply to the regulation of fermented malt beverages, except when otherwise expressly provided for in this article.

Source: L. 97: Entire article amended with relocations, p. 217, § 1, effective July 1.

Editor’s note: This section is similar to former § 12-46-102 as it existed prior to 1997.

ANNOTATION

Annotator’s note. The following annotations include cases decided under this section as it existed prior to the 1997 amendment to title 12, article 46, which resulted in the relocation of provisions.

Statewide exercise of police power. Legislation in the area of fermented malt beverages, representing an exercise of the state’s police power, is of statewide concern, and not a matter of local and municipal concern subject to coun-

cil action. *Big Top, Inc. v. Schooley*, 149 Colo. 116, 368 P.2d 201 (1962).

One reason for holding fermented malt beverages to be of statewide concern is the pronouncement that legislation in this area represents the exercise of the state's police power. *Big Top, Inc. v. Schooley*, 149 Colo. 116, 368 P.2d 201 (1962).

Depriving localities of jurisdiction. Where the state has adopted a statute on a matter of statewide interest or concern, the local governmental units are deprived of jurisdiction over such subjects. *Sierota v. Scott*, 143 Colo. 248, 352 P.2d 671 (1960).

"Fermented malt beverages" may not be a matter of local and municipal concern. *Big Top, Inc. v. Schooley*, 149 Colo. 116, 368 P.2d 201 (1962).

12-46-103. Definitions. Definitions applicable to this article also appear in article 47 of this title. As used in this article, unless the context otherwise requires:

(1) "Fermented malt beverage" means any beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any similar product or any combination thereof in water containing not less than one-half of one percent alcohol by volume and not more than three and two-tenths percent alcohol by weight or four percent alcohol by volume; except that "fermented malt beverage" shall not include confectionery containing alcohol within the limits prescribed by section 25-5-410 (1) (i) (II), C.R.S.

(2) "License" means a grant to a licensee to manufacture or sell fermented malt beverages as provided by this article.

(3) "Licensed premises" means the premises specified in an application for a license under this article which are owned or in possession of the licensee and within which such licensee is authorized to sell, dispense, or serve fermented malt beverages in accordance with the provisions of this article.

(4) "Local licensing authority" means the governing body of a municipality or city and county, the board of county commissioners of a county, or any authority designated by municipal or county charter, municipal ordinance, or county resolution.

(5) "Sell at wholesale" means selling to any other than the intended consumer of fermented malt beverages. "Sell at wholesale" shall not be construed to prevent a brewer or wholesale beer dealer from selling fermented malt beverages to the intended consumer thereof or to prevent a licensed manufacturer or importer from selling such beverages to a licensed wholesaler.

(6) "State licensing authority" means the executive director of the department of revenue or the deputy director of the department of revenue if the executive director so designates.

Source: L. 97: Entire article amended with relocations, p. 218, § 1, effective July 1.

Editor's note: This section is similar to former § 12-46-103 as it existed prior to 1997.

12-46-104. Licenses - state license fees - requirements. (1) The licenses to be granted and issued by the state licensing authority pursuant to this article for the manufacture, importation, and sale of fermented malt beverages shall be as follows:

(a) (I) A manufacturer's license shall be granted and issued to any person, partnership, association, organization, or corporation qualifying under section 12-47-301 and not prohibited from licensure under section 12-47-307 to manufacture and sell fermented malt beverages upon the payment of an annual license fee of one hundred fifty dollars to the state licensing authority. A manufacturer so licensed may have additional warehouses in the state upon payment of the wholesaler's license fee as provided in this section.

This article does not delegate power to prohibit sales of 3.2 beer if a municipality chooses to issue a license in the first place. *Sierota v. Scott*, 143 Colo. 248, 352 P.2d 671 (1960).

Moreover, this article is not one for revenue only but is one related to the exercise of the police power and to regulate the businesses enumerated. *MacArthur v. Sierota*, 122 Colo. 115, 221 P.2d 346 (1950).

The collection of fees by a city is not a local and municipal matter; article XXII of the Colorado Constitution concerning intoxicating liquors, applies to the whole state. *City and County of Denver v. People*, 103 Colo. 565, 88 P.2d 89, appeal dismissed, 307 U.S. 615, 59 S. Ct. 1044, 83 L. Ed. 1496 (1939).

(II) A manufacturer that has received a license pursuant to this paragraph (a) shall be authorized to manufacture fermented malt beverages upon an alternating proprietor licensed premises, as defined in section 12-47-103, as approved by the state licensing authority, but the manufacturer shall not conduct retail sales of fermented malt beverages from an area licensed or defined as an alternating proprietor licensed premises.

(b) A wholesaler's license shall be granted and issued to any person, partnership, association, organization, or corporation qualifying under section 12-47-301 and not prohibited from licensure under section 12-47-307 to sell fermented malt beverages upon the payment of an annual license fee of one hundred fifty dollars to the state licensing authority. Each wholesaler's license application shall designate the territory within which the licensee may sell the designated products of any manufacturer, as agreed upon by the licensee and the manufacturer of such products.

(c) A retailer's license shall be granted and issued to any person, partnership, association, organization, or corporation qualifying under section 12-47-301 and not prohibited from licensure under section 12-47-307 to sell at retail the said fermented malt beverages upon paying an annual license fee of seventy-five dollars to the state licensing authority.

(d) (I) A nonresident manufacturer's license shall be granted and issued to any person manufacturing fermented malt beverages outside of the state of Colorado for the sole purposes listed in subparagraph (III) of this paragraph (d), upon the payment of an annual license fee of one hundred fifty dollars to the state licensing authority.

(II) An importer's license shall be granted and issued to any person importing fermented malt beverages into this state for the sole purposes listed in subparagraph (III) of this paragraph (d), upon the payment of an annual license fee of one hundred fifty dollars to the state licensing authority.

(III) The licenses referred to in subparagraphs (I) and (II) of this paragraph (d) shall be issued for the following purposes only:

(A) To import and sell fermented malt beverages within this state to a person licensed as a wholesaler pursuant to this section;

(B) To maintain stocks of fermented malt beverages and to operate fermented malt beverages warehouses by procuring a wholesaler's license as provided in this section;

(C) To solicit orders from retail licensees and fill such orders through licensed wholesalers.

(IV) Each applicant for a license as a manufacturer, nonresident manufacturer, or importer of fermented malt beverages shall enter into a written contract with each wholesaler with which the applicant intends to do business, which contract shall designate the territory within which the product of such applicant shall be sold by the respective wholesaler. The contract shall be submitted to the state licensing authority with an application, and such applicant, if licensed, shall have a continuing duty to submit any subsequent revisions, amendments, or superseding contracts to the state licensing authority.

(V) A manufacturer, nonresident manufacturer, or importer licensed to sell fermented malt beverages under this article shall not contract with more than one wholesaler to sell the products of such manufacturer, nonresident manufacturer, or importer in the same territory.

(1.5) Notwithstanding the amount specified for any fee in subsection (1) of this section, the state licensing authority by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state licensing authority by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(2) The manufacturer's or wholesaler's licenses provided by this article shall permit the licensee to sell fermented malt beverages in sealed containers to retailers and consumers thereof, as long as the beverages have been unloaded and placed in the physical possession of a licensed wholesaler at its licensed premises in this state and inventoried for purposes of tax collection before being delivered to any such retailer or consumer. Wholesalers of fermented malt beverages receiving products to be held as required by this subsection (2) shall be liable for the payment of any tax due on such products under section 12-47-503.

(3) It is unlawful for any manufacturer or wholesaler or any person, partnership, association, organization, or corporation interested financially in or with any of the licensees described in this article to be interested financially, directly or indirectly, in the business of any retail licensee licensed pursuant to this article, or for any retail licensee under this article to be interested financially, directly or indirectly, in the business of any manufacturer or wholesaler or any person, partnership, association, organization, or corporation interested in or with any of the manufacturers or wholesalers licensed pursuant to this article.

Source: **L. 97:** Entire article amended with relocations, p. 219, § 1, effective July 1. **L. 98:** (1.5) added, p. 1329, § 35, effective June 1. **L. 2002:** (1)(a), (1)(b), (1)(c), (1)(d)(I), and (1)(d)(II) amended, p. 656, § 1, effective July 1. **L. 2009:** (1)(a) amended, (SB 09-254), ch. 272, p. 1229, § 1, effective May 18.

Editor's note: This section is similar to former § 12-46-109, and subsection (3) is similar to former § 12-46-113 (5), as they existed prior to 1997.

ANNOTATION

Law reviews. For note, "The Liquor Code — Colorado Revised Statute Antiquated", see 38 U. Colo. L. Rev. 248 (1965).

12-46-105. Fees and taxes - allocation. (1) (a) The state licensing authority shall establish fees for processing the following types of applications, notices, or reports required to be submitted to the state licensing authority: Applications for new fermented malt beverage licenses pursuant to section 12-47-301 and regulations thereunder; applications for change of location pursuant to section 12-47-301 and regulations thereunder; applications for changing, altering, or modifying licensed premises pursuant to section 12-47-301 and regulations thereunder; applications for warehouse or branch house permits pursuant to section 12-46-104 and regulations thereunder; applications for duplicate licenses; and notices of change of name or trade name pursuant to section 12-47-301 and regulations thereunder. The amounts of such fees, when added to the other fees and taxes transferred to the liquor enforcement division and state licensing authority cash fund pursuant to subsection (2) of this section and section 12-47-502 (1), shall reflect the direct and indirect costs of the liquor enforcement division and the state licensing authority in the administration and enforcement of this article and articles 47 and 48 of this title. At least annually, the amounts of the fees shall be reviewed and, if necessary, adjusted to reflect such direct and indirect costs.

(b) Except as provided in paragraph (c) of this subsection (1), the state licensing authority shall establish a basic fee that shall be paid at the time of service of any subpoena upon the state licensing authority or upon any employee of the division, plus a fee for meals and a fee for mileage at the rate prescribed for state officers and employees in section 24-9-104, C.R.S., for each mile actually and necessarily traveled in going to and returning from the place named in the subpoena. If the person named in the subpoena is required to attend the place named in the subpoena for more than one day, there shall be paid, in advance, a sum to be established by the state licensing authority for each day of attendance to cover the expenses of the person named in the subpoena.

(c) The subpoena fee established pursuant to paragraph (b) of this subsection (1) shall not be applicable to any state or local governmental agency.

(2) (a) All state license fees provided for by this article and all fees provided for by paragraphs (a) and (b) of subsection (1) of this section for processing applications, reports, and notices shall be paid to the department of revenue, which shall transmit the fees and taxes to the state treasurer. The state treasurer shall credit eighty-five percent of the fees and taxes to the old age pension fund and the balance to the general fund.

(b) An amount equal to the revenues attributable to fifty dollars of each state license fee provided for by this article and the processing fees provided for by paragraphs (a) and (b)

of subsection (1) of this section shall be transferred out of the general fund to the liquor enforcement division and state licensing authority cash fund. Such transfer shall be made by the state treasurer as soon as possible after the twentieth day of the month following the payment of such fees.

(c) The expenditures of the state licensing authority and the liquor enforcement division shall be paid out of appropriations from the liquor enforcement division and state licensing authority cash fund as provided in section 24-35-401, C.R.S.

(3) Eighty-five percent of the local license fees set forth in section 12-46-107 (2) shall be paid to the department of revenue, which shall transmit the fees to the state treasurer to be credited to the old age pension fund.

Source: L. 97: Entire article amended with relocations, p. 221, § 1, effective July 1.
L. 2002: (1)(a), (2)(b), and (2)(c) amended, p. 657, § 2, effective July 1.

Editor's note: This section is similar to former § 12-46-110 as it existed prior to 1997.

12-46-106. Lawful acts. It is lawful for a person under eighteen years of age who is under the supervision of a person on the premises over eighteen years of age to be employed in a place of business where fermented malt beverages are sold at retail in containers for off-premises consumption. During the normal course of such employment, any person under eighteen years of age may handle and otherwise act with respect to fermented malt beverages in the same manner as that person does with other items sold at retail; except that no person under eighteen years of age shall sell or dispense fermented malt beverages, check age identification, or make deliveries beyond the customary parking area for the customers of the retail outlet. This section shall not be construed to permit the violation of any other provisions of this section under circumstances not specified in this section.

Source: L. 97: Entire article amended with relocations, p. 222, § 1, effective July 1.

Editor's note: This section is similar to former § 12-46-115 as it existed prior to 1997.

12-46-107. Local licensing authority - application - fees. (1) The local licensing authority shall issue only the following classes of fermented malt beverage licenses:

- (a) Sales for consumption off the premises of the licensee;
- (b) Sales for consumption on the premises of the licensee;
- (c) Sales for consumption both on and off the premises of the licensee. A person licensed pursuant to this paragraph (c) may deliver at retail fermented malt beverages in factory-sealed containers in conjunction with the delivery of food products if such person has obtained a permit for the delivery of fermented malt beverages from the state licensing authority. The state licensing authority shall promulgate rules as are necessary for the proper delivery of fermented malt beverages pursuant to this paragraph (c) and shall have the authority to issue a permit to any person who is licensed pursuant to and delivers fermented malt beverages under this paragraph (c).

(2) The local licensing authority shall collect an annual license fee of twenty-five dollars if the licensed premises is located in a municipality or city and county and fifty dollars if the licensed premises is located outside the corporate limits of a municipality or city and county.

Source: L. 97: Entire article amended with relocations, p. 222, § 1, effective July 1.

Editor's note: This section is similar to former § 12-46-117 as it existed prior to 1997.

ANNOTATION

Annotator's note. Since § 12-46-107 is similar to § 12-46-117 as it existed prior to the

1997 amendment of title 12, article 46, which resulted in the relocation of provisions, a rele-

vant case construing that provision has been included in the annotations to this section.

Testimony of school officials will be admitted on the basis that said officials were equivalent to managers of a “business” within the

meaning of subsection (4) (b). *Southland Corporation v. City of Westminster City Council*, 746 P.2d 1353 (Colo. App. 1987) (decided under law in effect prior to 1987 amendment).

ARTICLE 47

Alcohol Beverages

Editor’s note: This article was numbered as article 2 of chapter 75, C.R.S. 1963. This article was repealed and reenacted in 1976 and was subsequently amended with relocations in 1997, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1997, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers prior to 1997 are shown in editor’s notes following those sections that were relocated. For a detailed comparison of this article for 1997, see the comparative tables located in the back of the index.

Law reviews. For comment, “The Substantive Fallacy of the Twenty-first Amendment”, see 61 Den. L.J. 235 (1984); for article, “Administrative Sanctions Against Colorado Liquor Licenses”, see 30 Colo. Law. 61 (December 2001); for article, “Basics of Colorado Liquor Licensing Law”, see 38 Colo. Law. 71 (October 2009).

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PART 1

GENERAL PROVISIONS

12-47-101. Short title. This article shall be known and may be cited as the “Colorado Liquor Code”.

Source: L. 97: Entire article amended with relocations, p. 225, § 3, effective July 1.

Editor’s note: This section is similar to former § 12-47-101 as it existed prior to 1997.

ANNOTATION

Annotator’s note. Since § 12-47-101 is similar to § 12-47-101 as it existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions, relevant cases construing that provision have been included in the annotations to this section.

Intent and primary purpose of the Colorado liquor code is to authorize, subject to regulation and safeguards, the sale and consumption of intoxicating liquors, and, at the

same time, to completely outlaw and eradicate the vices and ill effects which had come to be associated with the sale of such beverages. *Clown’s Den, Inc. v. Canjar*, 33 Colo. App. 212, 518 P.2d 957 (1974).

This article has to do with malt, vinous, or spirituous liquors. *Big Top, Inc. v. Schooley*, 149 Colo. 116, 368 P.2d 201 (1962).

Contractual limitations on the sale of intoxicating liquors generally are not against

the statute or its implied or expressed policy. A. D. Jones & Co. v. Parsons, 136 Colo. 434, 319 P.2d 480 (1957).

If parties to a contract desire to place restrictions on the sale of liquors greater than this article imposes, the law will sanction the agreement, and this is true even though a contracting party gains an advantage thereby. A. D. Jones & Co. v. Parsons, 136 Colo. 434, 319 P.2d 480 (1957).

Legal sales activities. Sales activities which are not restricted, limited, or otherwise regulated

by this article are not illegal. People v. Kagan, 195 Colo. 76, 575 P.2d 416 (1978).

Liquor code is not to be subjected to strained or narrow construction. Clown's Den, Inc. v. Canjar, 33 Colo. App. 212, 518 P.2d 957 (1974).

The right of a licensee in his relation to the state is narrow, confined, and transitory. A. D. Jones & Co. v. Parsons, 136 Colo. 434, 319 P.2d 480 (1957).

Applied in Waymire v. Ahern, 152 Colo. 46, 380 P.2d 239 (1963).

12-47-102. Legislative declaration. (1) The general assembly hereby declares that this article shall be deemed an exercise of the police powers of the state for the protection of the economic and social welfare and the health, peace, and morals of the people of this state and that no provisions of this article shall ever be construed so as to authorize the establishment or maintenance of any saloon.

(2) The general assembly further declares that it is lawful to manufacture and sell for beverages or medicinal purposes alcohol beverages, subject to the terms, conditions, limitations, and restrictions in this article.

Source: L. 97: Entire article amended with relocations, p. 225, § 3, effective July 1.
L. 2011: (2) amended, (SB 11-060), ch. 171, p. 605, § 15, effective May 13.

Editor's note: This section is similar to former § 12-47-102 as it existed prior to 1997.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions.

Exercise of police power. The state liquor code is deemed an exercise of the police power and a vested interest on the ground of conditions once obtained cannot be asserted against the proper exercise of this power. City and County of Denver v. People, 103 Colo. 565, 88 P.2d 89, appeal dismissed, 307 U.S. 615, 59 S. Ct. 1044, 83 L. Ed. 1496 (1939).

Statutes dealing with the liquor industry are founded on public policy and constitute an exercise of the police powers of the state. Spero v. Bd. of Trustees, 35 Colo. App. 64, 529 P.2d 327 (1974).

Purpose. The purpose of this article is the "protection of the economic and social welfare, the health and peace and morals", of any given locality in the state. Van DeVeght v. Bd. of County Comm'rs, 98 Colo. 161, 55 P.2d 703 (1936).

The aim, intent, and primary purpose of the people in the adoption of art. XXII, Colo. Const., and of the general assembly in the passage of this article, was to completely outlaw and eradicate the old-time public saloon or bar-room with its well-known obnoxious characteristics, vices, and effects, and at the same time to

authorize, under proper regulations and safeguards, the sale and consumption of intoxicating liquors in bona fide restaurants and hotels. City and County of Denver v. Gushurst, 120 Colo. 465, 210 P.2d 616 (1949).

The primary purpose of the liquor laws of this state is to authorize the sale and consumption of intoxicating beverages while simultaneously protecting the public's health, safety, and welfare. New Safari Lounge, Inc. v. City of Colo. Springs, 193 Colo. 428, 567 P.2d 372 (1977).

The liquor code was enacted to control the manufacture, distribution, and sale of liquor for the protection of the economic and social welfare and health, peace, and morals of the people of Colorado. Squire Restaurant and Lounge v. Denver, 890 P.2d 164 (Colo. App. 1994).

Section indicates legislative intent to regulate all aspects of licensing process including criminal penalties. People v. Bagby, 734 P.2d 1059 (Colo. 1987).

Applicability of liquor code. The provisions of this article do not apply to third persons who are not applicants of licensees and whose conduct does not violate specific provisions of this article but does violate specific provisions of the criminal code. People v. Eckley, 775 P.2d 566 (Colo. 1989).

State declares public policy. The public policy of the state concerning intoxicating liquor is for the law-making power to declare, and a

municipality has no such power. *City of Colo. Springs v. Graham*, 143 Colo. 97, 352 P.2d 273 (1960).

Which includes issuance of hotel and restaurant licenses. The general assembly of the state of Colorado has authorized the issuance of hotel and restaurant liquor licenses throughout the state, therefore, the public policy has thus been determined. *Farmer v. City Council*, 153 Colo. 306, 385 P.2d 596 (1963).

There is no inherent right to carry on the business of selling alcoholic beverages. *Gem Beverage Co. v. Geer*, 138 Colo. 420, 334 P.2d 744 (1959).

Mere privilege exercised under license. It is settled doctrine that the right to sell intoxicating liquors depends upon strict compliance of the vendor with the requirements of the laws in force in the community where the sale is proposed, and no absolute right to engage in the traffic has ever been admitted in this state, and it is and always has been a mere privilege exercised under a license granted by public authority. *Schwartz v. People*, 46 Colo. 239, 104 P. 92 (1909) (decided prior to earliest source, L. 35, p. 597, § 1).

No mandate to permit sale. Where petitioner contended that the liquor code is a mandate to permit the sale of liquor except in local option territory, the court said that it did not so construe it, because it makes the sale of liquor lawful, "subject to the terms, conditions, limitations, and restrictions contained in this article". *Van DeVegt v. Bd. of County Comm'rs*, 98 Colo. 161, 55 P.2d 703 (1936).

However, a liquor license vests a personal

right in the licensee to conduct the business. *A. D. Jones & Co. v. Parsons*, 136 Colo. 434, 319 P.2d 480 (1957).

Though not technically property, a liquor license is a valuable right and possesses some of the characteristics of property, and it may be revoked for breach of the conditions upon which it was issued. *A. D. Jones & Co. v. Parsons*, 136 Colo. 434, 319 P.2d 480 (1957).

The license confers the right to do that which without the license would be unlawful. *A. D. Jones & Co. v. Parsons*, 136 Colo. 434, 319 P.2d 480 (1957).

Liquor-related businesses form a distinct and justifiable class for regulatory purposes, and thus for taxing purposes. *Tom's Tavern, Inc. v. City of Boulder*, 186 Colo. 321, 526 P.2d 1328 (1974).

Objection based on abhorrence of alcohol not considered. The general assembly decreed that the business of manufacturing, distributing, and selling of liquor is lawful when supervised and controlled as provided by law, hence, the supreme court cannot consider objections to a license rooted solely in basic abhorrence of alcoholic beverages in any form, at any place, at any time. *Ladd v. Bd. of County Comm'rs*, 146 Colo. 366, 361 P.2d 627 (1961).

Because those opposing the granting of any application for a liquor license under all circumstances anywhere are not in harmony with the law on that subject as established by the general assembly. *Ladd v. Bd. of County Comm'rs*, 146 Colo. 366, 361 P.2d 627 (1961).

Applied in *Citizens for Free Enter. v. Dept. of Rev.*, 649 P.2d 1054 (Colo. 1982).

12-47-103. Definitions. As used in this article and article 46 of this title, unless the context otherwise requires:

(1) "Adult" means a person lawfully permitted to purchase alcohol beverages.

(2) "Alcohol beverage" means fermented malt beverage or malt, vinous, or spirituous liquors; except that "alcohol beverage" shall not include confectionery containing alcohol within the limits prescribed by section 25-5-410 (1) (i) (II), C.R.S.

(2.5) "Alternating proprietor licensed premises" means a distinct and definite area, as specified in an alternating use of premises application, that is owned by or in possession of a person licensed pursuant to section 12-46-104 (1) (a), 12-47-402, 12-47-403, or 12-47-415 and within which such licensee and other persons licensed pursuant to section 12-46-104 (1) (a), 12-47-402, 12-47-403, or 12-47-415, are authorized to manufacture and store vinous liquors, malt liquors, or fermented malt beverages in accordance with the provisions of this article or article 46 of this title, as applicable.

(3) "Bed and breakfast" means an overnight lodging establishment that provides at least one meal per day at no charge other than a charge for overnight lodging and does not sell alcohol beverages by the drink.

(4) "Brew pub" means a retail establishment that manufactures not more than one million eight hundred sixty thousand gallons of malt liquor and fermented malt beverages on its licensed premises or licensed alternating proprietor licensed premises, combined, each calendar year.

(5) "Brewery" means any establishment where malt liquors or fermented malt beverages are manufactured, except brew pubs licensed under this article.

(6) "Club" means:

(a) A corporation that:

- (I) Has been incorporated for not less than three years; and
- (II) Has a membership that has paid dues for a period of at least three years; and
- (III) Has a membership that for three years has been the owner, lessee, or occupant of an establishment operated solely for objects of a national, social, fraternal, patriotic, political, or athletic nature, but not for pecuniary gain, and the property as well as the advantages of which belong to the members;

(b) A corporation that is a regularly chartered branch, or lodge, or chapter of a national organization that is operated solely for the objects of a patriotic or fraternal organization or society, but not for pecuniary gain.

(6.5) "Colorado grown" means wine produced from one hundred percent Colorado-grown grapes, other fruits, or other agricultural products containing natural sugar, including honey, manufactured by a winery that is located in Colorado and licensed pursuant to part 3 of this article.

(6.6) "Common consumption area" means an area designed as a common area in an entertainment district approved by the local licensing authority that uses physical barriers to close the area to motor vehicle traffic and limit pedestrian access.

(7) "Distillery" means any establishment where spirituous liquors are manufactured.

(7.5) "Entertainment district" means an area located within a municipality that is designated as its entertainment district of no more than one hundred acres containing at least twenty thousand square feet of premises licensed as a tavern, hotel and restaurant, brew pub, retail gaming tavern, or vintner's restaurant when the district is created.

(8) "Fermented malt beverage" has the same meaning as provided in section 12-46-103 (1).

(9) "Good cause", for the purpose of refusing or denying a license renewal or initial license issuance, means:

(a) The licensee or applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of this article or any rules and regulations promulgated pursuant to this article;

(b) The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license in prior disciplinary proceedings or arose in the context of potential disciplinary proceedings;

(c) In the case of a new license, the applicant has not established the reasonable requirements of the neighborhood or the desires of its adult inhabitants as provided in section 12-47-301 (2); or

(d) Evidence that the licensed premises have been operated in a manner that adversely affects the public health, welfare, or safety of the immediate neighborhood in which the establishment is located, which evidence must include a continuing pattern of fights, violent activity, or disorderly conduct. For purposes of this paragraph (d), "disorderly conduct" has the meaning as provided for in section 18-9-106, C.R.S.

(10) "Hard cider" means an alcohol beverage containing at least one-half of one percent and less than seven percent alcohol by volume that is made by fermentation of the natural juice of apples or pears, including but not limited to flavored hard cider and hard cider containing not more than 0.392 gram of carbon dioxide per hundred milliliters. For the purpose of simplicity of administration of this article, hard cider shall in all respects be treated as a vinous liquor except where expressly provided otherwise.

(11) "Hotel" means any establishment with sleeping rooms for the accommodation of guests and having restaurant facilities.

(12) "Inhabitant", with respect to cities or towns having less than forty thousand population, means an individual who resides in a given neighborhood or community for more than six months each year.

(13) "License" means a grant to a licensee to manufacture or sell alcohol beverages as provided by this article.

(14) "Licensed premises" means the premises specified in an application for a license under this article that are owned or in possession of the licensee within which the licensee is authorized to sell, dispense, or serve alcohol beverages in accordance with this article.

(15) "Limited winery" means any establishment manufacturing not more than one hundred thousand gallons, or the metric equivalent thereof, of vinous liquors annually within Colorado.

(16) "Liquor-licensed drugstore" means any drugstore licensed by the state board of pharmacy that has also applied for and has been granted a license by the state licensing authority to sell malt, vinous, and spirituous liquors in original sealed containers for consumption off the premises.

(17) "Local licensing authority" means the governing body of a municipality or city and county, the board of county commissioners of a county, or any authority designated by municipal or county charter, municipal ordinance, or county resolution.

(18) "Location" means a particular parcel of land that may be identified by an address or by other descriptive means.

(19) "Malt liquors" includes beer and shall be construed to mean any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof, in water containing more than three and two-tenths percent of alcohol by weight or four percent alcohol by volume.

(20) "Meal" means a quantity of food of such nature as is ordinarily consumed by an individual at regular intervals for the purpose of sustenance.

(21) "Medicinal spirituous liquors" means any alcohol beverage, excepting beer and wine, that has been aged in wood for four years and bonded by the United States government and is at least one hundred proof.

(22) (a) "Optional premises" means:

(I) The premises specified in an application for a hotel and restaurant license under this article with related outdoor sports and recreational facilities for the convenience of its guests or the general public located on or adjacent to the hotel or restaurant within which the licensee is authorized to sell or serve alcohol beverages in accordance with this article and at the discretion of the state and local licensing authorities; or

(II) The premises specified in an application for an optional premises license located on an applicant's outdoor sports and recreational facility.

(b) For purposes of this subsection (22), "outdoor sports and recreational facility" means a facility that charges a fee for the use of such facility.

(23) "Person" means a natural person, partnership, association, company, corporation, or organization or a manager, agent, servant, officer, or employee thereof.

(23.5) "Personal consumer" means an individual who is at least twenty-one years of age, does not hold an alcohol beverage license issued in this state, and intends to use wine purchased under section 12-47-104 for personal consumption only and not for resale or other commercial purposes.

(24) "Premises" means a distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

(24.5) "Promotional association" means an association that is incorporated within Colorado, organizes and promotes entertainment activities within a common consumption area, and is organized or authorized by two or more people who own or lease property within an entertainment district.

(25) "Racetrack" means any premises where race meets or simulcast races with pari-mutuel wagering are held in accordance with the provisions of article 60 of this title.

(26) "Rectify" means to blend spirituous liquor with neutral spirits or other spirituous liquors of different age.

(27) "Rectifying plant" means any establishment where spirituous liquors are blended with neutral spirits or other spirituous liquors of different age.

(28) "Resort complex" means a hotel with at least fifty sleeping rooms and that has related sports and recreational facilities for the convenience of its guests or the general public located contiguous or adjacent to the hotel. For purposes of a resort complex only, "contiguous or adjacent" means within the overall boundaries or scheme of development or regularly accessible from the hotel by its members and guests.

(29) "Resort hotel" means a hotel, as defined in subsection (11) of this section, with well-defined occupancy seasons.

(30) "Restaurant" means an establishment, which is not a hotel as defined in subsection (11) of this section, provided with special space, sanitary kitchen and dining room equipment, and persons to prepare, cook, and serve meals, where, in consideration of payment, meals, drinks, tobaccos, and candies are furnished to guests and in which nothing is sold excepting food, drinks, tobaccos, candies, and items of souvenir merchandise depicting the theme of the restaurant or the geographical or historic subjects of the nearby area. Any establishment connected with any business wherein any business is conducted, excepting hotel business, limited gaming conducted pursuant to article 47.1 of this title, or the sale of food, drinks, tobaccos, candies, or such items of souvenir merchandise, is declared not to be a restaurant. Nothing in this subsection (30) shall be construed to prohibit the use in a restaurant of orchestras, singers, floor shows, coin-operated music machines, amusement devices that pay nothing of value and cannot by adjustment be made to pay anything of value, or other forms of entertainment commonly provided in restaurants.

(31) "Retail liquor store" means an establishment engaged only in the sale of malt, vinous, and spirituous liquors and soft drinks and mixers, all in sealed containers for consumption off the premises; tobaccos, tobacco products, smokers' supplies, and nonfood items related to the consumption of such beverages; and liquor-filled candy and food items approved by the state licensing authority, which are prepackaged, labeled, and directly related to the consumption of such beverages and are sold solely for the purpose of cocktail garnish in containers up to sixteen ounces. Nothing in this section shall be construed to authorize the sale of food items that could constitute a snack, a meal, or portion of a meal.

(32) "School" means a public, parochial, or nonpublic school that provides a basic academic education in compliance with school attendance laws for students in grades one to twelve. "Basic academic education" has the same meaning as set forth in section 22-33-104 (2) (b), C.R.S.

(33) "Sealed containers" means any container or receptacle used for holding an alcohol beverage, which container or receptacle is corked or sealed with any stub, stopper, or cap.

(34) "Sell" or "sale" means any of the following: To exchange, barter, or traffic in; to solicit or receive an order for except through a licensee licensed under this article or article 46 or 48 of this title; to keep or expose for sale; to serve with meals; to deliver for value or in any way other than gratuitously; to peddle or to possess with intent to sell; to possess or transport in contravention of this article; to traffic in for any consideration promised or obtained, directly or indirectly.

(35) "Sell at wholesale" means selling to any other than the intended consumer of malt, vinous, or spirituous liquors. "Sell at wholesale" shall not be construed to prevent a brewer or wholesale beer dealer from selling malt liquors to the intended consumer thereof, or to prevent a licensed manufacturer or importer from selling malt, vinous, or spirituous liquors to a licensed wholesaler.

(36) "Spirituous liquors" means any alcohol beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things brandy, rum, whiskey, gin, and every liquid or solid, patented or not, containing at least one-half of one percent alcohol by volume and which is fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor, except as provided in subsections (19) and (39) of this section, shall not be construed to be fermented malt or malt or vinous liquor but shall be construed to be spirituous liquor.

(37) "State licensing authority" means the executive director of the department of revenue or the deputy director of the department of revenue if the executive director so designates.

(37.5) "Tastings" means the sampling of malt, vinous, or spirituous liquors that may occur on the premises of a retail liquor store licensee or liquor-licensed drugstore licensee by adult patrons of the licensee pursuant to the provisions of section 12-47-301 (10).

(38) "Tavern" means an establishment serving alcohol beverages in which the principal business is the sale of alcohol beverages at retail for consumption on the premises and where sandwiches and light snacks are available for consumption on the premises.

(39) "Vinous liquors" means wine and fortified wines that contain not less than one-half of one percent and not more than twenty-one percent alcohol by volume and shall

be construed to mean an alcohol beverage obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar.

(39.5) “Vintner’s restaurant” means a retail establishment that sells food for consumption on the premises and that manufactures not more than two hundred fifty thousand gallons of wine on its premises each year.

(40) “Winery” means any establishment where vinous liquors are manufactured; except that the term does not include a vintner’s restaurant licensed pursuant to section 12-47-420.

Source: **L. 97:** Entire article amended with relocations, p. 225, § 3, effective July 1. **L. 2000:** (28) amended, p. 1167, § 1, effective May 26. **L. 2004:** (37.5) added, p. 784, § 6, effective July 1; (39.5) added and (40) amended, p. 738, § 1, effective August 4. **L. 2005:** (6.5) added and (15) amended, p. 683, § 1, effective June 1. **L. 2006:** (23.5) added, p. 433, § 1, effective July 1. **L. 2008:** (2.5) added, p. 2164, § 1, effective August 5. **L. 2009:** (2.5) and (4) amended, (SB 09-254), ch. 272, p. 1229, § 2, effective May 18. **L. 2011:** (3), (4), (5), (13), (14), (22)(a)(I), and (38) amended, (SB 11-060), ch. 171, p. 605, § 16, effective May 13; (6.6), (7.5), and (24.5) added, (SB11-273), ch. 233, p. 1003, § 1, effective August 10.

Editor’s note: This section is similar to former § 12-47-103 as it existed prior to 1997.

ANNOTATION

Annotator’s note. Since § 12-47-103 is similar to § 12-47-103 as it existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions, a relevant case construing that provision has been included in the annotations to this section.

Definition of words “sell” or “sale”, in subsection (24), must be considered in light of the purpose underlying this article. Contemporary Enters., Inc. v. Charnes, 44 Colo. App. 26, 613 P.2d 339 (1980).

Words “distinct” and “definite” in subsection (15) should be given their ordinary and generally accepted meanings. Denial of request for modification, where premises would still be distinct and definite as those terms are ordinarily defined, is arbitrary and capricious. East 40th Corp. v. City of Aurora, 746 P.2d 55 (Colo. App. 1987).

The operation of shuffleboards for gain or profit constitutes a business within the meaning of subsection (21) and is prohibited by law in restaurants where liquor is sold with meals. City and County of Denver v. Gushurst, 120 Colo. 465, 210 P.2d 616 (1949).

The playing of the game of shuffleboard does not come within the exceptions in subsection (21) and cannot be considered as an ancillary or auxiliary activity in aid of the main business of serving meals, but on the contrary is a separate

and distinct business wholly incompatible with the type of restaurant defined in that subsection. City and County of Denver v. Gushurst, 120 Colo. 465, 210 P.2d 616 (1949).

The presence and operation of a “Chicago Coin Pistol” machine constitutes a separate and distinct business and is prohibited in restaurants which are licensed to sell intoxicating liquor by the drink. MacArthur v. Wyscaver, 120 Colo. 525, 211 P.2d 556 (1949); City and County of Denver v. Gushurst, 120 Colo. 465, 210 P.2d 616 (1949).

Pizza Hut outlets are restaurants and not stores or mercantile establishments. Pizza Hut, Inc. v. Dolan, 619 P.2d 508 (Colo. App. 1980).

The sale of cigarettes, mints, and salad dressings does not exclude Pizza Hut outlets from the category of restaurants. Pizza Hut, Inc. v. Dolan, 619 P.2d 508 (Colo. App. 1980).

Sale of “charge-a-drink” cards did not constitute sale of liquor under article. The activities of a company which sold “charge-a-drink” cards which entitled the holder to obtain, without charge, one drink worth up to \$2 at each of 40 restaurants and lounges did not constitute the sale of liquor under the terms of this article. Contemporary Enters., Inc. v. Charnes, 44 Colo. App. 26, 613 P.2d 339 (1980).

Applied in Chroma Corp. v. County of Adams, 36 Colo. App. 345, 543 P.2d 83 (1975).

12-47-104. Wine shipments - permits. (1) (a) The holder of a winery direct shipper’s permit may sell and deliver wine that is produced or bottled by the permittee to a personal consumer located in Colorado.

(b) The holder of a winery direct shipper’s permit may not sell or ship wine to a minor, as defined in section 2-4-401 (6), C.R.S.

(2) A winery direct shipper's permit may be issued to only a person who applies for such permit to the state licensing authority and who:

(a) Operates a winery located in the United States and holds all state and federal licenses, permits, or both, necessary to operate the winery, including the federal winemaker's and blender's basic permit;

(b) Expressly submits to personal jurisdiction in Colorado state and federal courts for civil, criminal, and administrative proceedings and expressly submits to venue in the city and county of Denver, Colorado, as proper venue for any proceedings that may be initiated by or against the state licensing authority; and

(c) Except as provided in sections 12-47-402 (1) and 12-47-406 (3), does not directly or indirectly have any financial interest in a Colorado wholesaler or retailer licensed pursuant to section 12-47-406 or 12-47-407.

(3) (a) All wine sold or shipped by the holder of a winery direct shipper's permit shall be in a package that is clearly and conspicuously labeled, showing that:

(I) The package contains wine; and

(II) The package may be delivered only to a person who is twenty-one years of age or older.

(b) Wine sold or shipped by a holder of a winery direct shipper's permit may not be delivered to any person other than:

(I) The person who purchased the wine;

(II) A recipient designated in advance by such purchaser; or

(III) A person who is twenty-one years of age or older.

(c) Wine may be delivered only to a person who is twenty-one years of age or older after the person accepting the package:

(I) Presents valid proof of identity and age; and

(II) Personally signs a receipt acknowledging delivery of the package.

(4) The holder of a winery direct shipper's permit shall maintain records of all sales and deliveries made under the permit in accordance with section 12-47-701.

(5) A personal consumer purchasing wine from the holder of a winery direct shipper's permit may not resell the wine.

(6) The state licensing authority may adopt rules and forms necessary to implement this section.

Source: L. 97: Entire article amended with relocations, p. 230, § 3, effective July 1.
L. 2006: Entire section R&RE, p. 433, § 2, effective July 1.

Editor's note: This section is similar to former § 12-47-126.5 as it existed prior to 1997.

12-47-105. Local option. The operation of this article shall be statewide unless any municipality or city and county, by a majority of the registered electors of any municipality or city and county, voting at any regular election or special election called for that purpose in accordance with the election laws of this state, decides against the right to sell alcohol beverages or to limit the sale of alcohol beverages to any one or more of the classes of licenses as provided by this article within their respective limits. Said local option question shall be submitted only upon a petition signed by not less than fifteen percent of the registered electors in the municipality or city and county; otherwise, the procedure with reference to the calling and holding of the elections shall be substantially in accordance with the election laws of the state. The expenses of the election shall be borne by the municipality or city and county in which the elections are held. The question of prohibition of sale of alcohol beverages or the limitation of sales to any one or more of the classes of licenses provided in this article shall not be submitted to the registered electors more than once in any four-year period.

Source: L. 97: Entire article amended with relocations, p. 231, § 3, effective July 1.
L. 2011: Entire section amended, (SB 11-060), ch. 171, p. 606, § 17, effective May 13.

Editor's note: This section is similar to former § 12-47-140 as it existed prior to 1997.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions.

Exclusive method. It is not the law that a majority of the people of a locality must favor the issuance of a liquor license before it may be granted; and this section provides the only method by which the electorate may decide for or against the right to sell intoxicating liquors. *KBT Corp. v. Walker*, 148 Colo. 274, 365 P.2d

685 (1961); *Farmer v. City Council*, 153 Colo. 306, 385 P.2d 596 (1963).

Under the local option provisions of the liquor code cities may be "dry" in counties that are otherwise "wet". *Cloverleaf Kennel Club v. Bd. of County Comm'rs*, 136 Colo. 441, 319 P.2d 487 (1957).

There is no such thing under the law as county-wide local option. *Ladd v. Bd. of County Comm'rs*, 146 Colo. 366, 361 P.2d 627 (1961).

12-47-106. Exemptions. (1) The provisions of this article shall not apply to the sale or distribution of sacramental wines sold and used for religious purposes.

(2) (a) Any provision of this article or article 46 of this title to the contrary notwithstanding, when permitted by federal law and rules and regulations promulgated pursuant thereto, a head of a family may produce for family use and not for sale such amount of fermented malt beverage or malt or vinous liquor as is exempt from the federal excise tax on such alcohol beverage when produced by a head of a family for family use and not for sale.

(b) The production of fermented malt beverages or malt or vinous liquors under the circumstances set forth in this subsection (2) shall be in strict conformity with federal law and rules and regulations issued pursuant thereto.

(c) Fermented malt beverages or malt or vinous liquors produced pursuant to the provisions of this subsection (2) shall be exempt from any tax imposed by this article, and the producer shall not be required to obtain any license provided by this article or article 46 of this title.

(d) Malt liquors produced pursuant to this subsection (2) may be transported and delivered by the producer to any licensed premise where consumption of malt liquors by persons over the age of twenty-one is authorized for use at organized affairs, exhibitions, or competitions, such as home brew contests, tastings, or judgments. Consumption shall be limited solely to the participants in and judges of such events. Malt liquors used for the purposes described in this paragraph (d) shall be served in portions not exceeding six ounces and shall not be sold, offered for sale, or made available for consumption by the general public.

(3) (a) The provisions of this article or article 46 of this title, with the exception of the requirements of section 12-47-503, shall not apply to the occasional sale of an alcohol beverage to any individual twenty-one years of age or older at public auction by any person where such auction sale is for the purpose of disposing of such alcohol beverage as may lawfully have come into the possession of such person in the due course of such person's regular business in the following manner:

(I) By reason of the failure of the owner of such alcohol beverage to claim the same or to furnish instructions as to the disposition thereof;

(II) By reason of the foreclosure of any lawful lien upon such alcohol beverage by said person in accordance with lawful procedure;

(III) By reason of salvage of such alcohol beverage, in the case of carriers, from shipments damaged in transit;

(IV) By reason of a lawful donation of such alcohol beverage to an organization qualifying under section 12-48-102 for a special event permit; except that no more than four public auctions per year shall be conducted pursuant to this subparagraph (IV).

(b) The state licensing authority shall be presented records of all transactions referred to in paragraph (a) of this subsection (3).

(4) Any passenger twenty-one years of age or older arriving at any airport in this state on an air flight originating in a foreign country who is thereby subject to customs clearance at such airport may lawfully possess up to one gallon or four liters (one imperial gallon), whichever measure is applicable, of an alcohol beverage without liability for the Colorado excise tax thereon.

(5) This article shall not apply to state institutions of higher education when such institutions are engaged in the manufacture of vinous liquor on alternating proprietor licensed premises or premises licensed pursuant to section 12-47-402 or 12-47-403, for the purpose of enology research and education.

Source: L. 97: Entire article amended with relocations, p. 231, § 3, effective July 1.
L. 2008: (5) added, p. 2164, § 2, effective August 5.

Editor's note: This section is similar to former §§ 12-47-126 and 12-47-142 as they existed prior to 1997.

12-47-107. Permitted acts. Any person who has an interest in a liquor license may also be listed as an officer or director on a license owned by a municipality or governmental entity if such person does not individually manage or receive any direct financial benefit from the operation of such license.

Source: L. 97: Entire article amended with relocations, p. 232, § 3, effective July 1.

PART 2

STATE LICENSING AUTHORITY - DUTIES

12-47-201. State licensing authority - creation. (1) For the purpose of regulating and controlling the licensing of the manufacture, distribution, and sale of alcohol beverages in this state, there is hereby created the state licensing authority, which shall be the executive director of the department of revenue or the deputy director of the department of revenue if the executive director so designates.

(2) The executive director of the department of revenue shall be the chief administrative officer of the state licensing authority and may employ, pursuant to section 13 of article XII of the state constitution, such clerks and inspectors as may be determined to be necessary.

Source: L. 97: Entire article amended with relocations, p. 232, § 3, effective July 1.

Editor's note: This section is similar to former § 12-47-104 as it existed prior to 1997.

ANNOTATION

Annotator's note. Since § 12-47-201 is similar to § 12-46-104 as it existed prior to the 1997 amendment of title 12, article 46, which resulted in the relocation of provisions, a relevant case construing that provision has been included in the annotations to this section.

Applied in *Adams County Golf, Inc. v. Colo. Dept. of Rev.*, 199 Colo. 423, 610 P.2d 97 (1980).

12-47-202. Duties of state licensing authority. (1) The state licensing authority shall:

(a) Grant or refuse licenses for the manufacture, distribution, and sale of alcohol beverages as provided by law and suspend or revoke such licenses upon a violation of this article, article 46 or 48 of this title, or any rule or regulation adopted pursuant to such articles;

(b) Make such general rules and regulations and such special rulings and findings as

necessary for the proper regulation and control of the manufacture, distribution, and sale of alcohol beverages and for the enforcement of this article and articles 46 and 48 of this title and alter, amend, repeal, and publish the same from time to time;

(c) Hear and determine at public hearing all complaints against any licensee and administer oaths and issue subpoenas to require the presence of persons and production of papers, books, and records necessary to the determination of any hearing so held;

(d) Keep complete records of all acts and transactions of the state licensing authority, which records, except confidential reports obtained from the licensee showing the sales volume or quantity of alcohol beverages sold or stamps purchased or customers served, shall be open for inspection by the public;

(e) Prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to section 24-1-136, C.R.S., a report accounting to the governor for the efficient discharge of all responsibilities assigned by law or directive to the state licensing authority;

(f) Notify all persons to whom wholesale licenses have been issued as to applications for licenses and renewals of the licenses provided in sections 12-46-104 (1) and 12-47-407 to 12-47-418.

(2) (a) (I) Rules and regulations made pursuant to paragraph (b) of subsection (1) of this section may cover, but shall not be limited to, the following subjects:

(A) Compliance with or enforcement or violation of any provision of this article, article 46 or 48 of this title, or any rule or regulation issued pursuant to such articles;

(B) Specifications of duties of officers and employees;

(C) Instructions for local licensing authorities and law enforcement officers;

(D) All forms necessary or convenient in the administration of this article and articles 46 and 48 of this title;

(E) Inspections, investigations, searches, seizures, and such activities as may become necessary from time to time, including a range of penalties for use by licensing authorities, which shall include aggravating and mitigating factors to be considered, when persons under twenty-one years of age are utilized to investigate sales of alcohol beverages by liquor licensees to underage persons;

(F) Limitation of number of licensees as to any area or vicinity;

(G) Misrepresentation, unfair practices, and unfair competition;

(H) Control of signs and other displays on licensed premises;

(I) Use of screens;

(J) Identification of licensees and their employees;

(K) Storage, warehouses, and transportation;

(L) Health and sanitary requirements;

(M) Standards of cleanliness, orderliness, and decency, and sampling and analysis of products;

(N) Standards of purity and labeling;

(O) Records to be kept by licensees and availability thereof;

(P) Practices unduly designed to increase the consumption of alcohol beverages;

(Q) Implementation, standardization, and enforcement of alternating proprietor licensed premises. The state licensing authority shall consult with interested parties from the alcohol beverage industry in developing appropriate rules to ensure adequate oversight and regulation of alternating proprietor licensed premises.

(R) Such other matters as are necessary for the fair, impartial, stringent, and comprehensive administration of this article and articles 46 and 48 of this title;

(S) The testing of the alcohol content of malt liquor and fermented malt beverage sold by persons licensed pursuant to this article or article 46 of this title. The state licensing authority shall adopt such rules no later than January 1, 2011.

(II) Nothing in this article and articles 46 and 48 of this title shall be construed as delegating to the state licensing authority the power to fix prices. The licensing authority shall make no rule that would abridge the right of any licensee to fairly, honestly, and lawfully advertise the place of business of or the commodities sold by such licensee. All such rules shall be reasonable and just.

(b) (I) (A) The state licensing authority shall make no rule regulating or prohibiting the sale of alcohol beverages on credit offered or extended by a licensee to a retailer where the credit is offered or extended for thirty days or less. The state licensing authority shall enforce the prohibition against extending credit for more than thirty days for the sale of alcohol beverages pursuant to 27 CFR part 6 and may adopt rules regulating or prohibiting the sale of alcohol beverages on credit where the credit is offered or extended for more than thirty days, consistent with the federal regulations.

(B) Nothing in this subparagraph (I) allows the state licensing authority to adopt a rule that restricts the ability of a licensee to, or prohibits a licensee from, making sales of alcohol beverages, on a cash-on-delivery basis, to a retailer who is or may be in arrears in payments to a licensee for prior alcohol beverage sales.

(II) Licensees shall comply with the prohibition against extending credit to a retailer for more than thirty days for the sale of alcohol beverages, including beer, contained in 27 CFR part 6 and with rules adopted by the state licensing authority that are consistent with 27 CFR part 6.

(III) As used in this paragraph (b), “licensee” shall have the same meaning as “industry member”, as defined in 27 CFR 6.11, and includes a person engaged in business as a distiller, brewer, rectifier, blender, or other producer; as an importer or wholesaler of alcohol beverages; or as a bottler or warehouseman and bottler of spiritous liquors.

(3) In any hearing held by the state licensing authority pursuant to this article or article 46 or 48 of this title, no person may refuse, upon request of the state licensing authority, to testify or provide other information on the ground of self-incrimination; but no testimony or other information produced in the hearing or any information directly or indirectly derived from such testimony or other information may be used against such person in any criminal prosecution based on a violation of this article or article 46 or 48 of this title except a prosecution for perjury in the first degree committed in so testifying. Continued refusal to testify or provide other information shall constitute grounds for suspension or revocation of any license granted pursuant to this article or article 46 or 48 of this title.

Source: **L. 97:** Entire article amended with relocations, p. 233, § 3, effective July 1. **L. 98:** (2)(a) amended, p. 281, § 2, effective August 5. **L. 2000:** (1)(e) amended, p. 1545, § 1, effective August 2. **L. 2003:** (2)(b) amended, p. 669, § 1, effective August 6. **L. 2009:** (2)(a)(I)(P) and (2)(a)(I)(Q) amended and (2)(a)(I)(R) added, (SB 09-254), ch. 272, p. 1230, § 3, effective May 18. **L. 2010:** (2)(a)(I)(S) added and (2)(b) amended, (SB 10-083), ch. 100, pp. 342, 341, §§ 2, 1, effective August 11.

Editor’s note: (1) This section is similar to former § 12-47-105 as it existed prior to 1997.

(2) The amendments made to this section by Senate Bill 97-220 were superseded by the amendments in House Bill 97-1076.

Cross references: For the legislative declaration contained in the 1998 act amending subsection (2)(a), see section 1 of chapter 99, Session Laws of Colorado 1998.

ANNOTATION

Annotator’s note. Since § 12-47-202 is similar to §§ 12-46-105 and 12-47-105 as they existed prior to the 1997 amendment of title 12, articles 46 and 47, which resulted in the relocation of provisions, relevant cases construing those provisions have been included in the annotations to this section.

State licensing authority has jurisdiction to revoke expired liquor license. Department may revoke a license upon a violation of this article or a rule promulgated under this article. This article is silent concerning when the proceedings must be completed; therefore, the state licensing authority has jurisdiction to revoke a license so

long as the violation occurs before the license expires. *Trappers Lake Lodge & Resort, LLC v. Colo. Dept. of Rev.*, 179 P.3d 198 (Colo. App. 2007).

Cases Decided Under Former § 12-46-105.

No untrammelled authority. An agency empowered with discretion to grant or deny a fermented malt beverage license does not have untrammelled power; it too is subject to standards and delimitations. *Capra v. Davenport*, 158 Colo. 537, 408 P.2d 448 (1965).

Nor unbridled discretion. The general assembly in giving to the licensing authority the

power to grant or deny a license did not give it unbridled discretion, and did not permit it to exercise such discretion without the application of the standards upon which its conclusion was to be exercised. *Capra v. Davenport*, 158 Colo. 537, 408 P.2d 448 (1965).

Prima facie right to license established. Where an applicant establishes a prima facie right to a license to dispense 3.2 beer at its race track, and the only evidence before the commissioners in opposition thereto is incompetent and irrelevant, the license should be granted. *Cloverleaf Kennel Club v. Bd. of County Comm'rs*, 136 Colo. 441, 319 P.2d 487 (1957).

Denial because of neighborhood arbitrary and capricious. The denial of a license to dispense 3.2 beer to a kennel club on the ground that the reasonable requirements of a neighborhood do not warrant issuance thereof is not supported by evidence where the neighborhood is not supplied at all and that there are no such outlets within a radius of five miles, and is arbitrary and capricious. *Cloverleaf Kennel Club v. Bd. of County Comm'rs*, 136 Colo. 441, 319 P.2d 487 (1957).

Department acts capriciously and arbitrarily without proper statutory framework. Where there is no statutory framework within which a transfer application for a 3.2 percent license can properly be denied, the department acts capriciously and arbitrarily in denying the application. *Adams County Golf, Inc. v. Colo. Dept. of Rev.*, 199 Colo. 423, 610 P.2d 97 (1980).

Cases Decided Under Former § 12-47-105.

Authority granted to director to define criminal conduct is not an unconstitutional delegation of legislative authority. Although the general assembly may not delegate to an administrative agency the power to define criminal conduct, it may authorize the agency to adopt rules carrying criminal sanctions as long as the statutory scheme provides sufficient standards and safeguards to protect against the unreasonable exercise of discretionary power and offers adequate notice of the penalties applicable to a violator. *People v. Lowrie*, 761 P.2d 778 (Colo. 1988).

Enabling legislation which charges the director to adopt rules and regulations not only with respect to the sale of alcoholic beverages in licensed taverns but also in relation to practices unduly designed to increase the consumption of alcoholic beverages provides sufficient standards and safeguards to protect the public against the unreasonable exercise of the director's power. Prohibiting the service of alcoholic beverages to intoxicated persons and the performance of certain live entertainment are therefore constitutional and not an unauthorized delegation of legislative authority. *People v. Lowrie*, 761 P.2d 778 (Colo. 1988).

The licensing authority is charged with the duty and task of determining whether a license should be granted or denied. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958).

The Colorado liquor code does not authorize a conspiracy to fix prices to the injury of competitors. *United States v. Colo. Wine & Liquor Dealers Ass'n*, 47 F. Supp. 160 (D. Colo. 1942), *aff'd sub nom. United States v. Frankfort Distilleries, Inc.*, 324 U.S. 293, 65 S. Ct. 661, 89 L. Ed. 951 (1945).

Licensee presumed to know regulations. Having applied for and received a license pursuant to the state liquor code, a licensee is presumed to know the regulations governing use of that license. *Chroma Corp. v. County of Adams*, 36 Colo. App. 345, 543 P.2d 83 (1975).

Regulation prohibiting employees of liquor licensee from soliciting drinks was not overbroad and was reasonably related to a valid exercise of police power. *4-D Bros. v. Heckers*, 33 Colo. App. 421, 522 P.2d 749 (1974).

Regulation of department of revenue, prohibiting liquor establishment licensee from employing a person to "mingle with patrons" and personally solicit the purchase or sale of drinks for use of one soliciting, was a proper exercise of authority delegated by the general assembly. *People v. Willson*, 187 Colo. 141, 528 P.2d 1315 (1974).

Validity of credit sales recognized. No rules or regulations pertaining to sales on credit have been promulgated by the state licensing authority; however, it is clear that the validity of credit sales is recognized. *Majestic Marketing Co. v. Anderson Enterprises of Colo., Inc.*, 32 Colo. App. 369, 511 P.2d 943 (1973).

An applicant for a liquor license is entitled to a hearing on application, and if refused, to be advised of the reasons therefor. *Sheeley v. Bd. of County Comm'rs*, 137 Colo. 350, 325 P.2d 275 (1958).

The action of the board in failing to hold a hearing and in refusing to give reasons for denial of a license is improper. *Sheeley v. Bd. of County Comm'rs*, 137 Colo. 350, 325 P.2d 275 (1958).

Where a hearing has been held but no record made by the board, no judicial determination can be made as to whether the denial of an application itself is arbitrary and capricious, and that the courts should not in such a case order the board to issue a license but should remand the matter to the board for a hearing, the taking and recording of evidence and the making of specific findings of fact. *Sheeley v. Bd. of County Comm'rs*, 137 Colo. 350, 325 P.2d 275 (1958).

Remand for hearing proper. In an action to compel a board of county commissioners to issue a liquor license, where it is shown that the board refused to issue the license but held no

hearing and gave no reasons for such refusal, an order requiring the applicant to republish his notice and directing the board to hold a regular hearing thereon with a court reporter present is proper, since a liquor license cannot be secured by default. *Sheeley v. Bd. of County Comm'rs*, 137 Colo. 350, 325 P.2d 275 (1958).

Director's request to see documents not violative of secrecy of grand jury. Request by director to see documents, which had been, or may at some time be, shown to a grand jury, which was examining books and records of liquor outlets but had not as yet returned an indictment, did not violate the policy of secrecy surrounding grand jury proceedings. *Granbery v. District Court* 187 Colo. 316, 531 P.2d 390 (1975).

Regulations under the liquor code are presumed to be valid, and the burden is upon the

party challenging the constitutionality to establish by a clear and convincing showing beyond a reasonable doubt an asserted invalidity. *C.V. Enters., Inc. v. State, Dept. of Rev.*, 42 Colo. App. 337, 593 P.2d 984 (1979).

Sale of "charge-a-drink" cards did not constitute sale of liquor. A company which sold "charge-a-drink" cards, which entitled holder to obtain, without charge, one drink worth up to \$2 at each of 40 restaurants and lounges was not a liquor retailer since its activities do not constitute a sale of liquor under the terms of this article. *Contemporary Enters., Inc. v. Charnes*, 44 Colo. App. 26, 613 P.2d 339 (1980).

Applied in *People ex rel. Heckers v. District Court*, 170 Colo. 533, 463 P.2d 310 (1970); *Citizens for Free Enter. v. Dept. of Rev.*, 649 P.2d 1054 (Colo. 1982).

12-47-203. Performance of duties. (1) The performance of the functions or activities set forth in this article and articles 46 and 48 of this title shall be subject to available appropriations; but nothing in this section shall be construed to remove from the state licensing authority the responsibility for performing such functions or activities in accordance with law at the level of funding provided.

(2) Notwithstanding the provisions of subsection (1) of this section, the state shall be the final interpretive authority as it relates to this article and articles 46 and 48 of this title and the rules and regulations promulgated thereunder, concerning persons licensed pursuant to this article and articles 46 and 48 of this title as wholesalers, manufacturers, importers, and public transportation system licensees.

Source: L. 97: Entire article amended with relocations, p. 234, § 3, effective July 1.

Editor's note: This section is similar to former § 12-47-144 as it existed prior to 1997.

PART 3

STATE AND LOCAL LICENSING

12-47-301. Licensing in general. (1) No local licensing authority shall issue a license provided for in this article or article 46 or 48 of this title until that share of the license fee due the state has been received by the department of revenue. All licenses granted pursuant to this article and articles 46 and 48 of this title shall be valid for a period of one year from the date of their issuance unless revoked or suspended pursuant to section 12-47-601 or 12-47-306.

(2) (a) Before granting any license, all licensing authorities shall consider, except where this article and article 46 of this title specifically provide otherwise, the reasonable requirements of the neighborhood, the desires of the adult inhabitants as evidenced by petitions, remonstrances, or otherwise, and all other reasonable restrictions that are or may be placed upon the neighborhood by the local licensing authority. With respect to a second or additional license described in section 12-47-401 (1) (j) to (1) (t) or 12-47-410 (1) or in a financial institution referred to in section 12-47-308 (4) for the same licensee, all licensing authorities shall consider the effect on competition of the granting or disapproving of additional licenses to such licensee, and no application for a second or additional hotel and restaurant or vintner's restaurant license that would have the effect of restraining competition shall be approved.

(b) A local licensing authority or the state on state-owned property may deny the issuance of any new tavern or retail liquor store license whenever such authority determines that the issuance of such license would result in or add to an undue concentration of the

same class of license and, as a result, require the use of additional law enforcement resources.

(3) (a) Each license issued under this article and article 46 of this title is separate and distinct. It is unlawful for any person to exercise any of the privileges granted under any license other than that which the person holds or for any licensee to allow any other person to exercise such privileges granted under the licensee's license, except as provided in section 12-46-104 (1) (a), 12-47-402 (2.5), 12-47-403 (2) (a), 12-47-403.5, or 12-47-415 (1) (b). A separate license shall be issued for each specific business or business entity and each geographical location, and in said license the particular alcohol beverages the applicant is authorized to manufacture or sell shall be named and described. For purposes of this section, a resort complex with common ownership, a hotel and restaurant licensee with optional premises, an optional premises licensee for optional premises located on an outdoor sports and recreational facility, and a wine festival at which more than one licensee participates pursuant to a wine festival permit shall be considered a single business and location.

(b) At all times a licensee shall possess and maintain possession of the premises or optional premises for which the license is issued by ownership, lease, rental, or other arrangement for possession of such premises.

(4) (a) The licenses provided pursuant to this article and article 46 of this title shall specify the date of issuance, the period which is covered, the name of the licensee, the premises or optional premises licensed, the optional premises in the case of a hotel and restaurant license, and the alcohol beverages that may be sold on such premises or optional premises. The license shall be conspicuously placed at all times on the licensed premises or optional premises, and all sheriffs and police officers shall see to it that every person selling alcohol beverages within their jurisdiction has procured a license to do so.

(b) No local licensing authority shall issue, transfer location of, or renew any license to sell any alcohol beverages until the person applying for such license produces a license issued and granted by the state licensing authority covering the whole period for which a license or license renewal is sought.

(5) In computing any period of time prescribed by this article, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Saturdays, Sundays, and legal holidays shall be counted as any other day.

(6) (a) Licensees at facilities owned by a municipality, county, or special district or at publicly or privately owned sports and entertainment venues with a minimum seating capacity of one thousand five hundred seats may possess and serve for on-premises consumption any type of alcohol beverage as may be permitted pursuant to guidelines established by the local and state licensing authorities, and the licensees need not have meals available for consumption.

(b) Nothing in this article shall prohibit a licensee at a sports and entertainment venue described in paragraph (a) of this subsection (6) from selling or providing alcohol beverages in sealed containers, as authorized by the license in effect, to adult occupants of luxury boxes located at stadiums, arenas, and similar sports and entertainment venues that are included within the licensed premises of the licensee. However, no person shall be allowed to leave the licensed premises with a sealed container of alcohol beverage that was obtained in the luxury box. As used in this paragraph (b), "luxury box" means a limited public access room or booth that is used by its occupants and their guests at sports and entertainment venues that are provided within the licensed premises.

(7) A licensee shall report each transfer or change of financial interest in the license to the state licensing authority and, for retail licenses, to the local licensing authority within thirty days after the transfer or change. A report shall be required for transfers of capital stock of a public corporation; except that a report shall not be required for transfers of such stock totaling less than ten percent in any one year, but any transfer of a controlling interest shall be reported regardless of size. It is unlawful for the licensee to fail to report a transfer required by this subsection (7). Such failure to report shall be grounds for suspension or revocation of the license.

(8) Each licensee holding a fermented malt beverage on-premises license or on- and off-premises license, beer and wine license, tavern license, club license, arts license, or

racetrack license shall manage such premises himself or herself or employ a separate and distinct manager on the premises and shall report the name of such manager to the state and local licensing authorities. Such licensee shall report any change in managers to the state and local licensing authorities within thirty days after the change. It is unlawful for the licensee to fail to report the name of or any change in managers as required by this subsection (8). Such failure to report shall be grounds for suspension of the license.

(9) (a) A licensee may move his or her permanent location to any other place in the same city, town, or city and county for which the license was originally granted, or in the same county if such license was granted for a place outside the corporate limits of any city, town, or city and county, but it shall be unlawful to sell any alcohol beverage at any such place until permission to do so is granted by all the licensing authorities provided for in this article.

(b) In permitting such change of location, such licensing authorities shall consider the reasonable requirements of the neighborhood to which the applicant seeks to change his or her location, the desires of the adult inhabitants as evidenced by petitions, remonstrances, or otherwise, and all reasonable restrictions that are or may be placed upon the new district by the council, board of trustees, or licensing authority of the city, town, or city and county or by the board of county commissioners of any county.

(10) (a) The provisions of this subsection (10) shall only apply within a county, city and county, or municipality if the governing body of the county, city and county, or municipality adopts an ordinance or resolution authorizing tastings pursuant to this subsection (10). The ordinance or resolution may provide for stricter limits than this subsection (10) on the number of tastings per year per licensee, the days on which tastings may occur, or the number of hours each tasting may last.

(b) A retail liquor store or liquor-licensed drugstore licensee who wishes to conduct tastings may submit an application or application renewal to the local licensing authority. The local licensing authority may reject the application if the applicant fails to establish that he or she is able to conduct tastings without violating the provisions of this section or creating a public safety risk to the neighborhood. A local licensing authority may establish its own application procedure and may charge a reasonable application fee.

(c) Tastings shall be subject to the following limitations:

(I) Tastings shall be conducted only by a person who has completed a server training program that meets the standards established by the liquor enforcement division in the department of revenue and who is either a retail liquor store licensee or a liquor-licensed drugstore licensee, or an employee of a licensee, and only on a licensee's licensed premises.

(II) The alcohol used in tastings shall be purchased through a licensed wholesaler, licensed brew pub, or winery licensed pursuant to section 12-47-403 at a cost that is not less than the laid-in cost of such alcohol.

(III) The size of an individual alcohol sample shall not exceed one ounce of malt or vinous liquor or one-half of one ounce of spirituous liquor.

(IV) Tastings shall not exceed a total of five hours in duration per day, which need not be consecutive.

(V) Tastings shall be conducted only during the operating hours in which the licensee on whose premises the tastings occur is permitted to sell alcohol beverages, and in no case earlier than 11 a.m. or later than 7 p.m.

(VI) The licensee shall prohibit patrons from leaving the licensed premises with an unconsumed sample.

(VII) The licensee shall promptly remove all open and unconsumed alcohol beverage samples from the licensed premises or shall destroy the samples immediately following the completion of the tasting.

(VIII) The licensee shall not serve a person who is under twenty-one years of age or who is visibly intoxicated.

(IX) The licensee shall not serve more than four individual samples to a patron during a tasting.

(X) Alcohol samples shall be in open containers and shall be provided to a patron free of charge.

(XI) Tastings may occur on no more than four of the six days from a Monday to the following Saturday, not to exceed one hundred four days per year.

(XII) No manufacturer of spirituous or vinous liquors shall induce a licensee through free goods or financial or in-kind assistance to favor the manufacturer's products being sampled at a tasting. The licensee shall bear the financial and all other responsibility for a tasting.

(d) A violation of a limitation specified in this subsection (10) or of section 12-47-801 by a retail liquor store or liquor-licensed drugstore licensee, whether by his or her employees, agents, or otherwise, shall be the responsibility of the retail liquor store or liquor-licensed drugstore licensee who is conducting the tasting.

(e) A retail liquor store or liquor-licensed drugstore licensee conducting a tasting shall be subject to the same revocation, suspension, and enforcement provisions as otherwise apply to the licensee.

(f) Nothing in this subsection (10) shall affect the ability of a Colorado winery licensed pursuant to section 12-47-402 or 12-47-403 to conduct a tasting pursuant to the authority of section 12-47-402 (2) or 12-47-403 (2) (e).

(11) (a) This subsection (11) applies only within an entertainment district that a governing body of a local licensing authority has created by ordinance or resolution. This subsection (11) does not apply to a special event permit issued under article 48 of this title or the holder thereof unless the permit holder desires to use an existing common consumption area and agrees in writing to the requirements of this article and the local licensing authority concerning the common consumption area.

(b) A governing body of a local licensing authority may create an entertainment district by adopting an ordinance or resolution. An entertainment district shall not exceed one hundred acres. The ordinance or resolution may impose stricter limits than required by this subsection (11) on the size, security, or hours of operation of any common consumption area created within the entertainment district.

(c) (I) A certified promotional association may operate a common consumption area within an entertainment district and authorize the attachment of a licensed premises to the common consumption area.

(II) An association or tavern, hotel and restaurant, brew pub, retail gaming tavern, or vintner's restaurant licensee who wishes to create a promotional association may submit an application to the local licensing authority. To qualify for certification, the promotional association must:

(A) Have a board of directors;

(B) Have at least one director from each licensed premises attached to the common consumption area on the board of directors; and

(C) Agree to submit annual reports by January 31 of each year to the local licensing authority showing a detailed map of the boundaries of the common consumption area, the common consumption area's hours of operation, a list of attached licensed premises, a list of the directors and officers of the promotional association, security arrangements within the common consumption area, and any violation of this article committed by an attached licensed premises.

(III) The local licensing authority may refuse to certify or may decertify a promotional association of a common consumption area if the promotional association:

(A) Fails to submit the report required by sub-subparagraph (C) of subparagraph (II) of this paragraph (c) by January 31 of each year;

(B) Fails to establish that the licensed premises and common consumption area can be operated without violating this article or creating a safety risk to the neighborhood;

(C) Fails to have at least two licensed premises attached to the common consumption area;

(D) Fails to obtain or maintain a properly endorsed general liability and liquor liability insurance policy that is reasonably acceptable to the local licensing authority and names the local licensing authority as an additional insured;

(E) The use is not compatible with the reasonable requirements of the neighborhood or the desires of the adult inhabitants; or

(F) Violates section 12-47-909.

(d) A person shall not attach a premises licensed under this article to a common consumption area unless authorized by the local licensing authority.

(e) (I) A tavern, hotel and restaurant, brew pub, retail gaming tavern, or vintner's restaurant licensee who wishes to attach to a common consumption area may submit an application to the local licensing authority. To qualify, the licensee must include a request for authority to attach to the common consumption area from the certified promotional association of the common consumption area unless the promotional association does not exist when the application is submitted; if so, the applicant shall request the authority when a promotional association is certified and shall demonstrate to the local licensing authority that the authority has been obtained by the time the applicant's license issued under this article is renewed.

(II) The local licensing authority may deauthorize or refuse to authorize or reauthorize a licensee's attachment to a common consumption area if the licensed premises is not within or on the perimeter of the common consumption area and if the licensee:

(A) Fails to obtain or retain authority to attach to the common consumption area from the certified promotional association;

(B) Fails to establish that the licensed premises and common consumption area can be operated without violating this article or creating a safety risk to the neighborhood; or

(C) Violates section 12-47-909.

(f) A local licensing authority may establish application procedures and a fee for certifying a promotional authority or authorizing attachment to a common consumption area. The authority shall establish the fee in an amount designed to reasonably offset the cost of implementing this subsection (11). Notwithstanding any other provision of this article, a local authority may set the hours during which a common consumption area and attached licensed premises may serve alcohol and the customers may consume alcohol. Before certifying a promotional association, the local licensing authority shall consider the reasonable requirements of the neighborhood, the desires of the adult inhabitants as evidenced by petitions, remonstrances, or otherwise, and all other reasonable restrictions that are or may be placed upon the neighborhood by the local licensing authority.

Source: **L. 97:** (2) amended, p. 327, § 1, effective April 16; entire article amended with relocations, p. 235, § 3, effective July 1. **L. 99:** (3)(a) amended, p. 364, § 1, effective April 19. **L. 2003:** (7) amended, p. 2016, § 117, effective May 22. **L. 2004:** (10) added, p. 784, § 7, effective July 1; (2)(a) amended, p. 741, § 8, effective August 4. **L. 2005:** (2)(a) amended, p. 410, § 11, effective August 8. **L. 2008:** (3)(a) amended, p. 2165, § 3, effective August 5. **L. 2009:** (3)(a) amended, (SB 09-254), ch. 272, p. 1230, § 4, effective May 18. **L. 2010:** (6) amended, (HB 10-1170), ch. 81, p. 273, § 1, effective April 12. **L. 2011:** (6)(a) amended, (SB 11-060), ch. 171, p. 606, § 18, effective May 13; (11) added, (SB11-273), ch. 233, p. 1003, § 2, effective August 10.

Editor's note: (1) This section is similar to former § 12-47-106, and subsection (9) is similar to former § 12-47-128 (5)(g), as they existed prior to 1997.

(2) Amendments to subsection (2) by House Bill 97-1222 and House Bill 97-1076 were harmonized.

ANNOTATION

Annotator's note. Since § 12-47-301 is similar to §§ 12-46-106, 12-46-108, and 12-47-106 as they existed prior to the 1997 amendment of title 12, articles 46 and 47, which resulted in the relocation of provisions, relevant cases construing those provisions have been included in the annotations to this section.

Cases Decided Under Former § 12-46-106.

It was the legislative intent in passing this article to vest a wide discretion in licensing

authorities. *MacArthur v. Sierota*, 122 Colo. 115, 221 P.2d 346 (1950); *Geer v. Susman*, 134 Colo. 6, 298 P.2d 948 (1956); *Bd. of County Comm'rs v. Salardino*, 136 Colo. 421, 318 P.2d 596 (1957); *Bailey v. Bd. of County Comm'rs*, 151 Colo. 115, 376 P.2d 519 (1962); *Bd. of County Comm'rs v. Bova*, 153 Colo. 230, 385 P.2d 590 (1963).

In acting on an application for a liquor license, the licensing authority has considerable latitude and broad discretionary power. *Bd. of*

County Comm'rs v. Nat'l Tea Co., 149 Colo. 80, 367 P.2d 909 (1962).

No authority to establish local public policy. The wide discretion vested in the licensing authority in granting or denying beverage licenses is not to be construed as authority to establish a local public policy, either by express resolution or by secret agreement contrary to the state statute legalizing the issuance of such licenses. *Buddy & Lloyd's Store No. 1, Inc. v. City Council*, 139 Colo. 152, 337 P.2d 389 (1959); *Sierota v. Scott*, 143 Colo. 248, 352 P.2d 671 (1960).

The licensing authority must not act arbitrarily or capriciously. Bd. of County Comm'rs v. Salardino, 136 Colo. 421, 318 P.2d 596 (1957).

Nor does it have untrammelled power. An agency empowered with discretion to grant or deny a fermented malt beverage license does not have untrammelled power; it too is subject to standards and delimitations. *Capra v. Davenport*, 158 Colo. 537, 408 P.2d 448 (1965).

The power to license the sale of alcoholic beverages includes the power to refuse a license, even when the statutory or preliminary requirements are complied with. *Geer v. Susman*, 134 Colo. 6, 298 P.2d 948 (1956).

The licensing authorities of the state have authority to issue a number of licenses for the sale of fermented malt beverages to a licensee. *Big Top, Inc. v. Schooley*, 149 Colo. 116, 368 P.2d 201 (1962).

The city and county of Denver could not, under the guise of regulation, prohibit the issuance of more than one license to sell fermented malt beverages where the general assembly, by whom the delegation to regulate was made, has clearly indicated that a licensee may be issued multiple licenses under this article. *Big Top, Inc. v. Schooley*, 149 Colo. 116, 368 P.2d 201 (1962).

This article authorizes municipalities to make reasonable rules and regulations governing the sale of 3.2 beer. *Sierota v. Scott*, 143 Colo. 248, 352 P.2d 671 (1960).

Each license application must be determined upon the facts as they exist at the time, not as they may have existed when a previous application was made. *Vigil v. Burrell*, 157 Colo. 507, 404 P.2d 147 (1965).

A licensee under this article does not have a vested right to a renewal. *City of Manitou Springs v. Walk*, 149 Colo. 43, 367 P.2d 744 (1961).

The question of renewal becomes one for the exercise of the discretion of the licensing authority and it may refuse to renew such license upon good cause shown. *City of Manitou Springs v. Walk*, 149 Colo. 43, 367 P.2d 744 (1961).

A licensing authority may not arbitrarily or summarily deny a renewal. *City of Manitou*

Spring v. Walk, 149 Colo. 43, 367 P.2d 744 (1961).

What is good cause for denial of license renewal depends upon the circumstances of the case. *City of Manitou Springs v. Walk*, 149 Colo. 43, 367 P.2d 744 (1961).

Where county commissioners disregard the evidence presented, the denial of a license is arbitrary and capricious. Bd. of County Comm'rs v. Nat'l Tea Co., 149 Colo. 80, 367 P.2d 909 (1962); *Hirsch v. Bd. of Trustees*, 150 Colo. 50, 370 P.2d 760 (1962).

It is the duty of the local licensing authority to exercise its discretion on the basis of all of the evidence adduced at the hearing on the application, and not from a synopsis of the hearing officer. *Big Top, Inc. v. Hoffman*, 156 Colo. 362, 399 P.2d 249 (1965).

Doubts resolved in favor of authority. Where the evidence shows the need of an applicant for a license, but not convincingly, the requirement of the community for it, all reasonable doubt must be resolved in favor of the licensing authority. *Geer v. Susman*, 134 Colo. 6, 298 P.2d 948 (1956); *City of Manitou Springs v. Walk*, 149 Colo. 43, 367 P.2d 744 (1961); *Bailey v. Bd. of County Comm'rs*, 151 Colo. 115, 376 P.2d 519 (1962).

It is the duty of an applicant to make out a prima facie case before the licensing authority, and having made out a prima facie case, then those opposing the granting of the license should have an opportunity to show cause why the license should not be issued. Bd. of County Comm'rs v. Salardino, 136 Colo. 421, 318 P.2d 596 (1957).

Lack of hearing, etc., no basis for order to issue license. A finding by the trial court that there was no hearing, no evidence taken, and no consideration on the merits of an application for a liquor license before a board of county commissioners is not sufficient to sanction an order directing the board to issue the license. Bd. of County Comm'rs v. Salardino, 136 Colo. 421, 318 P.2d 596 (1957).

Where the record fails to disclose any valid reason for the denial of an application to dispense 3.2 beer, a judgment finding that the board of county commissioners abused its discretion in denying such license and ordering the same to issue was not erroneous. Bd. of County Comm'rs v. Skaff, 139 Colo. 452, 340 P.2d 866 (1959).

Refusal where store located close to school. The licensing authority, in its discretion, could refuse to issue a license to sell at retail 3.2 percent beer to an applicant whose store was located only 176 feet from a school with students both above and below the age of 18 who frequented such store. *MacArthur v. Sierota*, 122 Colo. 115, 221 P.2d 346 (1950).

Where an applicant sought a license to dispense 3.2 beer in a residential neighbor-

hood where a considerable juvenile and teenage problem existed, and such license was denied by the licensing authority on the ground that existing outlets were sufficient to meet the requirements of the community, and that a substantial number of persons living in the area desired that the license be denied, a claim that the licensing authority failed to give candid and honest consideration to the facts before him in the exercise of his discretion falls short of that required to overcome the presumption of validity attending his administrative acts. *Geer v. Susman*, 134 Colo. 6, 298 P.2d 948 (1956).

Where neighborhood requirements were adequately served. Where record does not reflect that reasonable requirements of neighborhood are not being adequately served by existing 3.2 percent beer outlets, one of which is to be found within distance of one city block from premises of applicant and another within two or three blocks east of applicant's store, denial of application by licensing authority under such circumstances was neither arbitrary nor capricious. *Capra v. U-Tote'm of Colo. Inc.*, 159 Colo. 130, 410 P.2d 171 (1966).

Despite inconvenience. Where the evidence showed nine outlets for the sale of beer within a radius of six blocks of applicant's store, and the testimony for applicant was limited and related only to an inconvenience in the location of other beer outlets, it could not be said that the showing made by applicant of the need for another beer outlet in the neighborhood was so plain and certain that the action of the licensing authority in denying the application was arbitrary and without good cause. *MacArthur v. Sierota*, 122 Colo. 115, 221 P.2d 346 (1950).

Denial of a license because of speculative reasons such as possible vandalism, noise, or disturbances, where it is obvious that these factors alone and not the required factors were the basis for the denial, is without legal justification. *Mobell v. Meyer*, 172 Colo. 12, 469 P.2d 414 (1970).

Denial of a license because of resulting traffic and parking problems is without legal justification. *Mobell v. Meyer*, 172 Colo. 12, 469 P.2d 414 (1970).

Issuance of other license not an admission of need. Where an application for a beer license was refused, the subsequent issuance of a license for the sale of malt, vinous, and spirituous liquors to another applicant on premises only three blocks away was not an admission that there was a reasonable need and requirement for another licensed place in the neighborhood nor did it prove that the denial of the license to the applicant was plainly arbitrary. *MacArthur v. Sierota*, 122 Colo. 115, 221 P.2d 346 (1950).

A reference in the findings to previous proceedings was improper. *Vigil v. Burress*, 157 Colo. 507, 404 P.2d 147 (1965).

County may lawfully issue 3.2 percent license to nonprofit corporation which is licensee-concessionaire of a portion of golf clubhouse facilities, in order to provide such service to the patrons of the golf course and to the general public. *Adams County Golf, Inc. v. Colo. Dept. of Rev.*, 199 Colo. 423, 610 P.2d 97 (1980).

Applied in *Duran v. Riggs*, 147 Colo. 278, 363 P.2d 656 (1961).

Cases Decided Under Former § 12-46-108.

Law reviews. For article, "Moral Character of the Liquor Licensee or Applicant", see 25 Colo. Law. 79 (February 1996).

The applicable legal requirements to be considered in issuing licenses are set forth in this section which deals with qualifications and conditions for license. *Bd. of County Comm'rs v. Skaff*, 139 Colo. 452, 340 P.2d 866 (1959).

In the exercise of the police power the licensing authority may refuse to issue or renew a license for any good cause, and the courts may reverse the decision only if the refusal was arbitrary or without good cause under the circumstances of the case. *City of Manitou Springs v. Walk*, 149 Colo. 43, 367 P.2d 744 (1961).

Discretion of licensing authority. In acting on liquor applications, there is considerable latitude and discretion in the local licensing authority. However, its power to act is not a completely unbridled one and its action is subject to judicial review. *Nat'l Convenience Stores, Inc. v. City of Englewood*, 192 Colo. 109, 556 P.2d 476 (1976).

This section does not relieve applicants of the duty to prove a reasonable requirement for the proposed outlet, an essential prerequisite to the granting of a license. *Hauf Brau v. Bd. of County Comm'rs*, 145 Colo. 522, 359 P.2d 659 (1961).

The applicant has the burden of showing prima facie that the desires and reasonable requirements of the neighborhood dictate the issuance of the license. *Bd. of County Comm'rs v. Nat'l Tea Co.*, 149 Colo. 80, 367 P.2d 909 (1962).

Language concerning good moral character in section 12-48.5-108, which is similar to language in this section, is applied in *R & F Enters., Inc. v. Bd. of County Comm'rs*, 199 Colo. 137, 606 P.2d 64 (1980).

The liquor licensing authority has a duty to consider the character and reputation of the applicant. *MacLarty v. Whiteford*, 30 Colo. App. 378, 496 P.2d 1071 (1972).

Consideration of conduct and location proper. It is entirely proper for a licensing authority to take into account not only the conduct of the licensee but also conditions which render a continuance of a 3.2 beer license in a particular location against the public interest. City of

Manitou Springs v. Walk, 149 Colo. 43, 367 P.2d 744 (1961).

The licensing authority is not limited in its consideration to the applicant's character, the need of the neighborhood, and the desires of the inhabitants. City of Manitou Springs v. Walk, 149 Colo. 43, 367 P.2d 744 (1961).

No arbitrariness in board's definition of neighborhood. Where the board in defining the neighborhood involved included therein not only the two subdivisions mentioned but also a few blocks south and west of said Duran's subdivision, wherein were located three existing 3.2 outlets, and also included in the neighborhood the fringe area adjacent, the board did not act arbitrarily in defining neighborhood to be affected. Duran v. Riggs, 147 Colo. 278, 363 P.2d 656 (1961).

The term "neighborhood" signifies nearness as opposed to remoteness. Cloverleaf Kennel Club v. Bd. of County Comm'rs, 136 Colo. 441, 319 P.2d 487 (1957).

But not entire county. Moreover, no authority justifies the conclusion that the "neighborhood" involved in an application for a liquor license can be expanded to include an entire county. Kerr v. Bd. of County Comm'rs, 170 Colo. 227, 460 P.2d 235 (1969).

Requirements of neighborhood and desires of inhabitants considered. This section requires the local licensing authority to consider not only the reasonable requirements of the neighborhood, but also the desires of its inhabitants. Neither is in itself controlling, but both must be considered together. Duran v. Riggs, 147 Colo. 278, 363 P.2d 656 (1961); Bailey v. Bd. of County Comm'rs, 151 Colo. 115, 376 P.2d 519 (1962); Mobell v. Meyer, 172 Colo. 12, 469 P.2d 414 (1970).

In regard to an application for a 3.2 percent beer license, local authorities are to consider the reasonable requirements of the neighborhood and the desires of the inhabitants. U-Tote-M of Colo., Inc. v. City of Greenwood Vill., 39 Colo. App. 28, 563 P.2d 373 (1977).

Record must show prima facie desires, etc., of neighborhood. The granting or denial of a beverage license depends on the record made by an applicant before the local licensing authority and must show prima facie the desires and reasonable requirements of the neighborhood. Bd. of County Comm'rs v. Nat'l Tea Co., 149 Colo. 80, 367 P.2d 909 (1962).

Under the statutory standard the applicant has the burden of making a prima facie showing that the desires of the inhabitants and reasonable requirements of the neighborhood establish the need for the issuance of the license. Nat'l Convenience Stores, Inc. v. City of Englewood, 192 Colo. 109, 556 P.2d 476 (1976).

Where the record before county commissioners discloses that the residents of a neighborhood indicated a desire that a license to

dispense 3.2 beer be issued to an applicant and that there is no similar outlet in the entire community, a determination by a trial court that a denial of the application by the board was arbitrary and without good cause is proper. Bd. of County Comm'rs v. Skaff, 139 Colo. 452, 340 P.2d 866 (1959).

Where evidence discloses that the overwhelming majority of persons living in a town are opposed to the granting of a liquor license, denial of the application therefor by board of county commissioners is neither arbitrary nor an abuse of discretion. Bailey v. Bd. of County Comm'rs, 151 Colo. 115, 376 P.2d 519 (1962).

Prospective patrons considered. In determining whether a license to dispense 3.2 beer should be granted or denied to a dog racing kennel club, the patrons of the track were to be considered in determining the needs of the particular location. Cloverleaf Kennel Club v. Bd. of County Comm'rs, 136 Colo. 441, 319 P.2d 487 (1957).

Inhabitants' petitions considered. This section precludes the licensing agency from granting a license until it has given good faith consideration to inhabitants' petitions and remonstrances. Hauf Brau v. Bd. of County Comm'rs, 145 Colo. 522, 359 P.2d 659 (1961).

The number of persons signing for or against a license is not wholly determinative of either the reasonable requirements or the desires of the neighborhood. Vigil v. Burress, 157 Colo. 507, 404 P.2d 147 (1965).

It is not dispositive that plaintiff obtained more signatures in favor of the license than were presented by defendant in opposition. U-Tote-M of Colo., Inc. v. City of Greenwood Vill., 39 Colo. App. 28, 563 P.2d 373 (1977).

Other proof. This section in no way limits the board in giving proper consideration to other proof of the reasonable requirements of the neighborhood or the desires of the inhabitants thereof. Hauf Brau v. Bd. of County Comm'rs, 145 Colo. 522, 359 P.2d 659 (1961).

Letters from various organizations and individuals from a city at large have no probative value whatever. Cloverleaf Kennel Club v. Bd. of County Comm'rs, 136 Colo. 441, 319 P.2d 487 (1957).

The desires of the citizens of one county cannot be controlling on the board of county commissioners of another county. Cloverleaf Kennel Club v. Bd. of County Comm'rs, 136 Colo. 441, 319 P.2d 487 (1957).

Evidence before a licensing authority relating to teenage problems, noise, and rowdiness, indicating that such conditions were in substantial measure due to existence of 3.2 beer license of the applicant, authorized the licensing authority to determine that the license in the particular location was against the public inter-

est. *City of Manitou Springs v. Walk*, 149 Colo. 43, 367 P.2d 744 (1961).

Denial of a license because of resulting traffic and parking problems is without legal justification. *Mobell v. Meyer*, 172 Colo. 12, 469 P.2d 414 (1970).

Denial of a license because of speculative reasons such as possible vandalism, noise, or disturbances, where it is obvious that these factors alone and not the required factors were the basis for the denial, is without legal justification. *Mobell v. Meyer*, 172 Colo. 12, 469 P.2d 414 (1970).

The mere existence of other outlets in the neighborhood, although a factor to be considered by the licensing authority, is not in itself a sufficient ground for denying a license. *Nat'l Convenience Stores, Inc. v. City of Englewood*, 192 Colo. 109, 556 P.2d 476 (1976).

The number and location of outlets licensed under the state "liquor code" are not a controlling factor in determining whether a license to dispense at retail fermented malt beverage by the package should be granted. *Hirsch v. Bd. of Trustees*, 150 Colo. 50, 370 P.2d 760 (1962).

The lack of proof that the neighborhood is not adequately served precludes issuance of a license. *Hauf Brau v. Bd. of County Comm'rs*, 145 Colo. 522, 359 P.2d 659 (1961).

The proximity of the proposed outlet to the existing outlet is an important factor properly to be considered by the licensing authority. *Big Top, Inc. v. Hoskinson*, 158 Colo. 400, 407 P.2d 26 (1965).

Must distinguish "package" and "by the drink" outlets. Where it appeared from the licensing agency findings that in consideration of the reasonable requirements of the neighborhood it refused to take cognizance of the distinction between outlets dispensing 3.2 beer by the package and a proposed outlet which would offer 3.2 beer by the drink, it acted arbitrarily. *Kerr v. Bd. of County Comm'rs*, 170 Colo. 227, 460 P.2d 235 (1969).

Outlets found inadequate. A complete absence of a 3.2 outlet within a radius of five miles cannot be said to serve the reasonable requirements of the neighborhood. *Cloverleaf Kennel Club v. Bd. of County Comm'rs*, 136 Colo. 441, 319 P.2d 487 (1957); *Bd. of County Comm'rs v. Skaff*, 139 Colo. 452, 340 P.2d 866 (1959).

Where the record disclosed that only one outlet as that for which license was sought had been authorized in entire county, located at a distance of 25 miles from city where applicant resided, a license to sell 3.2 beer was unlawfully denied by the city council. *McNeill v. City Council*, 148 Colo. 277, 365 P.2d 687 (1961).

Where the record disclosed not a single outlet in a town for the dispensing of 3.2 beer, a finding by the town board of trustees that the area was served adequately with such beverage

was wholly unsupported. *Hirsch v. Bd. of Trustees*, 150 Colo. 50, 370 P.2d 760 (1962).

Cases Decided Under Former § 12-47-106.

- I. General Consideration.
- II. Neighborhood Requirements.

I. GENERAL CONSIDERATION.

Law reviews. For comment on *Campbell v. City Council*, appearing below, see 35 U. Colo. L. Rev. 252 (1963). For note, "The Liquor Code — Colorado Revised Statute Antiquated", see 38 U. Colo. L. Rev. 248 (1965).

Delegation of legislative authority to the Department of Excise and Licenses to adopt rules and conduct hearings on applications to renew liquor licenses is not unconstitutional on the basis that the statute fails to provide sufficient standards for defining "good cause". *Squire Restaurant and Lounge v. Denver*, 890 P.2d 164 (Colo. App. 1994).

Statutory licensing guide. The licensing authority is by statute charged with the duty and task of determining whether a license should be granted or denied, and the statutory guide provided for the board in performing this duty is found in this section. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958).

Supreme court decisions. Another source of guidance for the board in performing its duties as a licensing authority is the numerous pronouncements of the supreme court. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958).

Three principles pervade all of the pertinent decisions: (1) The licensing authorities are vested with a very wide discretion; (2) all reasonable doubts as to the correctness of the board's rulings are to be resolved in favor of the board; (3) the determination of the board will not be disturbed by the courts unless it appears that the board has abused its discretion. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958).

The issuance of licenses under the liquor code depends in the final analysis on the judgment of the licensing authority and not upon that of citizens or the court; and all reasonable doubt must be resolved in favor of the licensing authority. *Kornfeld v. Yost*, 37 Colo. App. 483, 551 P.2d 219 (1976), rev'd on other grounds sub nom. *Kornfeld v. Perl Mack Liquors, Inc.*, 193 Colo. 442, 567 P.2d 383 (1977).

It was the intention of the general assembly to vest a wide discretion in local licensing authorities in the issuance of licenses for sale of alcoholic beverages. *Gem Beverage Co. v. Geer*, 138 Colo. 420, 334 P.2d 744 (1959).

Governed by facts and circumstances. While a wide discretion is vested in the county commissioners with respect to the issuance of liquor licenses, the exercise of that discretion

must be governed by a proper consideration of the facts and circumstances in each case. *Bd. of County Comm'rs v. Buckley*, 121 Colo. 108, 213 P.2d 608 (1949).

The exercise of this discretion cannot be dispensed with by the adoption of a policy to deny all applications. *Bd. of County Comm'rs v. Buckley*, 121 Colo. 108, 213 P.2d 608 (1949).

The discretion of the licensing officer in granting or refusing a license is well established by the decisions of the supreme court. *Cronin v. Ward*, 144 Colo. 192, 355 P.2d 655 (1960).

The general assembly has established the public policy for the entire state, and this cannot be overridden by local governments by mere fiat nor ignored by the courts. *Le Pore v. Larkin*, 146 Colo. 311, 361 P.2d 343 (1961).

No contrary local policy authorized. The wide discretion which is vested in the licensing authority in granting or denying licenses is not to be construed as authority to establish a local public policy either by express resolution or by secret agreement contrary to the state statutes which have legalized the issuance of this particular type of license. *Ladd v. Bd. of County Comm'rs*, 146 Colo. 366, 361 P.2d 627 (1961).

Licensing procedures must not be used as a means of establishing local option and circumventing statutory requirements. *Le Pore v. Larkin*, 146 Colo. 311, 361 P.2d 343 (1961).

Local authority to license, not to regulate. The board of county commissioners has no authority to regulate the sale of malt and vinous liquors, other than 3.2 percent beer, but only to grant, suspend, or revoke licenses as provided by this section. *Gettman v. Bd. of County Comm'rs*, 122 Colo. 185, 221 P.2d 363 (1950).

A resolution of a city council limiting the number of liquor licenses on the basis of citywide population is invalid as tantamount to a prejudgment of any application, this article requiring a hearing, and issuance or denial of a license on the merits of each application. *City of Colo. Springs v. Graham*, 143 Colo. 97, 352 P.2d 273 (1960).

No authority to regulate hours. No attempt to delegate to the board of county commissioners any authority of regulation as to hours when malt or vinous liquors may be sold or the authority to promulgate other rules and regulations is made by this section. *Gettman v. Bd. of County Comm'rs*, 122 Colo. 185, 221 P.2d 363 (1950).

Personal right vested in licensee. A liquor license vests a personal right in the licensee and confers the right to do that which without the license would be unlawful, such right being coextensive with the duration of the license and is restricted to a certain location, unless change thereof is granted upon application to, and after a hearing by, the licensing authority. *A. D. Jones*

& Co. v. Parsons, 136 Colo. 434, 319 P.2d 480 (1957).

Liquor license is a property right entitled to due process protection including notice and an opportunity to be heard and, therefore, due process was denied when claimant for liquor license renewal was not notified that evidence would be taken on the needs and desires of the neighborhood. *Price Haskell v. Denver Dept. of Excise & Licenses*, 694 P.2d 364 (Colo. App. 1984).

This section permits removal to another location of a hotel and restaurant license upon a proper showing. *A. D. Jones & Co. v. Parsons*, 136 Colo. 434, 319 P.2d 480 (1957).

While the section permits removal to another location of a hotel or restaurant license upon a proper showing, a contract by which the parties agree that the licensee will not exercise this privilege, but upon termination of the tenancy will surrender the license to the licensing authority, is not in violation of the law since it is not an agreement for the transfer of the license. *A. D. Jones & Co. v. Parsons*, 136 Colo. 434, 319 P.2d 480 (1957).

Full, fair, and impartial hearing. Where an applicant was given full opportunity to present all testimony and documentary evidence it desired, and availed itself of such opportunity, the fact that the chairman of the board of county commissioners at beginning of hearing expressed the opinion that needs of the neighborhood were presently met, falls short of denial to applicant of full, fair, and impartial hearing. *Lab Dev. Co. v. Hill*, 152 Colo. 338, 381 P.2d 811 (1963).

No court may substitute its judgment for that of the local licensing authority when there is any evidence in the record that supports the conclusion of the licensing authority. *Canjar v. Huerta*, 193 Colo. 388, 566 P.2d 1071 (1977); *Duren, Inc. v. City of Lakewood*, 709 P.2d 74 (Colo. App. 1985).

Denial upheld where not arbitrary or capricious. While not supported by a preponderance, the denial of a retail license will be upheld if supported by sufficient evidence, if the licensing authority did not act arbitrarily and capriciously. *Bd. of County Comm'rs v. Thompson*, 167 Colo. 402, 448 P.2d 639 (1968).

"Good cause" standard fails to give sufficient notice. Standard in liquor code of "good cause" as the criterion for determining if a liquor license is renewed, without any implementing rules, fails to give sufficient definiteness of what conduct and conditions are required to avoid nonrenewal, fails to insure rational and consistent administrative action and effective subsequent judicial review of that action, and therefore violates due process. Some limit must be provided by the Department of Excise and Licenses to guide discretion in determining if "good cause" for refusing to renew

a liquor license exists. *Squire Restaurant and Lounge v. Denver*, 890 P.2d 164 (Colo. App. 1994).

Abuse of discretion. An example of refusal for good cause is where the board of county commissioners refused to grant a liquor license to an operator of a rural hotel and based its decision on the fact that the premises could be reached only by a dangerous, winding country road in a mountainous area and also on the ground of the proximity of young people at a nearby college, it was held not to be an abuse of discretion. *Bd. of County Comm'rs v. Buckley*, 121 Colo. 108, 213 P.2d 608 (1949).

The right of a licensing authority to refuse for good cause, of necessity vests in the board of county commissioners in any county in the first instance the right to determine what is good cause for refusal. *Van DeVegt v. Bd. of County Comm'rs*, 98 Colo. 161, 55 P.2d 703 (1936); *Bd. of County Comm'rs v. Buckley*, 121 Colo. 108, 213 P.2d 608 (1949).

Prior license action not binding. The board is not bound by any prior action of any licensing authority with relation to the facts pertaining to the issuance of any license for former years, but is called upon to exercise its own discretion as of the date of a new application. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958).

Conceivably, the licensing authority passing upon a new application, in the exercise of its discretion, might with propriety reject an application which a former board, upon the same facts, approved, and in so doing the board would not, of necessity, be guilty of an abuse of discretion, or an arbitrary and capricious exercise thereof. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958); *Cronin v. Ward*, 144 Colo. 192, 355 P.2d 655 (1960).

That a licensing officer had previously denied the application to another to operate an establishment at the same premises does not preclude the issuance of a license to an applicant who in his judgment and discretion is qualified therefor. *Cronin v. Ward*, 144 Colo. 192, 355 P.2d 655 (1960).

Evidence at second court-ordered hearing. Upon a second hearing on an application for a liquor license, held pursuant to an order of court, the licensing authority is not limited only to the exhibits offered at the first hearing and the testimony of those witnesses only who testified therein. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958).

Applied in Awr Corp. v. Bd. of County Comm'rs, 154 Colo. 511, 391 P.2d 675 (1964); *Smith v. Bd. of County Comm'rs*, 155 Colo. 175, 394 P.2d 840 (1964).

II. NEIGHBORHOOD REQUIREMENTS.

Applications are considered and determined upon a geographical basis, a neighbor-

hood, and not upon a citywide population basis. *City of Colo. Springs v. Graham*, 143 Colo. 97, 352 P.2d 273 (1960).

Determined by city council. The members of a city council, as the local licensing authority, knowing the area which they represent and the problems confronting it, are better able to consider what should constitute the "neighborhood" after considering all of the evidence presented to it than is the supreme court. *Campbell v. City Council*, 150 Colo. 471, 374 P.2d 348 (1962).

The geographic extent of the neighborhood will vary from case to case. *Bd. of County Comm'rs v. Johnson*, 170 Colo. 259, 460 P.2d 770 (1969).

Never entire county. No authority justifies the conclusion that the "neighborhood" involved in an application for a liquor license can be expanded to include an entire county. *Bolton v. Bd. of County Comm'rs*, 164 Colo. 112, 432 P.2d 761 (1967).

Boundary lines of a city do not exclude residents on one side or the other from the "neighborhood" to be considered in connection with applications for liquor licenses. *Bd. of County Comm'rs v. Bickel*, 155 Colo. 465, 395 P.2d 208 (1964); *Anderson v. Spencer*, 162 Colo. 328, 426 P.2d 970 (1967).

The existence or nonexistence of outlets on either side of a city boundary are to be considered by the licensing authority in determining whether reasonable requirements of the neighborhood are being met. *Bd. of County Comm'rs v. Bickel*, 155 Colo. 465, 395 P.2d 208 (1964); *Anderson v. Spencer*, 162 Colo. 328, 426 P.2d 970 (1967).

The fact that a particular type of license is not authorized in the neighborhood does not require the issuance of such a license if, in fact, the needs of the neighborhood, with respect to the type of beverage authorized to be sold by the license requested, are being met by existing licenses. *Canjar v. Huerta*, 193 Colo. 388, 566 P.2d 1071 (1977).

The licensing of so-called "fringe stores" is not a matter that in and of itself is a bar to the issuance of licenses, but is merely a circumstance to which the board is entitled to give such reasonable weight as it shall determine. *Van DeVegt v. Bd. of County Comm'rs*, 98 Colo. 161, 55 P.2d 703 (1936).

Applicant's showing of neighborhood. It is incumbent upon an applicant for a liquor license to show with some degree of clarity the area of the neighborhood requiring the service proposed to be rendered. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958).

The test under subsection (2) is still the "desires of the inhabitants" and "the reasonable requirements of the neighborhood". *Tavella v. Eppinger*, 152 Colo. 506, 383 P.2d 314 (1963).

Before a liquor license can be issued under subsection (2), two requirements must be affirmatively established: 1. that the reasonable requirements of the neighborhood are not being met by existing outlets, and 2. that the inhabitants of the neighborhood desire its issuance. *Heinz v. Bauer*, 150 Colo. 589, 375 P.2d 520 (1962).

The licensing authority must determine both the reasonable requirements of a neighborhood and the desires of its inhabitants. *Canjar v. Huerta*, 193 Colo. 388, 566 P.2d 1071 (1977).

Unless both requirements are met no license may issue. *Heinz v. Bauer*, 150 Colo. 589, 375 P.2d 520 (1962).

Establishing these two requirements is the statutory responsibility of the board. Bd. of County Comm'rs v. *Johnson*, 170 Colo. 259, 460 P.2d 770 (1969).

Showing of inadequate service required. An applicant is entitled to a license only on proof that the neighborhood sought to be served is not adequately served by the other licensed outlets. Bd. of County Comm'rs v. *Salardino*, 138 Colo. 66, 329 P.2d 629 (1958).

This section does not relieve applicants of the duty to prove a reasonable requirement for the proposed outlet, an essential prerequisite to the granting of a license. *Hauf Brau v. Bd. of County Comm'rs*, 145 Colo. 522, 359 P.2d 659 (1961).

Where there are a number of licensed outlets in an area, an applicant for an additional liquor license has the burden to establish by competent evidence that the needs of the community are not being adequately met by existing outlets. Bd. of County Comm'rs v. *Evergreen Lanes, Inc.*, 154 Colo. 413, 391 P.2d 372 (1964).

Lack of proof of the fact that the neighborhood is not adequately served precludes the issuance of a license. *Hauf Brau v. Bd. of County Comm'rs*, 145 Colo. 522, 359 P.2d 659 (1961).

Economic competition considered. Whether any benefit will result to the public from competition in the sale of intoxicating liquor in a particular area is a matter which the licensing authority may consider in determining the reasonable requirements of the neighborhood and the desires of the inhabitants, the weight to be accorded such matter being within the sound discretion of the authority. *Lab Dev. Co. v. Hill*, 152 Colo. 338, 381 P.2d 811 (1963).

The weight to be accorded to such matters as whether any benefit will result to the public from economic competition lies within the sound discretion of the board of county supervisors. *Lab Dev. Co. v. Hill*, 152 Colo. 338, 381 P.2d 811 (1963).

Number and proximity of other outlets considered. Besides considering the number of outlets in the area, the board of county commissioners may properly take into account in its

consideration of the case the fact that close to the location for which a license is sought there are existing outlets to serve the public. *Jennings v. Hoskinson*, 152 Colo. 276, 382 P.2d 807 (1963).

The existence of a desire for a new outlet is some evidence that the reasonable requirements of the neighborhood were not being met. *Anderson v. Spencer*, 162 Colo. 328, 426 P.2d 970 (1967).

Regardless of their reasons, the desires of the inhabitants are to be considered. *Van DeVegt v. Bd. of County Comm'rs*, 98 Colo. 161, 55 P.2d 703 (1936).

Where protests were based on the general policy that liquor is evil, and secondly that there was a package store nearby, such protests were not relevant and should not have been considered since the application was for liquor by the drink. Since there was no competent evidence before the board to negate the affirmative showing by the applicant, and the board arbitrarily restricted the neighborhood, the license should have been granted. Bd. of County Comm'rs v. *Johnson*, 170 Colo. 259, 460 P.2d 770 (1969).

Consideration of proof unlimited. This section in no way limits the board in giving proper consideration to other proof of the reasonable requirements of the neighborhood or the desires of the inhabitants thereof. *Hauf Brau v. Bd. of County Comm'rs*, 145 Colo. 522, 359 P.2d 659 (1961).

Effect of petitions and remonstrances of inhabitants. While the expression of opinions as to the requirements of the neighborhood and the needs of the inhabitants thereof, contained in petitions and remonstrances, are entitled to consideration, they are not controlling since this section requires that the issuance of licenses shall depend on the judgment of the licensing authority and not on that of citizens or the court. *MacArthur v. Presto*, 122 Colo. 202, 221 P.2d 934 (1950); *MacArthur v. Sanzalone*, 123 Colo. 166, 225 P.2d 1044 (1950).

The statute precludes the board from granting a license until it has given good faith consideration to inhabitants' petitions and remonstrances. *Hauf Brau v. Bd. of County Comm'rs*, 145 Colo. 522, 359 P.2d 659 (1961).

Geographical distinctions within a neighborhood do not determine the efficacy of petitions or remonstrances in liquor licensing cases. *Anderson v. Spencer*, 162 Colo. 328, 426 P.2d 970 (1967).

The fact that a greater number of inhabitants had signed petitions favoring issuance of the license does not of itself mandate issuance thereof. *Kornfeld v. Yost*, 37 Colo. App. 483, 551 P.2d 219 (1976), rev'd on other grounds sub nom. *Kornfeld v. Perl Mack Liquors, Inc.*, 193 Colo. 442, 567 P.2d 383 (1977).

Where remonstrances against the granting of a beverage license are signed by others than those resident in a defined neighborhood of a licensee's outlet, and its issuance is supported by several hundred persons resident in the immediate neighborhood, the petitions supporting the application are sufficient to justify its issuance, and there being nothing to indicate that a city council acted arbitrarily or capriciously in granting a license, the courts will not interfere. *Hanna v. Henderson*, 140 Colo. 481, 345 P.2d 384 (1959).

Votes in local option election. The desires of the citizens "otherwise" expressed by their votes in a local option election is likewise admissible evidence to be considered in ascertaining the "desires of the inhabitants", and given such weight as the board of commissioners deemed proper under this section. *Van De Vegt v. Bd. of County Comm'rs*, 98 Colo. 161, 55 P.2d 703 (1936).

Needs of traveling public. In determining the reasonable requirements of neighborhood upon application for a restaurant liquor license, evidence of the reasonable need of the traveling public and transients is valid to show such need and demand. *Campbell v. City Council*, 150 Colo. 471, 374 P.2d 348 (1962).

Showing of inadequate service sufficient. Where the record discloses that there are no restaurant liquor licenses in the city, and no such license in the entire county, the nearest outlet of the kind being 50 miles distant, it cannot be said that the reasonable requirements of the area have been met. *Farmer v. City Council*, 153 Colo. 306, 385 P.2d 596 (1963).

Where there is a substantial showing that a liquor outlet is desired in a community, it cannot be said that the reasonable requirements of the neighborhood are being served when it appears that the nearest outlet of the kind sought is 12 or 13 miles distant from the location requested. *Bd. of County Comm'rs v. Whale*, 154 Colo. 271, 389 P.2d 588 (1964).

Where the only licenses presently existing in a city are for private clubs and package liquor stores, and more favor than disfavor the license in the immediate neighborhood, there is no basis upon which the application of plaintiff may legally be denied since there are no licenses of the type sought within a five mile radius. *Le Pore v. Larkin*, 146 Colo. 311, 361 P.2d 343 (1961).

Where the general assembly has authorized the issuance of hotel and restaurant liquor licenses throughout the state, thus determining the public policy, and where the evidence disclosed that no such license had ever been issued in city of size and population disclosed by the record, and substantial support for the issuance of such license is shown, it cannot be said that reasonable requirements of the area have been met. *KBT Corp. v. Walker*, 148 Colo. 274, 365 P.2d 685 (1961).

Denial arbitrary and capricious. Where there is no liquor outlet of a given classification within a radius of several miles, the refusal to grant such a license is arbitrary and capricious where substantial support for the issuance thereof is shown. *Bd. of County Comm'rs v. Bickel*, 155 Colo. 465, 395 P.2d 208 (1964); *Bd. of County Comm'rs v. Johnson*, 170 Colo. 259, 460 P.2d 770 (1969).

Where an application for a hotel and restaurant liquor license was denied and evidence disclosed that there was no such outlet within a radius of 35 miles of city, the determination of city council that the neighborhood was adequately supplied by existing outlets was arbitrary and capricious. *KBT Corp. v. Walker*, 148 Colo. 274, 365 P.2d 685 (1961).

Showing of inadequate service insufficient. Where there are a number of licensed outlets in an area in which a restaurant license is sought, evidence that many residents of the neighborhood desired to dine at applicants' restaurant and desired to be served liquor with their meals, does not alone establish that existing outlets were inadequate to satisfy the desires of the inhabitants and the reasonable requirements of the neighborhood. *Bd. of County Comm'rs v. Bova*, 153 Colo. 230, 385 P.2d 590 (1963).

The finding of the trial court that the applicant plans to provide a general recreation facility and that such facility is unlike any presently existing in the area, and this is fully borne out by the evidence and is undisputed, does not evidence the fact that the neighborhood in question requires another liquor outlet, especially where the undisputed evidence is that the proposed development will proceed whether or not a liquor license is granted. *Bd. of County Comm'rs v. Evergreen Lanes, Inc.*, 154 Colo. 413, 391 P.2d 372 (1964).

Though the applicant proved the majority of those interested desired the license to issue, and it undoubtedly would be a convenience to have such a store within the shopping center where there is more adequate parking and one stop service, nevertheless it is also true that the physical facts could, and in the judgment of the authority did, show that the present reasonable requirements of the neighborhood are being met. *Brentwood Liquors, Inc. v. Schooley*, 147 Colo. 324, 363 P.2d 670 (1961).

Denial not capricious or arbitrary. Where even though the desire of the neighborhood was that the license should issue, nonetheless the reasonable requirements of the neighborhood were adequately met by the existing outlets, in particular a liquor store next door to the applicant, the city council in so finding did not act arbitrarily or capriciously, but well within the limits of its discretionary power. *McIntosh v. Council of City of Littleton*, 145 Colo. 533, 360 P.2d 136 (1961).

Where the evidence in the record showed the existence of many licensed restaurants and liquor stores in the vicinity, this was potent evidence to support the finding that the reasonable requirements of the neighborhood had been met and that the denial of a license was not capricious or arbitrary. *MacArthur v. Presto*, 122 Colo. 202, 221 P.2d 934 (1950).

Where evidence disclosed three existing hotel and restaurant liquor licenses in an area designated as a neighborhood and others in close proximity thereto, a finding by the licensing authority of lack of need for issuance of license applied for, based upon a fair appraisal of the evidence, cannot be held to be arbitrary. *Schooley v. Steinberg*, 148 Colo. 222, 365 P.2d 245 (1961).

Where the record disclosed two package liquor outlets and two establishments serving liquor by the drink within half to three quarters of a mile of applicant's location, denial of a package liquor license by board of county commissioners was not arbitrary or capricious. *Malouff v. Bd. of County Comm'rs*, 150 Colo. 11, 370 P.2d 161 (1962).

Where the board of commissioners did not refuse to receive any evidence offered, and the

evidence showed the location of the proposed dispensary to be in close proximity to state college, and where the board had before it protests admitted to have been made by many of the officials of the college and of the public schools, as well as petitions signed by citizens, the court could not say that the board acted arbitrarily or capriciously in refusing a license when such action was based on evidence from which reasonable men might honestly draw different conclusions. *Van DeVegt v. Bd. of County Comm'rs*, 98 Colo. 161, 55 P.2d 703 (1936).

Prima facie need for license shown. Where prior to condemnation by the state for highway purposes, there were two successful outlets in Silver Plume; that because of the condemnation proceedings there were none at the time of the application; that the nearest such outlet was two and one-half miles away; that 34 residents indicated the need for such an outlet; and where after denial of the application, but prior to the district court's review thereof, the trustees issued a similar license to a nearby establishment, the evidence constitutes a prima facie showing of need for the license. *Booth v. Trustees of Town of Silver Plume*, 28 Colo. App. 470, 474 P.2d 227 (1970).

12-47-302. License renewal. (1) Ninety days prior to the expiration date of an existing license, the state licensing authority shall notify the licensee of such expiration date by first class mail at the business' last-known address. Application for the renewal of an existing license shall be made to the local licensing authority not less than forty-five days and to the state licensing authority not less than thirty days prior to the date of expiration. No application for renewal of a license shall be accepted by the local licensing authority after the date of expiration, except as provided in subsection (2) of this section, but filing with the local licensing authority shall be deemed filing with the state, and all renewals filed with the local licensing authorities prior to expiration, and subsequently approved, shall be processed by the state licensing authority, and the expiration date is extended until the state license is processed. The state or the local licensing authority, for good cause, may waive the forty-five- or thirty-day time requirements set forth in this subsection (1). The local licensing authority may cause a hearing on the application for renewal to be held. No renewal hearing provided for by this subsection (1) shall be held by the local licensing authority until a notice of hearing has been conspicuously posted on the licensed premises for a period of ten days and notice of the hearing has been provided the applicant at least ten days prior to the hearing. The licensing authority may refuse to renew any license for good cause, subject to judicial review. Any renewal hearing held by the state licensing authority shall be pursuant to section 12-47-305 (2).

(2) (a) Notwithstanding the provisions of subsection (1) of this section, a licensee whose license has been expired for not more than ninety days may file a late renewal application upon the payment of a nonrefundable late application fee of five hundred dollars each to the state and local licensing authorities. A licensee who files a late renewal application and pays the requisite fees may continue to operate until both state and local licensing authorities have taken final action to approve or deny such licensee's late renewal application.

(b) No state or local licensing authority shall accept a late renewal application more than ninety days after the expiration of a licensee's permanent annual license. Any licensee whose permanent annual license has been expired for more than ninety days must apply for a new license pursuant to section 12-47-311 and shall not sell or possess for sale any alcohol beverage until all required licenses have been obtained.

(c) Notwithstanding the amount specified for the fee in paragraph (a) of this subsection (2), the state licensing authority by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state licensing authority by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

Source: **L. 97:** Entire article amended with relocations, p. 238, § 3, effective July 1. **L. 98:** (2)(c) added, p. 1329, § 36, effective June 1.

Editor's note: This section is similar to former § 12-47-106 (1)(b) and (1)(b.5) as they existed prior to 1997.

ANNOTATION

- I. General Consideration.
- II. Neighborhood Requirements.

I. GENERAL CONSIDERATION.

Law reviews. For comment on Campbell v. City Council, appearing below, see 35 U. Colo. L. Rev. 252 (1963). For note, "The Liquor Code — Colorado Revised Statute Antiquated", see 38 U. Colo. L. Rev. 248 (1965).

Annotator's note. Section 12-47-302 is similar to § 12-47-106 as it existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions. Relevant cases construing that provision have been included in the annotations to § 12-47-301.

Statute is not unconstitutionally vague. A licensee has no property right in the renewal of a license and need not be provided procedural due process protections attendant to a property right. *Morris-Schindler, LLC v. City & County of Denver*, 251 P.3d 1076 (Colo. App. 2010).

Delegation of legislative authority to the Department of Excise and Licenses to adopt rules and conduct hearings on applications to renew liquor licenses is not unconstitutional on the basis that the statute fails to provide sufficient standards for defining "good cause". *Squire Restaurant and Lounge v. Denver*, 890 P.2d 164 (Colo. App. 1994).

Statutory licensing guide. The licensing authority is by statute charged with the duty and task of determining whether a license should be granted or denied, and the statutory guide provided for the board in performing this duty is found in this section. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958).

Supreme court decisions. Another source of guidance for the board in performing its duties as a licensing authority is the numerous pronouncements of the supreme court. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958).

Three principles pervade all of the pertinent decisions: (1) The licensing authorities are

vested with a very wide discretion; (2) all reasonable doubts as to the correctness of the board's rulings are to be resolved in favor of the board; (3) the determination of the board will not be disturbed by the courts unless it appears that the board has abused its discretion. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958).

The issuance of licenses under the liquor code depends in the final analysis on the judgment of the licensing authority and not upon that of citizens or the court; and all reasonable doubt must be resolved in favor of the licensing authority. *Kornfeld v. Yost*, 37 Colo. App. 483, 551 P.2d 219 (1976), rev'd on other grounds sub nom. *Kornfeld v. Perl Mack Liquors, Inc.*, 193 Colo. 442, 567 P.2d 383 (1977).

It was the intention of the general assembly to vest a wide discretion in local licensing authorities in the issuance of licenses for sale of alcoholic beverages. *Gem Beverage Co. v. Geer*, 138 Colo. 420, 334 P.2d 744 (1959).

Governed by facts and circumstances. While a wide discretion is vested in the county commissioners with respect to the issuance of liquor licenses, the exercise of that discretion must be governed by a proper consideration of the facts and circumstances in each case. *Bd. of County Comm'rs v. Buckley*, 121 Colo. 108, 213 P.2d 608 (1949).

The exercise of this discretion cannot be dispensed with by the adoption of a policy to deny all applications. *Bd. of County Comm'rs v. Buckley*, 121 Colo. 108, 213 P.2d 608 (1949).

The discretion of the licensing officer in granting or refusing a license is well established by the decisions of the supreme court. *Cronin v. Ward*, 144 Colo. 192, 355 P.2d 655 (1960).

The general assembly has established the public policy for the entire state, and this cannot be overridden by local governments by mere fiat nor ignored by the courts. *Le Pore v. Larkin*, 146 Colo. 311, 361 P.2d 343 (1961).

No contrary local policy authorized. The wide discretion which is vested in the licensing

authority in granting or denying licenses is not to be construed as authority to establish a local public policy either by express resolution or by secret agreement contrary to the state statutes which have legalized the issuance of this particular type of license. *Ladd v. Bd. of County Comm'rs*, 146 Colo. 366, 361 P.2d 627 (1961).

Licensing procedures must not be used as a means of establishing local option and circumventing statutory requirements. *Le Pore v. Larkin*, 146 Colo. 311, 361 P.2d 343 (1961).

Local authority to license, not to regulate. The board of county commissioners has no authority to regulate the sale of malt and vinous liquors, other than 3.2 percent beer, but only to grant, suspend, or revoke licenses as provided by this section. *Gettman v. Bd. of County Comm'rs*, 122 Colo. 185, 221 P.2d 363 (1950).

A resolution of a city council limiting the number of liquor licenses on the basis of citywide population is invalid as tantamount to a prejudgment of any application. This article requires a hearing and issuance or denial of a license on the merits of each application. *City of Colo. Springs v. Graham*, 143 Colo. 97, 352 P.2d 273 (1960).

No authority to regulate hours. This section makes no attempt to delegate to the board of county commissioners any authority of regulation as to hours when malt or vinous liquors may be sold or the authority to promulgate other rules and regulations. *Gettman v. Bd. of County Comm'rs*, 122 Colo. 185, 221 P.2d 363 (1950).

Personal right vested in licensee. A liquor license vests a personal right in the licensee and confers the right to do that which without the license would be unlawful, such right being coextensive with the duration of the license and is restricted to a certain location, unless change thereof is granted upon application to, and after a hearing by, the licensing authority. *A. D. Jones & Co. v. Parsons*, 136 Colo. 434, 319 P.2d 480 (1957).

Liquor license is a property right entitled to due process protection including notice and an opportunity to be heard and, therefore, due process was denied when claimant for liquor license renewal was not notified that evidence would be taken on the needs and desires of the neighborhood. *Price Haskel v. Denver Dept. of Excise & Licenses*, 694 P.2d 364 (Colo. App. 1984).

This section permits removal to another location of a hotel and restaurant license upon a proper showing. *A. D. Jones & Co. v. Parsons*, 136 Colo. 434, 319 P.2d 480 (1957).

While the section permits removal to another location of a hotel or restaurant license upon a proper showing, a contract by which the parties agree that the licensee will not exercise this privilege, but upon termination of the tenancy will surrender the license to the licensing authority, is not in violation of the law since it is

not an agreement for the transfer of the license. *A. D. Jones & Co. v. Parsons*, 136 Colo. 434, 319 P.2d 480 (1957).

Full, fair, and impartial hearing. Where an applicant was given full opportunity to present all testimony and documentary evidence it desired, and availed itself of such opportunity, the fact that the chairman of the board of county commissioners at beginning of hearing expressed the opinion that needs of the neighborhood were presently met falls short of denial to applicant of a full, fair, and impartial hearing. *Lab Dev. Co. v. Hill*, 152 Colo. 338, 381 P.2d 811 (1963).

No court may substitute its judgment for that of the local licensing authority when there is any evidence in the record that supports the conclusion of the licensing authority. *Canjar v. Huerta*, 193 Colo. 388, 566 P.2d 1071 (1977); *Duren, Inc. v. City of Lakewood*, 709 P.2d 74 (Colo. App. 1985).

Denial upheld where not arbitrary or capricious. While not supported by a preponderance, the denial of a retail license will be upheld if supported by sufficient evidence, if the licensing authority did not act arbitrarily and capriciously. *Bd. of County Comm'rs v. Thompson*, 167 Colo. 402, 448 P.2d 639 (1968).

The nonrenewal of a liquor license is not a sanction. *Morris-Schindler, LLC v. City & County of Denver*, 251 P.3d 1076 (Colo. App. 2010).

"Good cause" standard fails to give sufficient notice. Standard in liquor code of "good cause" as the criterion for determining if a liquor license is renewed, without any implementing rules, fails to give sufficient definiteness of what conduct and conditions are required to avoid nonrenewal, fails to insure rational and consistent administrative action and effective subsequent judicial review of that action, and therefore violates due process. Some limit must be provided by the Department of Excise and Licenses to guide discretion in determining if "good cause" for refusing to renew a liquor license exists. *Squire Restaurant & Lounge v. Denver*, 890 P.2d 164 (Colo. App. 1994) (decided under former law).

Any violation of a provision of the Colorado Liquor Code constitutes good cause for nonrenewal. *Morris-Schindler, LLC v. City & County of Denver*, 251 P.3d 1076 (Colo. App. 2010).

Abuse of discretion. An example of refusal for good cause is where the board of county commissioners refused to grant a liquor license to an operator of a rural hotel and based its decision on the fact that the premises could be reached only by a dangerous, winding country road in a mountainous area and also on the ground of the proximity of young people at a nearby college, it was held not to be an abuse of

discretion. *Bd. of County Comm'rs v. Buckley*, 121 Colo. 108, 213 P.2d 608 (1949).

The right of a licensing authority to refuse for good cause, of necessity vests in the board of county commissioners in any county in the first instance the right to determine what is good cause for refusal. *Van DeVegt v. Bd. of County Comm'rs*, 98 Colo. 161, 55 P.2d 703 (1936); *Bd. of County Comm'rs v. Buckley*, 121 Colo. 108, 213 P.2d 608 (1949).

Prior license action not binding. The board is not bound by any prior action of any licensing authority with relation to the facts pertaining to the issuance of any license for former years, but is called upon to exercise its own discretion as of the date of a new application. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958).

Conceivably, the licensing authority passing upon a new application, in the exercise of its discretion, might with propriety reject an application which a former board, upon the same facts, approved, and in so doing the board would not, of necessity, be guilty of an abuse of discretion, or an arbitrary and capricious exercise thereof. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958); *Cronin v. Ward*, 144 Colo. 192, 355 P.2d 655 (1960).

That a licensing officer had previously denied the application to another to operate an establishment at the same premises does not preclude the issuance of a license to an applicant who in his judgment and discretion is qualified therefor. *Cronin v. Ward*, 144 Colo. 192, 355 P.2d 655 (1960).

Evidence at second court-ordered hearing. Upon a second hearing on an application for a liquor license, held pursuant to an order of court, the licensing authority is not limited only to the exhibits offered at the first hearing and the testimony of those witnesses only who testified therein. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958).

Sanctions criteria set forth in § 12-47-601 do not govern a decision not to renew under subsection (1) of this section. *Morris-Schindler, LLC v. City & County of Denver*, 251 P.3d 1076 (Colo. App. 2010).

Applied in *Awr Corp.* *v. Bd. of County Comm'rs*, 154 Colo. 511, 391 P.2d 675 (1964); *Smith v. Bd. of County Comm'rs*, 155 Colo. 175, 394 P.2d 840 (1964).

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Applicant's showing of neighborhood. It is incumbent upon an applicant for a liquor license to show with some degree of clarity the area of the neighborhood requiring the service proposed to be rendered. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958).

The test under subsection (2) is still the "desires of the inhabitants" and "the reasonable requirements of the neighborhood". *Tavella v. Eppinger*, 152 Colo. 506, 383 P.2d 314 (1963).

Before a liquor license can be issued under subsection (2), two requirements must be affirmatively established: 1. that the reasonable requirements of the neighborhood are not being met by existing outlets, and 2. that the inhabitants of the neighborhood desire its issuance.

Heinz v. Bauer, 150 Colo. 589, 375 P.2d 520 (1962).

The licensing authority must determine both the reasonable requirements of a neighborhood and the desires of its inhabitants. Canjar v. Huerta, 193 Colo. 388, 566 P.2d 1071 (1977).

Unless both requirements are met no license may issue. Heinz v. Bauer, 150 Colo. 589, 375 P.2d 520 (1962).

Establishing these two requirements is the statutory responsibility of the board. Bd. of County Comm'rs v. Johnson, 170 Colo. 259, 460 P.2d 770 (1969).

Showing of inadequate service required. An applicant is entitled to a license only on proof that the neighborhood sought to be served is not adequately served by the other licensed outlets. Bd. of County Comm'rs v. Salardino, 138 Colo. 66, 329 P.2d 629 (1958).

This section does not relieve applicants of the duty to prove a reasonable requirement for the proposed outlet, an essential prerequisite to the granting of a license. Hauf Brau v. Bd. of County Comm'rs, 145 Colo. 522, 359 P.2d 659 (1961).

Where there are a number of licensed outlets in an area, an applicant for an additional liquor license has the burden to establish by competent evidence that the needs of the community are not being adequately met by existing outlets. Bd. of County Comm'rs v. Evergreen Lanes, Inc., 154 Colo. 413, 391 P.2d 372 (1964).

Lack of proof of the fact that the neighborhood is not adequately served precludes the issuance of a license. Hauf Brau v. Bd. of County Comm'rs, 145 Colo. 522, 359 P.2d 659 (1961).

Economic competition considered. Whether any benefit will result to the public from competition in the sale of intoxicating liquor in a particular area, is a matter which the licensing authority may consider in determining the reasonable requirements of the neighborhood and the desires of the inhabitants, the weight to be accorded such matter being within the sound discretion of the authority. Lab Dev. Co. v. Hill, 152 Colo. 338, 381 P.2d 811 (1963).

The weight to be accorded to such matters as whether, any benefit will result to the public from economic competition lies within the sound discretion of the board of county supervisors. Lab Dev. Co. v. Hill, 152 Colo. 338, 381 P.2d 811 (1963).

Number and proximity of other outlets considered. Besides considering the number of outlets in the area, the board of county commissioners may properly take into account in its consideration of the case the fact that close to the location for which a license is sought there are existing outlets to serve the public. Jennings v. Hoskinson, 152 Colo. 276, 382 P.2d 807 (1963).

The existence of a desire for a new outlet is some evidence that the reasonable requirements of the neighborhood were not being met. Anderson v. Spencer, 162 Colo. 328, 426 P.2d 970 (1967).

Regardless of their reasons, the desires of the inhabitants are to be considered. Van DeVegt v. Bd. of County Comm'rs, 98 Colo. 161, 55 P.2d 703 (1936).

Where protests were based on the general policy that liquor is evil, and secondly that there was a package store nearby, such protests were not relevant and should not have been considered since the application was for liquor by the drink, and since there was no competent evidence before the board to negate the affirmative showing by the applicant, and the board arbitrarily restricted the neighborhood, the license should have been granted. Bd. of County Comm'rs v. Johnson, 170 Colo. 259, 460 P.2d 770 (1969).

Consideration of proof unlimited. This section in no way limits the board in giving proper consideration to other proof of the reasonable requirements of the neighborhood or the desires of the inhabitants thereof. Hauf Brau v. Bd. of County Comm'rs, 145 Colo. 522, 359 P.2d 659 (1961).

Effect of petitions and remonstrances of inhabitants. While the expression of opinions as to the requirements of the neighborhood and the needs of the inhabitants thereof, contained in petitions and remonstrances, are entitled to consideration, they are not controlling since this section requires that the issuance of licenses shall depend on the judgment of the licensing authority and not on that of citizens or the court. MacArthur v. Presto, 122 Colo. 202, 221 P.2d 934 (1950); MacArthur v. Sanzalone, 123 Colo. 166, 225 P.2d 1044 (1950).

The statute precludes the board from granting a license until it has given good-faith consideration to inhabitants' petitions and remonstrances. Hauf Brau v. Bd. of County Comm'rs, 145 Colo. 522, 359 P.2d 659 (1961).

Geographical distinctions within a neighborhood do not determine the efficacy of petitions or remonstrances in liquor licensing cases. Anderson v. Spencer, 162 Colo. 328, 426 P.2d 970 (1967).

The fact that a greater number of inhabitants had signed petitions favoring issuance of the license does not of itself mandate issuance thereof. Kornfeld v. Yost, 37 Colo. App. 483, 551 P.2d 219 (1976), rev'd on other grounds sub nom. Kornfeld v. Perl Mack Liquors, Inc., 193 Colo. 442, 567 P.2d 383 (1977).

Where remonstrances against the granting of a beverage license are signed by others than those resident in a defined neighborhood of a licensee's outlet, and its issuance is supported by several hundred persons resident in the immediate neighborhood, the petitions sup-

porting the application are sufficient to justify its issuance, and there being nothing to indicate that a city council acted arbitrarily or capriciously in granting a license, the courts will not interfere. *Hanna v. Henderson*, 140 Colo. 481, 345 P.2d 384 (1959).

Votes in local option election. The desires of the citizens "otherwise" expressed by their votes in a local option election is likewise admissible evidence to be considered in ascertaining the "desires of the inhabitants", and given such weight as the board of commissioners deemed proper under this section. *Van DeVegt v. Bd. of County Comm'rs*, 98 Colo. 161, 55 P.2d 703 (1936).

Needs of traveling public. In determining the reasonable requirements of neighborhood upon application for a restaurant liquor license, evidence of the reasonable need of the traveling public and transients is valid to show such need and demand. *Campbell v. City Council*, 150 Colo. 471, 374 P.2d 348 (1962).

Showing of inadequate service sufficient. Where the record discloses that there are no restaurant liquor licenses in the city, and no such license in the entire county, the nearest outlet of the kind being 50 miles distant, it cannot be said that the reasonable requirements of the area have been met. *Farmer v. City Council*, 153 Colo. 306, 385 P.2d 596 (1963).

Where there is a substantial showing that a liquor outlet is desired in a community, it cannot be said that the reasonable requirements of the neighborhood are being served when it appears that the nearest outlet of the kind sought is 12 or 13 miles distant from the location requested. *Bd. of County Comm'rs v. Whale*, 154 Colo. 271, 389 P.2d 588 (1964).

Where the only licenses presently existing in a city are for private clubs and package liquor stores, and more favor than disfavor the license in the immediate neighborhood, there is no basis upon which the application of plaintiff may legally be denied since there are no licenses of the type sought within a five mile radius. *Le Pore v. Larkin*, 146 Colo. 311, 361 P.2d 343 (1961).

Where the general assembly has authorized the issuance of hotel and restaurant liquor licenses throughout the state, thus determining the public policy, and where the evidence disclosed that no such license had ever been issued in city of size and population disclosed by the record, and substantial support for the issuance of such license is shown, it cannot be said that reasonable requirements of the area have been met. *KBT Corp. v. Walker*, 148 Colo. 274, 365 P.2d 685 (1961).

Denial arbitrary and capricious. Where there is no liquor outlet of a given classification within a radius of several miles, the refusal to grant such a license is arbitrary and capricious where substantial support for the issuance thereof is shown. *Bd. of County Comm'rs v.*

Bickel, 155 Colo. 465, 395 P.2d 208 (1964); *Bd. of County Comm'rs v. Johnson*, 170 Colo. 259, 460 P.2d 770 (1969).

Where an application for a hotel and restaurant liquor license was denied and evidence disclosed that there was no such outlet within a radius of 35 miles of city, the determination of city council that the neighborhood was adequately supplied by existing outlets was arbitrary and capricious. *KBT Corp. v. Walker*, 148 Colo. 274, 365 P.2d 685 (1961).

Showing of inadequate service insufficient.

Where there are a number of licensed outlets in an area in which a restaurant license is sought, evidence that many residents of the neighborhood desired to dine at applicants' restaurant and desired to be served liquor with their meals, does not alone establish that existing outlets were inadequate to satisfy the desires of the inhabitants and the reasonable requirements of the neighborhood. *Bd. of County Comm'rs v. Bova*, 153 Colo. 230, 385 P.2d 590 (1963).

The finding of the trial court that the applicant plans to provide a general recreation facility and that such facility is unlike any presently existing in the area, and this is fully borne out by the evidence and is undisputed, does not evidence the fact that the neighborhood in question requires another liquor outlet, especially where the undisputed evidence is that the proposed development will proceed whether or not a liquor license is granted. *Bd. of County Comm'rs v. Evergreen Lanes, Inc.*, 154 Colo. 413, 391 P.2d 372 (1964).

Though the applicant proved the majority of those interested desired the license to issue, and it undoubtedly would be a convenience to have such a store within the shopping center where there is more adequate parking and one stop service, nevertheless it is also true that the physical facts could, and in the judgment of the authority did, show that the present reasonable requirements of the neighborhood are being met. *Brentwood Liquors, Inc. v. Schooley*, 147 Colo. 324, 363 P.2d 670 (1961).

Denial not capricious or arbitrary. Where even though the desire of the neighborhood was that the license should issue, nonetheless the reasonable requirements of the neighborhood were adequately met by the existing outlets, in particular a liquor store next door to the applicant, the city council in so finding did not act arbitrarily or capriciously, but well within the limits of its discretionary power. *McIntosh v. Council of City of Littleton*, 145 Colo. 533, 360 P.2d 136 (1961).

Where the evidence in the record showed the existence of many licensed restaurants and liquor stores in the vicinity, this was potent evidence to support the finding that the reasonable requirements of the neighborhood had been met and that the denial of a license was not capri-

cious or arbitrary. *MacArthur v. Presto*, 122 Colo. 202, 221 P.2d 934 (1950).

Where evidence disclosed three existing hotel and restaurant liquor licenses in an area designated as a neighborhood and others in close proximity thereto, a finding by the licensing authority of lack of need for issuance of license applied for, based upon a fair appraisal of the evidence, cannot be held to be arbitrary. *Schooley v. Steinberg*, 148 Colo. 222, 365 P.2d 245 (1961).

Where the record disclosed two package liquor outlets and two establishments serving liquor by the drink within half to three quarters of a mile of applicant's location, denial of a package liquor license by board of county commissioners was not arbitrary or capricious. *Malouff v. Bd. of County Comm'rs*, 150 Colo. 11, 370 P.2d 161 (1962).

Where the board of commissioners did not refuse to receive any evidence offered, and the evidence showed the location of the proposed dispensary to be in close proximity to state college, and where the board had before it pro-

tests admitted to have been made by many of the officials of the college and of the public schools, as well as petitions signed by citizens, the court could not say that the board acted arbitrarily or capriciously in refusing a license when such action was based on evidence from which reasonable men might honestly draw different conclusions. *Van DeVegt v. Bd. of County Comm'rs*, 98 Colo. 161, 55 P.2d 703 (1936).

Prima facie need for license shown. Where prior to condemnation by the state for highway purposes, there were two successful outlets in Silver Plume; that because of the condemnation proceedings there were none at the time of the application; that the nearest such outlet was two and one-half miles away; that 34 residents indicated the need for such an outlet; and where after denial of the application, but prior to the district court's review thereof, the trustees issued a similar license to a nearby establishment, the evidence constitutes a prima facie showing of need for the license. *Booth v. Trustees of Town of Silver Plume*, 28 Colo. App. 470, 474 P.2d 227 (1970).

12-47-303. Transfer of ownership and temporary permits. (1) (a) No license granted under the provisions of this article or article 46 of this title shall be transferable except as provided in this subsection (1), but this shall not prevent a change of location as provided in section 12-47-301 (9).

(b) When a license has been issued to a husband and wife, or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new license. All rights and privileges granted under the original license shall continue in full force and effect as to such survivors for the balance of the license period.

(c) For any other transfer of ownership, application shall be made to the state and local licensing authorities on forms prepared and furnished by the state licensing authority. In determining whether to permit a transfer of ownership, the licensing authorities shall consider only the requirements of section 12-47-307 and 1 CCR 203-2, rule 47-302, entitled "Changing, Altering, or Modifying Licensed Premises", or any analogous successor rule. The local licensing authority may cause a hearing on the application for transfer of ownership to be held. No hearing provided for by this paragraph (c) shall be held by the local licensing authority until a notice of hearing has been conspicuously posted on the licensed premises for a period of ten days and notice of the hearing has been provided the applicant at least ten days prior to the hearing. Any transfer of ownership hearing by the state licensing authority shall be pursuant to section 12-47-305 (2).

(2) Notwithstanding the provisions of this article to the contrary, a local licensing authority shall have discretionary authority to issue a temporary permit to a transferee of any retail class of alcohol beverage license issued by the local licensing authority pursuant to this article or article 46 of this title. Such temporary permit shall authorize a transferee to continue selling such alcohol beverages as permitted under the permanent license during the period in which an application to transfer the ownership of the license is pending.

(3) A temporary permit shall authorize a transferee to conduct business and sell alcohol beverages at retail in accordance with the license of the transferor subject to compliance with all of the following conditions:

(a) The premises where such alcohol beverages are sold shall have been previously licensed by the state and local licensing authorities, and such license shall have been valid at the time the application for transfer of ownership was filed with the local licensing authority that has jurisdiction to approve an application for a temporary permit.

(b) The applicant has filed with the local licensing authority on forms provided by the department of revenue an application for the transfer of the liquor license. Such application shall include, but not be limited to, the following information:

(I) The name and address of the applicant; if the applicant is a partnership, the names and addresses of all the partners; and, if the applicant is a corporation, association, or other organization, the names and addresses of the president, vice-president, secretary, and managing officer;

(II) The applicant's financial interest in the proposed transfer;

(III) The premises for which the temporary permit is sought;

(IV) Such other information as the local licensing authority may require; and

(V) A statement that all accounts for alcohol beverages sold to the applicant are paid.

(c) The application for a temporary permit shall be filed no later than thirty days after the filing of the application for transfer of ownership and shall be accompanied by a temporary permit fee not to exceed one hundred dollars.

(d) When applying with the local licensing authority for a temporary permit, the applicant shall provide a copy, by facsimile or otherwise, of the statement made pursuant to subparagraph (V) of paragraph (b) of this subsection (3) to the state licensing authority. Such statement is a public record and shall be open to inspection by the public.

(4) A temporary permit, if granted, by a local licensing authority shall be issued within five working days after the receipt of such application. A temporary permit issued pursuant to this section shall be valid until such time as the application to transfer ownership of the license to the applicant is granted or denied or for one hundred twenty days, whichever occurs first; except that, if the application to transfer the license has not been granted or denied within the one-hundred-twenty-day period and the transferee demonstrates good cause, the local licensing authority may extend, in its discretion, the validity of said permit for an additional period not to exceed sixty days.

(5) A temporary permit shall also be authorized in the event of a transfer of possession of the licensed premises by operation of law, a petition in bankruptcy pursuant to federal bankruptcy law, the appointment of a receiver, a foreclosure action by a secured party, or a court order dispossessing the prior licensee of all rights of possession pursuant to article 40 of title 13, C.R.S.

(6) A temporary permit may be canceled, revoked, or summarily suspended if the local or state licensing authority determines that there is probable cause to believe that the transferee has violated any provision of this article or article 46 of this title or has violated any rule or regulation adopted by the local or state licensing authority or has failed to truthfully disclose those matters required pursuant to the application forms required by the department of revenue.

Source: **L. 97:** Entire article amended with relocations, p. 239, § 3, effective July 1. **L. 2001:** (3)(b)(V) added, p. 63, § 1, effective July 1. **L. 2002:** (3)(d) added, p. 868, § 1, effective July 1. **L. 2006:** (1)(c) amended, p. 837, § 1, effective May 4.

Editor's note: This section is similar to former § 12-47-106.5, and subsection (1) is similar to former § 12-47-106 (4), as they existed prior to 1997.

ANNOTATION

I. General Consideration.

II. Neighborhood Requirements.

I. GENERAL CONSIDERATION.

Law reviews. For comment on Campbell v. City Council, appearing below, see 35 U. Colo. L. Rev. 252 (1963). For note, "The Liquor Code — Colorado Revised Statute Antiquated", see 38 U. Colo. L. Rev. 248 (1965).

Annotator's note. § 12-47-303 is similar to § 12-47-106 as it existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions. Relevant cases

construing § 12-47-106 have been included in the annotations to § 12-47-301.

Delegation of legislative authority to the Department of Excise and Licenses to adopt rules and conduct hearings on applications to renew liquor licenses is not unconstitutional on the basis that the statute fails to provide sufficient standards for defining "good cause". *Squire Restaurant and Lounge v. Denver*, 890 P.2d 164 (Colo. App. 1994).

Statutory licensing guide. The licensing authority is by statute charged with the duty and task of determining whether a license should be granted or denied, and the statutory guide pro-

vided for the board in performing this duty is found in this section. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958).

Supreme court decisions. Another source of guidance for the board in performing its duties as a licensing authority is the numerous pronouncements of the supreme court. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958).

Three principles pervade all of the pertinent decisions: (1) The licensing authorities are vested with a very wide discretion; (2) all reasonable doubts as to the correctness of the board's rulings are to be resolved in favor of the board; (3) the determination of the board will not be disturbed by the courts unless it appears that the board has abused its discretion. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958).

The issuance of licenses under the liquor code depends in the final analysis on the judgment of the licensing authority and not upon that of citizens or the court; and all reasonable doubt must be resolved in favor of the licensing authority. *Kornfeld v. Yost*, 37 Colo. App. 483, 551 P.2d 219 (1976), rev'd on other grounds sub nom. *Kornfeld v. Perl Mack Liquors, Inc.*, 193 Colo. 442, 567 P.2d 383 (1977).

It was the intention of the general assembly to vest a wide discretion in local licensing authorities in the issuance of licenses for sale of alcoholic beverages. *Gem Beverage Co. v. Geer*, 138 Colo. 420, 334 P.2d 744 (1959).

Governed by facts and circumstances. While a wide discretion is vested in the county commissioners with respect to the issuance of liquor licenses, the exercise of that discretion must be governed by a proper consideration of the facts and circumstances in each case. *Bd. of County Comm'rs v. Buckley*, 121 Colo. 108, 213 P.2d 608 (1949).

The exercise of this discretion cannot be dispensed with by the adoption of a policy to deny all applications. *Bd. of County Comm'rs v. Buckley*, 121 Colo. 108, 213 P.2d 608 (1949).

The discretion of the licensing officer in granting or refusing a license is well established by the decisions of the supreme court. *Cronin v. Ward*, 144 Colo. 192, 355 P.2d 655 (1960).

The general assembly has established the public policy for the entire state, and this cannot be overridden by local governments by mere fiat nor ignored by the courts. *Le Pore v. Larkin*, 146 Colo. 311, 361 P.2d 343 (1961).

No contrary local policy authorized. The wide discretion which is vested in the licensing authority in granting or denying licenses is not to be construed as authority to establish a local public policy either by express resolution or by secret agreement contrary to the state statutes which have legalized the issuance of this partic-

ular type of license. *Ladd v. Bd. of County Comm'rs*, 146 Colo. 366, 361 P.2d 627 (1961).

Licensing procedures must not be used as a means of establishing local option and circumventing statutory requirements. *Le Pore v. Larkin*, 146 Colo. 311, 361 P.2d 343 (1961).

Local authority to license, not to regulate. The board of county commissioners has no authority to regulate the sale of malt and vinous liquors, other than 3.2 percent beer, but only to grant, suspend, or revoke licenses as provided by this section. *Gettman v. Bd. of County Comm'rs*, 122 Colo. 185, 221 P.2d 363 (1950).

A resolution of a city council limiting the number of liquor licenses on the basis of citywide population is invalid as tantamount to a prejudgment of any application. This article requires a hearing and issuance or denial of a license on the merits of each application. *City of Colo. Springs v. Graham*, 143 Colo. 97, 352 P.2d 273 (1960).

No authority to regulate hours. This section makes no attempt to delegate to the board of county commissioners any authority of regulation as to hours when malt or vinous liquors may be sold or the authority to promulgate other rules and regulations. *Gettman v. Bd. of County Comm'rs*, 122 Colo. 185, 221 P.2d 363 (1950).

Personal right vested in licensee. A liquor license vests a personal right in the licensee and confers the right to do that which without the license would be unlawful, such right being coextensive with the duration of the license and is restricted to a certain location, unless change thereof is granted upon application to, and after a hearing by, the licensing authority. *A. D. Jones & Co. v. Parsons*, 136 Colo. 434, 319 P.2d 480 (1957).

Liquor license is a property right entitled to due process protection including notice and an opportunity to be heard and, therefore, due process was denied when claimant for liquor license renewal was not notified that evidence would be taken on the needs and desires of the neighborhood. *Price Haskel v. Denver Dept. of Excise & Licenses*, 694 P.2d 364 (Colo. App. 1984).

This section permits removal to another location of a hotel and restaurant license upon a proper showing. *A. D. Jones & Co. v. Parsons*, 136 Colo. 434, 319 P.2d 480 (1957).

While the section permits removal to another location of a hotel or restaurant license upon a proper showing, a contract by which the parties agree that the licensee will not exercise this privilege, but upon termination of the tenancy will surrender the license to the licensing authority, is not in violation of the law since it is not an agreement for the transfer of the license. *A. D. Jones & Co. v. Parsons*, 136 Colo. 434, 319 P.2d 480 (1957).

Full, fair, and impartial hearing. Where an applicant was given full opportunity to present

all testimony and documentary evidence it desired, and availed itself of such opportunity, the fact that the chairman of the board of county commissioners at beginning of hearing expressed the opinion that needs of the neighborhood were presently met falls short of denial to applicant of a full, fair, and impartial hearing. *Lab Dev. Co. v. Hill*, 152 Colo. 338, 381 P.2d 811 (1963).

No court may substitute its judgment for that of the local licensing authority when there is any evidence in the record that supports the conclusion of the licensing authority. *Canjar v. Huerta*, 193 Colo. 388, 566 P.2d 1071 (1977); *Duren, Inc. v. City of Lakewood*, 709 P.2d 74 (Colo. App. 1985).

Denial upheld where not arbitrary or capricious. While not supported by a preponderance, the denial of a retail license will be upheld if supported by sufficient evidence, if the licensing authority did not act arbitrarily and capriciously. *Bd. of County Comm'rs v. Thompson*, 167 Colo. 402, 448 P.2d 639 (1968).

"Good cause" standard fails to give sufficient notice. Standard in liquor code of "good cause" as the criterion for determining if a liquor license is renewed, without any implementing rules, fails to give sufficient definiteness of what conduct and conditions are required to avoid nonrenewal, fails to insure rational and consistent administrative action and effective subsequent judicial review of that action, and therefore violates due process. Some limit must be provided by the Department of Excise and Licenses to guide discretion in determining if "good cause" for refusing to renew a liquor license exists. *Squire Restaurant and Lounge v. Denver*, 890 P.2d 164 (Colo. App. 1994).

Abuse of discretion. An example of refusal for good cause is where the board of county commissioners refused to grant a liquor license to an operator of a rural hotel and based its decision on the fact that the premises could be reached only by a dangerous, winding country road in a mountainous area and also on the ground of the proximity of young people at a nearby college, it was held not to be an abuse of discretion. *Bd. of County Comm'rs v. Buckley*, 121 Colo. 108, 213 P.2d 608 (1949).

The right of a licensing authority to refuse for good cause, of necessity vests in the board of county commissioners in any county in the first instance the right to determine what is good cause for refusal. *Van DeVegt v. Bd. of County Comm'rs*, 98 Colo. 161, 55 P.2d 703 (1936); *Bd. of County Comm'rs v. Buckley*, 121 Colo. 108, 213 P.2d 608 (1949).

Prior license action not binding. The board is not bound by any prior action of any licensing authority with relation to the facts pertaining to the issuance of any license for former years, but is called upon to exercise its own discretion as

of the date of a new application. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958).

Conceivably, the licensing authority passing upon a new application, in the exercise of its discretion, might with propriety reject an application which a former board, upon the same facts, approved, and in so doing the board would not, of necessity, be guilty of an abuse of discretion, or an arbitrary and capricious exercise thereof. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958); *Cronin v. Ward*, 144 Colo. 192, 355 P.2d 655 (1960).

That a licensing officer had previously denied the application to another to operate an establishment at the same premises does not preclude the issuance of a license to an applicant who in his judgment and discretion is qualified therefor. *Cronin v. Ward*, 144 Colo. 192, 355 P.2d 655 (1960).

Evidence at second court-ordered hearing. Upon a second hearing on an application for a liquor license, held pursuant to an order of court, the licensing authority is not limited only to the exhibits offered at the first hearing and the testimony of those witnesses only who testified therein. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958).

Applied in *Awr Corp. v. Bd. of County Comm'rs*, 154 Colo. 511, 391 P.2d 675 (1964); *Smith v. Bd. of County Comm'rs*, 155 Colo. 175, 394 P.2d 840 (1964).

II. NEIGHBORHOOD REQUIREMENTS.

Applications are considered and determined upon a geographical basis, a neighborhood, and not upon a citywide population basis. *City of Colo. Springs v. Graham*, 143 Colo. 97, 352 P.2d 273 (1960).

Determined by city council. The members of a city council, as the local licensing authority, knowing the area which they represent and the problems confronting it, are better able to consider what should constitute the "neighborhood" after considering all of the evidence presented to it than is the supreme court. *Campbell v. City Council*, 150 Colo. 471, 374 P.2d 348 (1962).

The geographic extent of the neighborhood will vary from case to case. *Bd. of County Comm'rs v. Johnson*, 170 Colo. 259, 460 P.2d 770 (1969).

Never entire county. No authority justifies the conclusion that the "neighborhood" involved in an application for a liquor license can be expanded to include an entire county. *Bolton v. Bd. of County Comm'rs*, 164 Colo. 112, 432 P.2d 761 (1967).

Boundary lines of a city do not exclude residents on one side or the other from the "neighborhood" to be considered in connec-

tion with applications for liquor licenses. *Bd. of County Comm'rs v. Bickel*, 155 Colo. 465, 395 P.2d 208 (1964); *Anderson v. Spencer*, 162 Colo. 328, 426 P.2d 970 (1967).

The existence or nonexistence of outlets on either side of a city boundary are to be considered by the licensing authority in determining whether reasonable requirements of the neighborhood are being met. *Bd. of County Comm'rs v. Bickel*, 155 Colo. 465, 395 P.2d 208 (1964); *Anderson v. Spencer*, 162 Colo. 328, 426 P.2d 970 (1967).

The fact that a particular type of license is not authorized in the neighborhood does not require the issuance of such a license if, in fact, the needs of the neighborhood, with respect to the type of beverage authorized to be sold by the license requested, are being met by existing licenses. *Canjar v. Huerta*, 193 Colo. 388, 566 P.2d 1071 (1977).

The licensing of so-called "fringe stores" is not a matter that in and of itself is a bar to the issuance of licenses, but is merely a circumstance to which the board is entitled to give such reasonable weight as it "shall determine." *Van DeVegt v. Bd. of County Comm'rs*, 98 Colo. 161, 55 P.2d 703 (1936).

Applicant's showing of neighborhood. It is incumbent upon an applicant for a liquor license to show with some degree of clarity the area of the neighborhood requiring the service proposed to be rendered. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958).

The test under subsection (2) is still the "desires of the inhabitants" and "the reasonable requirements of the neighborhood". *Tavella v. Eppinger*, 152 Colo. 506, 383 P.2d 314 (1963).

Before a liquor license can be issued under subsection (2), two requirements must be affirmatively established: 1. that the reasonable requirements of the neighborhood are not being met by existing outlets, and 2. that the inhabitants of the neighborhood desire its issuance. *Heinz v. Bauer*, 150 Colo. 589, 375 P.2d 520 (1962).

The licensing authority must determine both the reasonable requirements of a neighborhood and the desires of its inhabitants. *Canjar v. Huerta*, 193 Colo. 388, 566 P.2d 1071 (1977).

Unless both requirements are met, no license may issue. *Heinz v. Bauer*, 150 Colo. 589, 375 P.2d 520 (1962).

Establishing these two requirements is the statutory responsibility of the board. *Bd. of County Comm'rs v. Johnson*, 170 Colo. 259, 460 P.2d 770 (1969).

Showing of inadequate service required. An applicant is entitled to a license only on proof that the neighborhood sought to be served is not adequately served by the other licensed outlets. *Bd. of County Comm'rs v. Salardino*, 138 Colo. 66, 329 P.2d 629 (1958).

This section does not relieve applicants of the duty to prove a reasonable requirement for the proposed outlet, an essential prerequisite to the granting of a license. *Hauf Brau v. Bd. of County Comm'rs*, 145 Colo. 522, 359 P.2d 659 (1961).

Where there are a number of licensed outlets in an area, an applicant for an additional liquor license has the burden to establish by competent evidence that the needs of the community are not being adequately met by existing outlets. *Bd. of County Comm'rs v. Evergreen Lanes, Inc.*, 154 Colo. 413, 391 P.2d 372 (1964).

Lack of proof of the fact that the neighborhood is not adequately served precludes the issuance of a license. *Hauf Brau v. Bd. of County Comm'rs*, 145 Colo. 522, 359 P.2d 659 (1961).

Economic competition considered. Whether any benefit will result to the public from competition in the sale of intoxicating liquor in a particular area is a matter which the licensing authority may consider in determining the reasonable requirements of the neighborhood and the desires of the inhabitants, the weight to be accorded such matter being within the sound discretion of the authority. *Lab Dev. Co. v. Hill*, 152 Colo. 338, 381 P.2d 811 (1963).

The weight to be accorded to such matters as whether any benefit will result to the public from economic competition lies within the sound discretion of the board of county supervisors. *Lab Dev. Co. v. Hill*, 152 Colo. 338, 381 P.2d 811 (1963).

Number and proximity of other outlets considered. Besides considering the number of outlets in the area, the board of county commissioners may properly take into account in its consideration of the case the fact that close to the location for which a license is sought there are existing outlets to serve the public. *Jennings v. Hoskinson*, 152 Colo. 276, 382 P.2d 807 (1963).

The existence of a desire for a new outlet is some evidence that the reasonable requirements of the neighborhood were not being met. *Anderson v. Spencer*, 162 Colo. 328, 426 P.2d 970 (1967).

Regardless of their reasons, the desires of the inhabitants are to be considered. *Van DeVegt v. Bd. of County Comm'rs*, 98 Colo. 161, 55 P.2d 703 (1936).

Where protests were based on the general policy that liquor is evil, and secondly that there was a package store nearby, such protests were not relevant and should not have been considered since the application was for liquor by the drink, and since there was no competent evidence before the board to negate the affirmative showing by the applicant, and the board arbitrarily restricted the neighborhood, the license should have been granted. *Bd. of County*

Comm'rs v. Johnson, 170 Colo. 259, 460 P.2d 770 (1969).

Consideration of proof unlimited. This section in no way limits the board in giving proper consideration to other proof of the reasonable requirements of the neighborhood or the desires of the inhabitants thereof. *Hauf Brau v. Bd. of County Comm'rs*, 145 Colo. 522, 359 P.2d 659 (1961).

Effect of petitions and remonstrances of inhabitants. While the expression of opinions as to the requirements of the neighborhood and the needs of the inhabitants thereof, contained in petitions and remonstrances, are entitled to consideration, they are not controlling since this section requires that the issuance of licenses shall depend on the judgment of the licensing authority and not on that of citizens or the court. *MacArthur v. Presto*, 122 Colo. 202, 221 P.2d 934 (1950); *MacArthur v. Sanzalone*, 123 Colo. 166, 225 P.2d 1044 (1950).

The statute precludes the board from granting a license until it has given good-faith consideration to inhabitants' petitions and remonstrances. *Hauf Brau v. Bd. of County Comm'rs*, 145 Colo. 522, 359 P.2d 659 (1961).

Geographical distinctions within a neighborhood do not determine the efficacy of petitions or remonstrances in liquor licensing cases. *Anderson v. Spencer*, 162 Colo. 328, 426 P.2d 970 (1967).

The fact that a greater number of inhabitants had signed petitions favoring issuance of the license does not of itself mandate issuance thereof. *Kornfeld v. Yost*, 37 Colo. App. 483, 551 P.2d 219 (1976), rev'd on other grounds sub nom. *Kornfeld v. Perl Mack Liquors, Inc.*, 193 Colo. 442, 567 P.2d 383 (1977).

Where remonstrances against the granting of a beverage license are signed by others than those resident in a defined neighborhood of a licensee's outlet, and its issuance is supported by several hundred persons resident in the immediate neighborhood, the petitions supporting the application are sufficient to justify its issuance, and there being nothing to indicate that a city council acted arbitrarily or capriciously in granting a license, the courts will not interfere. *Hanna v. Henderson*, 140 Colo. 481, 345 P.2d 384 (1959).

Votes in local option election. The desires of the citizens "otherwise" expressed by their votes in a local option election is likewise admissible evidence to be considered in ascertaining the "desires of the inhabitants", and given such weight as the board of commissioners deemed proper under this section. *Van DeVegt v. Bd. of County Comm'rs*, 98 Colo. 161, 55 P.2d 703 (1936).

Needs of traveling public. In determining the reasonable requirements of neighborhood upon application for a restaurant liquor license, evidence of the reasonable need of the traveling

public and transients is valid to show such need and demand. *Campbell v. City Council*, 150 Colo. 471, 374 P.2d 348 (1962).

Showing of inadequate service sufficient. Where the record discloses that there are no restaurant liquor licenses in the city, and no such license in the entire county, the nearest outlet of the kind being 50 miles distant, it cannot be said that the reasonable requirements of the area have been met. *Farmer v. City Council*, 153 Colo. 306, 385 P.2d 596 (1963).

Where there is a substantial showing that a liquor outlet is desired in a community, it cannot be said that the reasonable requirements of the neighborhood are being served when it appears that the nearest outlet of the kind sought is 12 or 13 miles distant from the location requested. *Bd. of County Comm'rs v. Whale*, 154 Colo. 271, 389 P.2d 588 (1964).

Where the only licenses presently existing in a city are for private clubs and package liquor stores, and more favor than disfavor the license in the immediate neighborhood, there is no basis upon which the application of plaintiff may legally be denied since there are no licenses of the type sought within a five mile radius. *Le Pore v. Larkin*, 146 Colo. 311, 361 P.2d 343 (1961).

Where the general assembly has authorized the issuance of hotel and restaurant liquor licenses throughout the state, thus determining the public policy, and where the evidence disclosed that no such license had ever been issued in city of size and population disclosed by the record, and substantial support for the issuance of such license is shown, it cannot be said that reasonable requirements of the area have been met. *KBT Corp. v. Walker*, 148 Colo. 274, 365 P.2d 685 (1961).

Denial arbitrary and capricious. Where there is no liquor outlet of a given classification within a radius of several miles, the refusal to grant such a license is arbitrary and capricious where substantial support for the issuance thereof is shown. *Bd. of County Comm'rs v. Bickel*, 155 Colo. 465, 395 P.2d 208 (1964); *Bd. of County Comm'rs v. Johnson*, 170 Colo. 259, 460 P.2d 770 (1969).

Where an application for a hotel and restaurant liquor license was denied and evidence disclosed that there was no such outlet within a radius of 35 miles of city, the determination of city council that the neighborhood was adequately supplied by existing outlets was arbitrary and capricious. *KBT Corp. v. Walker*, 148 Colo. 274, 365 P.2d 685 (1961).

Showing of inadequate service insufficient. Where there are a number of licensed outlets in an area in which a restaurant license is sought, evidence that many residents of the neighborhood desired to dine at applicants' restaurant and desired to be served liquor with their meals did not alone establish that existing outlets were inadequate to satisfy the desires of the inhabit-

ants and the reasonable requirements of the neighborhood. *Bd. of County Comm'rs v. Bova*, 153 Colo. 230, 385 P.2d 590 (1963).

The finding of the trial court that the applicant plans to provide a general recreation facility and that such facility is unlike any presently existing in the area, and this is fully borne out by the evidence and is undisputed, does not evidence the fact that the neighborhood in question requires another liquor outlet, especially where the undisputed evidence is that the proposed development will proceed whether or not a liquor license is granted. *Bd. of County Comm'rs v. Evergreen Lanes, Inc.*, 154 Colo. 413, 391 P.2d 372 (1964).

Though the applicant proved the majority of those interested desired the license to issue, and it undoubtedly be a convenience to have such a store within the shopping center where there is more adequate parking and one stop service, nevertheless it is also true that the physical facts could, and in the judgment of the authority did, show that the present reasonable requirements of the neighborhood are being met. *Brentwood Liquors, Inc. v. Schooley*, 147 Colo. 324, 363 P.2d 670 (1961).

Denial not capricious or arbitrary. Where even though the desire of the neighborhood was that the license should issue, nonetheless the reasonable requirements of the neighborhood were adequately met by the existing outlets, in particular a liquor store next door to the applicant, the city council in so finding did not act arbitrarily or capriciously, but well within the limits of its discretionary power. *McIntosh v. Council of City of Littleton*, 145 Colo. 533, 360 P.2d 136 (1961).

Where the evidence in the record showed the existence of many licensed restaurants and liquor stores in the vicinity, this was potent evidence to support the finding that the reasonable requirements of the neighborhood had been met and that the denial of a license was not capricious or arbitrary. *MacArthur v. Presto*, 122 Colo. 202, 221 P.2d 934 (1950).

Where evidence disclosed three existing hotel and restaurant liquor licenses in an area designated as a neighborhood and others in close proximity thereto, a finding by the licensing authority of lack of need for issuance of license applied for, based upon a fair appraisal of the evidence, cannot be held to be arbitrary. *Schooley v. Steinberg*, 148 Colo. 222, 365 P.2d 245 (1961).

Where the record disclosed two package liquor outlets and two establishments serving liquor by the drink within half to three quarters of a mile of applicant's location, denial of a package liquor license by board of county commissioners was not arbitrary or capricious. *Malouff v. Bd. of County Comm'rs*, 150 Colo. 11, 370 P.2d 161 (1962).

Where the board of commissioners did not refuse to receive any evidence offered, and the evidence showed the location of the proposed dispensary to be in close proximity to a state college, and where the board had before it protests admitted to have been made by many of the officials of the college and of the public schools, as well as petitions signed by citizens, the court could not say that the board acted arbitrarily or capriciously in refusing a license when such action was based on evidence from which reasonable men might honestly draw different conclusions. *Van DeVegt v. Bd. of County Comm'rs*, 98 Colo. 161, 55 P.2d 703 (1936).

Prima facie need for license shown. Where prior to condemnation by the state for highway purposes, there were two successful outlets in Silver Plume; that because of the condemnation proceedings there were none at the time of the application; that the nearest such outlet was two and one-half miles away; that 34 residents indicated the need for such an outlet; and where after denial of the application, but prior to the district court's review thereof, the trustees issued a similar license to a nearby establishment, the evidence constitutes a prima facie showing of need for the license. *Booth v. Trustees of Town of Silver Plume*, 28 Colo. App. 470, 474 P.2d 227 (1970).

12-47-304. State licensing authority - application and issuance procedures - definitions. (1) (a) Applications for licenses under the provisions of this article and articles 46 and 48 of this title shall be made to the state licensing authority on forms prepared and furnished by the state licensing authority and shall set forth such information as the state licensing authority may require to enable the authority to determine whether a license should be granted. Such information shall include the name and address of the applicant, and if a partnership, also the names and addresses of all the partners, and if a corporation, association, or other organization, also the names and addresses of the president, vice-president, secretary, and managing officer, together with all other information deemed necessary by the licensing authority. Each application shall be verified by the oath or affirmation of such person or persons as the state licensing authority may prescribe.

(b) Notwithstanding the requirements of paragraph (a) of this subsection (1), an applicant seeking licenses for multiple locations may request the state licensing authority to establish a master file. All requests for a master file shall be made on forms provided by the state licensing authority and shall contain such information as the state licensing authority

may require to enable the authority to determine the suitability of the license applicant and its principal owners as required pursuant to section 12-47-307. The state licensing authority shall either approve the request for a master file and issue an approval letter, or deny the request pursuant to the provisions of section 12-47-305. Any change to information contained in the master file shall be reported by the applicant or licensee to the state licensing authority within thirty days after the change. Failure to report all changes as required may be grounds for suspension or revocation of a license or licenses as determined by the state licensing authority. No local licensing authority shall require applicants with an approved master file to file additional background investigation forms or fingerprints. Nothing in this section shall prohibit a local licensing authority from conducting its own investigation, or from verifying any of the information provided by the applicant, or from denying the application of the applicant pursuant to the provisions set forth in section 12-47-307.

(c) As used in this part 3, “master file” means a file that is established by the state licensing authority and that contains licensing and background information for an applicant seeking licenses pursuant to this article in multiple locations. Such master file shall be available to the local licensing authority.

(d) The state licensing authority shall promulgate rules governing the minimum number of multiple locations required to establish and maintain a master file.

(2) (a) Before granting any license for which application has been made, the state licensing authority or one or more of its inspectors may visit and inspect the plant or property in which the applicant proposes to conduct business and investigate the fitness to conduct such business of any person or the officers and directors of any corporation applying for a license. In investigating the fitness of the applicant or a licensee, the state licensing authority may have access to criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency. In the event the state licensing authority takes into consideration information concerning the applicant’s criminal history record, the state licensing authority shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant’s last criminal conviction and the consideration of the application for a license.

(b) As used in paragraph (a) of this subsection (2), “criminal justice agency” means any federal, state, or municipal court or any governmental agency or subunit of such agency that performs the administration of criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice.

(3) The state licensing authority shall not issue a license pursuant to this section until the local licensing authority has approved the application provided for in section 12-47-309.

Source: L. 97: Entire article amended with relocations, p. 241, § 3, effective July 1. L. 2002: (1) amended, p. 20, § 1, effective August 7.

Editor’s note: This section is similar to former § 12-47-107 as it existed prior to 1997.

ANNOTATION

Law reviews. For note, “The Liquor Code — Colorado Revised Statute Antiquated”, see 38 U. Colo. L. Rev. 248 (1965).

Annotator’s note. The following annotations include cases decided under this section as it existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions.

Applicability of liquor code. The provisions of this article do not apply to third persons who are not applicants of licensees and whose con-

duct does not violate specific provisions of this article but does violate specific provisions of the criminal code. *People v. Eckley*, 775 P.2d 566 (Colo. 1989).

The issuance of licenses shall depend on the judgment of the licensing authority and not on that of other citizens. *Gem Beverage Co. v. Geer*, 138 Colo. 420, 334 P.2d 744 (1959).

Whether a license should or should not be granted is a matter resting within the discretion of the licensing authority, and will not be

disturbed in the absence of a showing of abuse of that discretion. *Harvey v. Schooley*, 152 Colo. 384, 382 P.2d 189 (1963).

It is within the discretion of the licensing authority to determine the facts and to conclude that an application should be denied. *Gem Beverage Co. v. Geer*, 138 Colo. 420, 334 P.2d 744 (1959).

There is no inherent right to carry on the business of selling alcoholic beverages. The licensing authority in the exercise of its administrative discretion may determine whether in the light of all the evidence and surrounding facts and circumstances, the granting of a particular license is or is not justified. *Gem Beverage Co. v. Geer*, 138 Colo. 420, 334 P.2d 744 (1959).

It is nowhere provided that the state licensing authority must conduct a public hearing. *Potter v. Anderson*, 155 Colo. 25, 392 P.2d 650 (1964).

State may use local investigative reports. There is nothing in the law that makes it illegal for the state licensing authority to use the investigation reports and hearing record of the local licensing authority which by law must conduct a hearing. *Potter v. Anderson*, 155 Colo. 25, 392 P.2d 650 (1964).

Denial of second application for particular location. This section provides in substance that no application for a liquor license shall be granted for a particular location if the same applicant has been denied a license for that location within two years prior to the second application. *Harvey v. Schooley*, 152 Colo. 384, 382 P.2d 189 (1963).

The holder of a liquor license cannot apply for a transfer of his license to a facility where, during the preceding two years, a license has

been denied for the reason that the reasonable requirements of the neighborhood and the desires of the inhabitants were being satisfied by existing outlets. *Sixth Ave. Liquors, Inc. v. Kalbin*, 44 Colo. App. 232, 615 P.2d 56 (1980).

A sole applicant for issuance of a license is not "the same person or persons" as a partnership, whose application for a liquor license had previously been denied. *Harvey v. Schooley*, 152 Colo. 384, 382 P.2d 189 (1963).

Burden on applicant. It is incumbent upon an applicant for a liquor license to make a prima facie showing of facts which satisfy the requisites of the liquor code. *Geer v. Hall*, 138 Colo. 384, 333 P.2d 1040 (1959).

All reasonable doubt must be resolved in favor of the findings of the licensing authority, and unless it clearly appears that under the whole record an action of that authority is arbitrary and capricious, the supreme court may not order a different result. *Gem Beverage Co. v. Geer*, 138 Colo. 420, 334 P.2d 744 (1959); *Lab Dev. Co. v. Hill*, 152 Colo. 338, 381 P.2d 811 (1963).

Duty to consider neighborhood requirements and desires. The licensing authority has the duty and authority to consider the reasonable requirements of the neighborhood and the desires of the inhabitants as evidenced by petition, remonstrances, or otherwise. *Gem Beverage Co. v. Geer*, 138 Colo. 420, 334 P.2d 744 (1959).

The test in consideration of a license application is still the "desires of the inhabitants" and "the reasonable requirements of the neighborhood". *Travella v. Eppinger*, 152 Colo. 506, 383 P.2d 314 (1963).

Applied in *In re Title Pertaining to Sale of Table Wine in Grocery Stores*, 646 P.2d 916 (Colo. 1982).

12-47-305. Denial of application. (1) The state licensing authority shall refuse a state license if the premises on which the applicant proposes to conduct its business do not meet the requirements of this article, or if the character of the applicant or its officers or directors is such that violations of this article or article 46 or 48 of this title would be likely to result if a license were granted, or if in its opinion licenses already granted for the particular locality are adequate for the reasonable needs of the community.

(2) The state licensing authority shall not refuse a state license after a local license has been granted, except upon hearing after fifteen days' notice to the applicant and to the local licensing authority. The notice shall be in writing and shall state grounds upon which the application may be refused. If the applicant does not respond to the notice within fifteen days after the date of the notice, the application for a license shall be denied. Such hearing shall be conducted in accordance with the provisions of section 24-4-105, C.R.S., and judicial review of the state licensing authority's decision shall be pursuant to section 24-4-106, C.R.S.

Source: L. 97: Entire article amended with relocations, p. 242, § 3, effective July 1.

Editor's note: This section is similar to former § 12-47-108 as it existed prior to 1997.

ANNOTATION

Law reviews. For article, "Antitrust", see 55 Den. L.J. 415 (1978).

Annotator's note. The following annotations include cases decided under this section as it existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions.

Three grounds for refusal. By the express provisions of this section, the state licensing authority is authorized and directed to refuse to grant a license for the failure of an applicant to meet statutory requirements in three particulars only, viz: (1) that the premises for which the license is sought do not meet the requirements of the law; (2) that the character of applicant or its officers is such that violation of the liquor law would likely result; and (3) that existing outlets are adequate for the reasonable needs of the community. *MacArthur v. Bishop*, 123 Colo. 452, 230 P.2d 589 (1951); *Stanley v. Anderson*, 158 Colo. 576, 408 P.2d 984 (1965).

This section contains no requirement of formal findings. *MacArthur v. Bishop*, 123 Colo. 452, 230 P.2d 589 (1951).

Where there was substantial evidence to support the action of the licensing authority, and no jurisdictional or quasi-jurisdictional determination or finding was required, and no specific findings were requested and refused, the decision of the licensing authority to refuse a license could not be challenged on the ground that he failed to make any findings or state any reason for his refusal. *MacArthur v. Bishop*, 123 Colo. 452, 230 P.2d 589 (1951).

Witnesses not required. The power of an agency to do justice informally and promptly is not limited to cases where witnesses have been heard, and without any witnesses at all it may act of its own knowledge, for it is made up of men with special qualifications of training and experience. *Geer v. Stathopoulos*, 135 Colo. 146, 309 P.2d 606 (1957).

When an agency acts on its own knowledge, it must set forth in its return the facts known to its members, but not otherwise disclosed. *Geer v. Stathopoulos*, 135 Colo. 146, 309 P.2d 606 (1957).

Facts as to hardship required. To characterize a situation as a hardship without more does not tend in any substantial degree to enlighten a reviewing court, and therefore there must be disclosure of the facts from which a hardship is inferred. *Geer v. Stathopoulos*, 135 Colo. 146, 309 P.2d 606 (1957).

Notice of hearing responsibility of local authority. The question of whether there has been compliance with the requirement that notice of

hearing be given upon the application for a county license is a matter which has been specifically and exclusively entrusted to the local licensing authority. *Stanley v. Anderson*, 158 Colo. 576, 408 P.2d 984 (1965).

Finding of adequacy of notice binding. The determination of the commissioners on the issue of whether posting of notice of hearing before the commissioners has been adequate is binding upon the state licensing authority. *Stanley v. Anderson*, 158 Colo. 576, 408 P.2d 984 (1965).

The state licensing authority does not have statutory authority to inquire into the adequacy of posting, once the local licensing authority has made its determination of such question. *Stanley v. Anderson*, 158 Colo. 576, 408 P.2d 984 (1965).

To favor one applicant over another is discriminatory and suggests the exercise of an unwarranted and uncontrolled discretion on the part of the licensing authority. *Geer v. Presto*, 135 Colo. 536, 313 P.2d 980 (1957).

Basis for finding denial arbitrary and capricious. Capricious or arbitrary exercise of discretion by an administrative board can arise by exercising its discretion in such manner after a consideration of evidence before it as clearly to indicate that its action is based on conclusions from the evidence such that reasonable men fairly and honestly considering the evidence must reach contrary conclusions. *Geer v. Stathopoulos*, 135 Colo. 146, 309 P.2d 606 (1957).

Denial not arbitrary and capricious. Where the record of a hearing on an application for a liquor license discloses a situation with reference to which reasonable minds might reach different conclusions, the action of the board of county commissioners in denying such application cannot be adjudged arbitrary, capricious, or unreasonable as a matter of law. *Bd. of County Comm'rs v. Bonicelli*, 151 Colo. 308, 377 P.2d 124 (1962).

Evidence sufficient to deny license. Where a plat put in evidence disclosed the existence of 93 liquor outlets within a radius of six blocks of the premises for which the license was sought, and of these, more than half were hotel and restaurant licenses, the evidence was sufficient to support the denial of a hotel and restaurant liquor license. *MacArthur v. Bishop*, 123 Colo. 452, 230 P.2d 589 (1951).

Issuance of a license to another person in an area, shortly after the rejection of applicant's application on the ground that the needs of the neighborhood were satisfied, would be arbitrary and discriminatory. *Geer v. Presto*, 135 Colo. 536, 313 P.2d 980 (1957).

12-47-306. Inactive licenses. The state or local licensing authority, in its discretion, may revoke or elect not to renew a retail license if it determines that the licensed premises

has been inactive, without good cause, for at least one year or, in the case of a retail license approved for a facility that has not been constructed, such facility has not been constructed and placed in operation within two years after approval of the license application or construction of the facility has not commenced within one year after such approval.

Source: L. 97: Entire article amended with relocations, p. 242, § 3, effective July 1.

Editor's note: This section is similar to former § 12-47-110 (1) as it existed prior to 1997.

12-47-307. Persons prohibited as licensees. (1) (a) No license provided by this article or article 46 or 48 of this title shall be issued to or held by:

- (I) Any person until the annual fee therefor has been paid;
 - (II) Any person who is not of good moral character;
 - (III) Any corporation, any of whose officers, directors, or stockholders holding ten percent or more of the outstanding and issued capital stock thereof are not of good moral character;
 - (IV) Any partnership, association, or company, any of whose officers, or any of whose members holding ten percent or more interest therein, are not of good moral character;
 - (V) Any person employing, assisted by, or financed in whole or in part by any other person who is not of good character and reputation satisfactory to the respective licensing authorities;
 - (VI) Any person unless such person's character, record, and reputation are satisfactory to the respective licensing authority;
 - (VII) Any natural person under twenty-one years of age.
- (b) (I) In making a determination as to character or when considering the conviction of a crime, a licensing authority shall be governed by the provisions of section 24-5-101, C.R.S.

(II) With respect to arts or club license applications, an investigation of the character of the president or chair of the board and the operational manager shall be deemed sufficient to determine whether to issue the arts or club license to the applicant.

(2) No license provided by this article shall be issued to or held by any peace officer, or the state licensing authority, or any of its inspectors or employees.

(3) (a) In investigating the qualifications of the applicant or a licensee, the local licensing authority may have access to criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency. In the event the local licensing authority takes into consideration information concerning the applicant's criminal history record, the local licensing authority shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license.

(b) As used in paragraph (a) of this subsection (3), "criminal justice agency" means any federal, state, or municipal court or any governmental agency or subunit of such agency that performs the administration of criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice.

(c) At the time of the application for a license, the applicant shall submit fingerprints and file personal history information concerning the applicant's qualifications for a license on forms prepared by the state licensing authority. The state and local licensing authorities shall submit such fingerprints to the Colorado bureau of investigation for the purpose of conducting fingerprints-based criminal history record checks. The Colorado bureau of investigation shall forward the fingerprints to the federal bureau of investigation for the purpose of conducting fingerprints-based criminal history record checks. An applicant who has previously submitted fingerprints for alcohol beverage licensing purposes may request that the fingerprints on file be used. The licensing authorities shall use the information resulting from the fingerprints-based criminal history record check to investigate and to determine if an applicant is qualified for a license pursuant to this article and article 46 of

this title. The licensing authority shall not be prohibited from verifying any of the information required to be submitted by an applicant pursuant to this section. An applicant shall not be required to submit additional information beyond that required in this subsection (3) unless the licensing authority has determined any of the following:

- (I) The applicant has misrepresented a material fact;
- (II) The applicant has an established criminal history record;
- (III) A prior criminal or administrative proceeding determined that the applicant violated alcohol beverage laws;
- (IV) The information submitted by an applicant is incomplete; or
- (V) The character, record, or reputation of the applicant, his or her agent, or his or her principal is such that a potential violation of this article or article 46 of this title may occur if a license is issued to the applicant.

Source: **L. 97:** Entire article amended with relocations, p. 243, § 3, effective July 1. **L. 99:** (1)(b) amended, p. 77, § 1, effective September 30. **L. 2002:** (3)(c) added, p. 21, § 2, effective August 7. **L. 2003:** (1)(b)(II) amended, p. 567, § 1, effective March 13; (2) amended, p. 1632, § 75, effective August 6.

Editor's note: This section is similar to former § 12-47-111, and subsections (3)(a) and (3)(b) are similar to former § 12-47-137 (2)(a) and (2)(b), as they existed prior to 1997.

ANNOTATION

Law reviews. For article, "Moral Character of the Liquor Licensee or Applicant", see 25 Colo. Law. 79 (February 1996).

Annotator's note. The following annotations include cases decided under this section as it existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions.

Only offenses involving "moral turpitude" basis for denial. This section as "governed" and modified by § 24-5-101 requires that only those offenses involving "moral turpitude" can serve as justification for denial of a liquor license. *Hartman v. Wadlow*, 37 Colo. App. 90, 545 P.2d 735 (1975), *aff'd*, 191 Colo. 196, 551 P.2d 201 (1976).

Negative response to question regarding suspension or revocation of liquor license was a misrepresentation of a material fact with respect to prior cancelled license and, therefore, could constitute grounds for license revocation. *Fueston v. City of Colo. Springs*, 713 P.2d 1323 (Colo. App. 1985).

Not driving while ability impaired. While "driving a motor vehicle while ability is impaired" is a serious offense, nevertheless it does not rise to the magnitude of being one involving moral turpitude. *Hartman v. Wadlow*, 37 Colo. App. 90, 545 P.2d 735 (1975), *aff'd*, 191 Colo. 196, 551 P.2d 201 (1976).

Effect of nolo contendere plea. The state licensing authority cannot utilize the plea of *nolo contendere* at a hearing called by him as

evidence of a conviction of a violation of the liquor law. *Bruce v. Leo*, 129 Colo. 129, 267 P.2d 1014 (1954).

This section prohibits the sale of intoxicating liquor by the drink within 500 feet of a public or parochial school. *Geer v. Rabinoff*, 138 Colo. 8, 328 P.2d 375 (1958); *Harvey v. Schooley*, 152 Colo. 384, 382 P.2d 189 (1963).

The general assembly has enacted no such restriction on the sale of liquors in sealed containers not to be consumed at the place where sold. *Geer v. Rabinoff*, 138 Colo. 8, 328 P.2d 375 (1958).

An area covered by a parking lot adjacent to restaurant is not to be considered in computing distance from a school. *Harvey v. Schooley*, 152 Colo. 384, 382 P.2d 189 (1963).

No liquor can be sold on a parking lot. *Harvey v. Schooley*, 152 Colo. 384, 382 P.2d 189 (1963).

"Record" defined. Although the word "record", referred to in paragraph (1)(a)(VIII), may be somewhat broad, its context certainly includes violations of statutory law of the state. *Mr. Lucky's, Inc. v. Dolan*, 197 Colo. 195, 591 P.2d 1021 (1979).

Judicial review of licensing board. A liquor licensing board which revokes or suspends a license under this section is subject to judicial review for abuse of discretion. *Mr. Lucky's, Inc. v. Dolan*, 197 Colo. 195, 591 P.2d 1021 (1979).

Applied in *Van DeVegt v. Bd. of County Comm'rs*, 98 Colo. 161, 55 P.2d 703 (1936).

12-47-308. Unlawful financial assistance. (1) (a) It is unlawful for any person licensed pursuant to this article or article 46 of this title as a manufacturer, limited winery licensee, wholesaler, or importer, or any person, partnership, association, organization, or

corporation interested financially in or with any of said licensees, to furnish, supply, or loan, in any manner, directly or indirectly, to any person licensed to sell at retail pursuant to this article or article 46 or 48 of this title any financial assistance, including the extension of credit for more than thirty days, as specified in section 12-47-202 (2) (b) or in rules of the state licensing authority, or any equipment, fixtures, chattels, or furnishings used in the storing, handling, serving, or dispensing of food or alcohol beverages within the premises or for making any structural alterations or improvements in or on the building in which such premises are located. This section shall not apply to signs or displays within such premises.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (1), any person or party described in said paragraph (a) may provide financial or in-kind assistance, directly or indirectly, to a nonprofit arts organization that has been issued an arts license pursuant to section 12-47-417 or to a state-supported institution of higher education in Colorado, including junior colleges, area vocational schools, and the Auraria higher education center, or the governing board of a state-supported institution of higher education, or to a nonpublic institution of higher education as defined in section 23-3.7-102, C.R.S., that is operating pursuant to 26 U.S.C. sec. 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, if the institution has been issued a license pursuant to article 46, 47, or 48 of this title.

(2) The state licensing authority, by rule and regulation, shall require a complete disclosure of all persons having a direct or indirect financial interest, and the extent of such interest, in each hotel and restaurant license and each retail gaming tavern license issued under this article. A willful failure to report and disclose the financial interests of all persons having a direct or indirect financial interest in a hotel and restaurant license or in a retail gaming tavern license shall be grounds for suspension or revocation of such license by the state licensing authority. The invalidity of any provision of this subsection (2) concerning interest in more than one hotel and restaurant license or retail gaming tavern license shall invalidate all interests in more than one hotel and restaurant license or retail gaming tavern license, and such invalidity shall make any such interest unlawful financial assistance.

(3) (a) It is unlawful for any person licensed to sell at retail pursuant to this article or article 46 of this title to receive and obtain from the persons or parties described and referred to in subsection (1) (a) of this section, directly or indirectly, any financial assistance or any equipment, fixtures, chattels, or furnishings used in the storing, handling, serving, or dispensing of food or alcohol beverages within the premises or from making any structural alterations or improvements in or on the building on which such premises are located. This subsection (3) shall not apply to signs or displays within such premises or to advertising materials that are intended primarily to advertise the product of the wholesaler or manufacturer and that have only negligible value in themselves or to the inspection and servicing of malt or vinous liquor-dispensing equipment to the extent necessary for the maintenance of reasonable standards of purity, cleanliness, and health.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (3), a nonprofit arts organization that has been issued an arts license pursuant to section 12-47-417 or a state-supported institution of higher education in Colorado, including junior colleges, area vocational schools, and the Auraria higher education center, or the governing board of a state-supported institution of higher education, or a nonpublic institution of higher education as defined in section 23-3.7-102, C.R.S., that is operating pursuant to 26 U.S.C. sec. 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, if the institution has been issued a license pursuant to article 46, 47, or 48 of this title, may receive financial or in-kind assistance, directly or indirectly, from the persons or parties described and referred to in paragraph (a) of subsection (1) of this section.

(4) (a) Except as otherwise authorized, it is unlawful for any person or corporation holding any license pursuant to this article or article 46 of this title or any person who is a stockholder, director, or officer of any corporation holding a license pursuant to this article or article 46 of this title to be a stockholder, director, or officer or to be interested, directly or indirectly, in any person or corporation that lends money to any person or corporation licensed pursuant to this article or article 46 of this title, but this subsection (4) shall not apply to banks, savings and loan associations, or industrial banks supervised and regulated by an agency of the state or federal government, or to FHA-approved mortgagees, or to

stockholders, directors, or officers thereof; and it is unlawful for any person or corporation licensed pursuant to this article or article 46 of this title, or any stockholder, director, or officer of such corporation, to make any loan or be interested, directly or indirectly, in any loan to any other person licensed pursuant to the provisions of this article or article 46 of this title; except that this paragraph (a) shall not apply to any financial institution that comes into possession of a licensed premises by virtue of a foreclosure or deed in lieu of foreclosure if such financial institution does not retain such premises for longer than one year or for such time exceeding one year as provided in paragraph (b) of this subsection (4).

(b) In the case of a financial institution that comes into possession of a licensed premises by virtue of a foreclosure or deed in lieu of foreclosure, the state and the local licensing authority may grant a transfer of ownership for such license for a period of one year and, upon notice and hearing, renewal of such license may be granted. This paragraph (b) shall apply in the case of every foreclosure or deed in lieu of foreclosure in which disposition of the license has not otherwise been made by the state or local licensing authority.

(5) It is unlawful for any owner, part owner, shareholder, stockholder, or person interested, directly or indirectly, in any retail business or establishment of a person licensed to sell at retail pursuant to the provisions of this article or article 46 or 48 of this title to enter into any agreement with any person or party or to receive, possess, or accept any money, fixtures, supplies, or things of value from any person or party, whereby a person licensed to sell at retail pursuant to this article or article 46 or 48 of this title may be influenced or caused, directly or indirectly, to buy, sell, dispense, or handle the product of any manufacturer of alcohol beverages. This subsection (5) shall not apply to displays within such premises.

(6) Any transaction, agreement, or arrangement prohibited by the provisions of this section, if made and entered into by and between the persons and parties described and referred to in this section, is unlawful, illegal, invalid, and void, and any obligation or liability arising out of such transaction, agreement, or arrangement shall be unenforceable in any court of this state by or against any such persons and parties entering into such transaction, agreement, or arrangement.

(7) This section is intended to prohibit and prevent the control of the outlets for the sale of alcohol beverages by any persons or parties other than the persons licensed pursuant to the provisions of this article or article 46 or 48 of this title.

(8) It is unlawful for an owner, part owner, shareholder, or person interested directly or indirectly in a brew pub or vintner's restaurant license to conduct, own in whole or in part, or be directly or indirectly interested in a wholesaler's license issued under this article or article 46 of this title.

Source: **L. 97:** Entire article amended with relocations, p. 244, § 3, effective July 1. **L. 2002:** (1)(b) and (3)(b) amended, p. 367, § 1, effective July 1. **L. 2004:** (8) amended, p. 741, § 10, effective August 4. **L. 2010:** (1)(a) amended, (SB 10-083), ch. 100, p. 342, § 3, effective August 11. **L. 2011:** (8) amended, (SB11-060), ch. 171, p. 606, § 19, effective May 13; (1)(b) and (3)(b) amended, (HB 11-1301), ch. 297, p. 1418, § 6, effective August 10.

Editor's note: This section is similar to former § 12-47-129 as it existed prior to 1997.

ANNOTATION

Law reviews. For article, "The Colorado Liquor Code: Distinct and Definite Requirements", see 17 Colo. Law. 841 (1988).

Annotator's note. The following annotations include cases decided under this section as it existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions.

This section interdicts any transaction, agreement, or arrangement prohibited by it and provides that any obligation or liability arising out of any such transaction, agreement, or arrangement shall be unenforceable in any court by or against any such persons and parties entering into such transaction. *Fishman v. Davis*, 112 F.2d 432 (10th Cir. 1940).

A plain reading of this section demonstrates that the general assembly did not speak to the precise question of below-cost sales of alcohol by manufacturers to retailer, and therefore deference to agency construction is appropriate. *Wine & Spirits Wholesalers v. Colo. Dept. of Rev.*, 919 P.2d 894 (Colo. App. 1996).

A person who held a retail liquor license could not acquire an interest in the business of a bankrupt wholesaler, and a transaction whereby he attempts to acquire such an interest is void under this section and any claim or obligation arising therefrom is unenforceable, because he could not advance money to the bankrupt for an interest in its business and obtain a claim which was enforceable in the bankruptcy court against the estate. *Fishman v. Davis*, 112 F.2d 432 (10th Cir. 1940).

Finding of lack of any indirect interest in another retail liquor store is supported by competent evidence on the record and is not arbitrary nor capricious. The evidence does not show that the stock transfer of ownership of another liquor store to the wife of the licensee was a sham transaction nor that the licensee retained control of or any interest in another liquor store. *Brass Monkey v. Louisville City Council*, 870 P.2d 636 (Colo. App. 1994).

Liquor wholesaler's extension of credit to retailer unaccompanied with control or attempt to control is not unlawful under the Colorado liquor law. *Majestic Marketing Co. v. Anderson Enterprises of Colo., Inc.* 32 Colo. App. 369, 511 P.2d 943 (1973).

Where decedent, part owner of one bar, advanced money for the construction and

equipment of another bar, plaintiff claiming by and through decedent as his heir and as executrix of decedent's estate was barred from recovering moneys advanced by decedent for construction of the other bar. *Frederics v. Wilson*, 31 Colo. App. 117, 500 P.2d 384 (1972).

When asserting rights of decedent, a claimant is subject to the limitations appurtenant to any claim decedent might have had, thus, the working of this section itself, and clear public policy, would bar recovery. *Frederics v. Wilson*, 31 Colo. App. 117, 500 P.2d 384 (1972).

Giving of a chattel mortgage was in violation of this section. *Fishman v. Davis*, 112 F.2d 432 (10th Cir. 1940).

Installment sale by wholesaler not prohibited. Absent proof of control or attempt to control a retail licensee by a wholesale licensee, an installment sale or lease of equipment by a wholesaler to a retailer is not prohibited by this section. *Nobel, Inc. v. Colo. Dept. of Rev.*, 652 P.2d 1084 (Colo. App. 1982).

Installment sale by wholesaler does not constitute unlawful financial assistance. The leasing of equipment and the sale of equipment on credit by a wholesale liquor licensee to a retail liquor licensee, absent control or attempt to control the retail licensee, does not constitute unlawful financial assistance. *Nobel, Inc. v. Colo. Dept. of Rev.*, 652 P.2d 1084 (Colo. App. 1982).

Applied in *Law Offices of Bernard D. Morley, P.C. v. MacFarlane*, 647 P.2d 1215 (Colo. 1982); *People v. Luciano*, 662 P.2d 480 (Colo. 1983).

12-47-309. Local licensing authority - applications - optional premises licenses.

(1) A local licensing authority may issue only the following alcohol beverage licenses upon payment of the fee specified in section 12-47-505:

- (a) Retail liquor store license;
- (b) Liquor-licensed drugstore license;
- (c) Beer and wine license;
- (d) Hotel and restaurant license;
- (e) Tavern license;
- (f) Brew pub license;
- (g) Club license;
- (h) Arts license;
- (i) Racetrack license;
- (j) Optional premises license;
- (k) Retail gaming tavern license;
- (l) Vintner's restaurant license.

(2) An application for any license specified in subsection (1) of this section or section 12-46-107 shall be filed with the appropriate local licensing authority on forms provided by the state licensing authority and containing such information as the state licensing authority may require. Each application shall be verified by the oath or affirmation of such persons as prescribed by the state licensing authority.

(3) The applicant shall file at the time of application plans and specifications for the interior of the building if the building to be occupied is in existence at the time. If the building is not in existence, the applicant shall file a plot plan and a detailed sketch for the

interior and submit an architect's drawing of the building to be constructed. In its discretion, the local licensing authority may impose additional requirements necessary for the approval of the application.

Source: L. 97: Entire article amended with relocations, p. 248, § 3, effective July 1. L. 2004: (1)(l) added, p. 738, § 2, effective August 4. L. 2011: IP(1) amended, (SB 11-060), ch. 171, p. 606, § 20, effective May 13.

Editor's note: This section is similar to former § 12-47-135 as it existed prior to 1997.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions.

Before there can be any issuance of a liquor license or a transfer thereof at the local level, the state authority must approve the action of the local authority. *Moschetti v. Liquor Licensing Auth.*, 176 Colo. 281, 490 P.2d 299 (1971).

Oath requirement is mandatory. *Spero v. Bd. of Trustees*, 35 Colo. App. 64, 529 P.2d 327 (1974).

The requirement that the contents of a liquor license application be verified is mandatory. *Mr. Lucky's, Inc. v. City of Glendale*, 42 Colo. App. 322, 596 P.2d 1218 (1979).

Private parties may not waive requirements. Because the requirement of a verified application is mandatory and because statutes dealing with the liquor industry are founded on public policy, and constitute an exercise of the police powers of the state, private parties may not waive the requirements of this statute. *Spero v. Bd. of Trustees*, 35 Colo. App. 64, 529 P.2d 327 (1974).

Failure to verify properly application prior to expiration date for filing renewal application is not fatal, because a hearing on the application may be held after the filing period has expired. *Mr. Lucky's, Inc. v. City of Glendale*, 42 Colo. App. 322, 596 P.2d 1218 (1979).

Amendment made on license application and sworn to anew. Where an applicant desires to amend his application required for a liquor license either by changing an answer previously given or by furnishing answers to questions not previously answered, the amendment must be made on the application itself and sworn to anew. *Spero v. Bd. of Trustees*, 35 Colo. App. 64, 529 P.2d 327 (1974).

Liquor license application may be amended prior to or at hearing to review

application in order to correct or add information thereto. A proper verification for the application can be supplied prior to or at the hearing on the application. *Mr. Lucky's, Inc. v. City of Glendale*, 42 Colo. App. 322, 596 P.2d 1218 (1979).

Term "plans and specifications" in subsection (4) has a special meaning and includes not only the dimensions and mode of construction, but a description of the material, its kind, length, breadth, and thickness, and the manner of joining the separate parts. It is a particular and detailed account; the accurate description of the materials to be used and work to be performed in the construction of a building; a written instrument containing a good minute description, account, or enumeration of particulars. *Spero v. Bd. of Trustees*, 35 Colo. App. 64, 529 P.2d 327 (1974).

Failure to file specifications more than formal defect. The failure of liquor license applicant to have detailed specifications of the interior as required under subsection (4) is more than a formal defect. *Spero v. Bd. of Trustees*, 35 Colo. App. 64, 529 P.2d 327 (1974).

Failure to file building plans at the time of the application is not fatal. *Goehring v. Bd. of County Comm'rs*, 172 Colo. 1, 469 P.2d 137 (1970).

There is no statutory prohibition against amending an application or supplying a deficiency prior to the consideration of the application, or at the hearing. *Goehring v. Bd. of County Comm'rs*, 172 Colo. 1, 469 P.2d 137 (1970).

May file specifications up to and including hearing. An applicant for a liquor license can file the plans and specifications and architect's drawings required under subsection (4) at any time up to and including the hearing. *Spero v. Bd. of Trustees*, 35 Colo. App. 64, 529 P.2d 327 (1974).

Applied in *City of Aurora v. Morris*, 160 Colo. 289, 417 P.2d 7 (1966).

12-47-310. Optional premises license - local option. (1) No optional premises license, or optional premises permit for a hotel and restaurant license, as defined in section 12-47-103 (22) (a), shall be issued within any municipality or the unincorporated portion of any county unless the governing body of the municipality has adopted by ordinance, or the

governing body of the county has adopted by resolution, specific standards for the issuance of optional premises licenses or for optional premises for a hotel and restaurant license. No municipality or county shall be required to adopt such standards or make such licenses available within its jurisdiction.

(2) In addition to all other standards applicable to the issuance of licenses under this article, the governing body may adopt additional standards for the issuance of optional premises licenses or for optional premises for a hotel and restaurant license that may include:

(a) The specific types of outdoor sports and recreational facilities that are eligible to apply for an optional premises license or an optional premises for a hotel and restaurant license;

(b) Restrictions on the number of optional premises that any one licensee may have on an outdoor sports or recreational facility;

(c) A restriction on the minimum size of any applicant's outdoor sports or recreational facility that would be eligible for the issuance of an optional premises license or optional premises for a hotel and restaurant license;

(d) Any other requirements necessary to ensure the control of the premises and the ease of enforcement.

(3) An applicant for a hotel and restaurant license who desires to sell or serve alcohol beverages on optional premises shall file with the optional premises permit application a list of the optional premises locations. Such application and list shall be filed with the state and local licensing authorities upon initial application, and each license year thereafter. Approval of the areas must be obtained from the state licensing authority and the local licensing authority. The decision of each authority shall be discretionary. In the event that the state and local licensing authorities allow the area or areas to be designated optional premises, no alcohol beverages may be served on the optional premises without the licensee having provided written notice to the state and local licensing authorities forty-eight hours prior to serving alcohol beverages on the optional premises. Such notice shall contain the specific days and hours on which the optional premises are to be used. This subsection (3) shall not be construed to permit the violation of any other provision of this article under circumstances not specified in this subsection (3).

(4) An applicant for an optional premises license who desires to sell, dispense, or serve alcohol beverages on optional premises shall file with the optional premises license application a list of the optional premises locations and the area in which the applicant desires to store alcohol beverages for future use on the optional premises. The applicant shall file the application and additional information with the state and local licensing authorities upon initial application, and each license year thereafter. Approval of the license and areas must be obtained from the state licensing authority and the local licensing authority. The decision of each authority shall be discretionary. In the event that the state and local licensing authorities allow the area or areas to be designated optional premises, no alcohol beverages may be served on the optional premises without the licensee having provided written notice to the state and local licensing authorities forty-eight hours prior to serving alcohol beverages on the optional premises. The notice must contain the specific days and hours on which the optional premises are to be used. This subsection (4) does not permit the violation of any other provision of this article under circumstances not specified in this subsection (4).

Source: L. 97: Entire article amended with relocations, p. 249, § 3, effective July 1. L. 2002: (1) amended, p. 1014, § 13, effective June 1. L. 2011: (4) amended, (SB 11-060), ch. 171, p. 607, § 21, effective May 13.

Editor's note: This section is similar to former § 12-47-135.5, and subsections (3) and (4) are similar to former § 12-47-135 (6) and (7), as they existed prior to 1997.

12-47-311. Public notice - posting and publication. (1) Upon receipt of an application, except an application for renewal or for transfer of ownership, the local licensing authority shall schedule a public hearing upon the application not less than thirty days from

the date of the application and shall post and publish the public notice thereof not less than ten days prior to such hearing. Public notice shall be given by the posting of a sign in a conspicuous place on the premises for which application has been made and by publication in a newspaper of general circulation in the county in which the premises are located.

(2) Notice given by posting shall include a sign of suitable material, not less than twenty-two inches wide and twenty-six inches high, composed of letters not less than one inch in height and stating the type of license applied for, the date of the application, the date of the hearing, and the name and address of the applicant, and such other information as may be required to fully apprise the public of the nature of the application. If the applicant is a partnership, the sign shall contain the names and addresses of all partners, and if the applicant is a corporation, association, or other organization, the sign shall contain the names and addresses of the president, vice-president, secretary, and manager or other managing officers.

(3) Notice given by publication shall contain the same information as that required for signs.

(4) If the building in which the alcohol beverage is to be sold is in existence at the time of the application, any sign posted as required in subsections (1) and (2) of this section shall be placed so as to be conspicuous and plainly visible to the general public. If the building is not constructed at the time of the application, the applicant shall post the premises upon which the building is to be constructed in such a manner that the notice shall be conspicuous and plainly visible to the general public.

(5) At the public hearing held pursuant to this section, any party in interest shall be allowed to present evidence and to cross-examine witnesses.

(b) As used in this subsection (5), "party in interest" means any of the following:

(I) The applicant;

(II) An adult resident of the neighborhood under consideration;

(III) The owner or manager of a business located in the neighborhood under consideration;

(IV) The principal or representative of any school located within five hundred feet of the premises for which the issuance of a license pursuant to section 12-47-309 (1) is under consideration.

(c) The local licensing authority, in its discretion, may limit the presentation of evidence and cross-examination so as to prevent repetitive and cumulative evidence or examination.

(d) Nothing in this subsection (5) shall be construed to prevent a representative of an organized neighborhood group that encompasses part or all of the neighborhood under consideration from presenting evidence subject to this section. Such representative shall reside within the neighborhood group's geographic boundaries and shall be a member of the neighborhood group. Such representative shall not be entitled to cross-examine witnesses or seek judicial review of the licensing authority's decision.

Source: L. 97: Entire article amended with relocations, p. 251, § 3, effective July 1. L. 2011: (5)(b)(IV) amended, (SB 11-060), ch. 171, p. 607, § 22, effective May 13.

Editor's note: This section is similar to former § 12-47-136 as it existed prior to 1997.

ANNOTATION

Law reviews. For article, "A Primer on Liquor License Application Hearings in Colorado", see 31 Colo. Law. 11 (September 2002).

Annotator's note. The following annotations include cases decided under this section as it existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions.

An owner of a business located within the neighborhood is a party in interest to the

extent that he may present evidence at the hearing before the licensing authority. *Kornfeld v. Yost*, 37 Colo. App. 483, 551 P.2d 219 (1976), rev'd on other grounds sub nom. *Kornfeld v. Perl Mack Liquors, Inc.*, 193 Colo. 442, 567 P.2d 383 (1977).

A competitor has standing to challenge granting of a liquor license and to appeal any adverse judgment if the competitor is also a resident of the affected neighborhood. *Brass*

Monkey v. Louisville City Council, 870 P.2d 636 (Colo. App. 1994).

The term “party in interest” grants only the limited right to participate in the evidentiary hearing and not the right to participate as a party in judicial proceedings to review the action of the licensing authority. Kornfeld v. Perl Mack Liquors, Inc., 193, Colo. 442, 567 P.2d 383 (1977).

No-cross-examination order exceeded council authority. While the licensing authority may limit the presentation of evidence and cross-examination so as to prevent repetitive or cumulative evidence or cross-examination, the council exceeded its authority by arbitrarily ordering that no cross-examination of witnesses would be allowed at this public hearing. Mobell v. Meyer, 172 Colo. 12, 469 P.2d 414 (1970).

12-47-312. Results of investigation - decision of authorities. (1) Not less than five days prior to the date of hearing, the local licensing authority shall make known its findings based on its investigation in writing to the applicant and other interested parties. The local licensing authority has authority to refuse to issue any licenses provided in sections 12-47-309 (1) and 12-46-107 for good cause, subject to judicial review.

(2) (a) Before entering any decision approving or denying the application, the local licensing authority shall consider, except where this article specifically provides otherwise, the facts and evidence adduced as a result of its investigation, as well as any other facts, the reasonable requirements of the neighborhood for the type of license for which application has been made, the desires of the adult inhabitants, the number, type, and availability of alcohol beverage outlets located in or near the neighborhood under consideration, and any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed; except that the reasonable requirements of the neighborhood shall not be considered in the issuance of a club liquor license. The reasonable requirements of the neighborhood may, but are not required to, be considered in the conversion or transfer of a liquor-licensed drugstore license to a retail liquor store license.

(b) Any petitioning otherwise required to establish the reasonable requirements of the neighborhood shall be waived for a bed and breakfast permit applicant unless the local licensing authority has previously taken affirmative, official action to rescind the availability of such waiver in all subsequent cases.

(3) Any decision of a local licensing authority approving or denying an application shall be in writing stating the reasons therefor, within thirty days after the date of the public hearing, and a copy of such decision shall be sent by certified mail to the applicant at the address shown in the application.

(4) No license shall be issued by any local licensing authority after approval of an application until the building in which the business is to be conducted is ready for occupancy with such furniture, fixtures, and equipment in place as is necessary to comply with the applicable provisions of this article and article 46 of this title, and then only after inspection of the premises has been made by the licensing authority to determine that the applicant has complied with the architect’s drawing and the plot plan and detailed sketch for the interior of the building submitted with the application.

(5) After approval of any application, the local licensing authority shall notify the state licensing authority of such approval, who shall investigate and either approve or disapprove such application.

Source: L. 97: Entire article amended with relocations, p. 252, § 3, effective July 1. L. 2000: (2)(a) amended, p. 141, § 3, effective March 16.

Editor’s note: This section is similar to former § 12-47-137 as it existed prior to 1997.

ANNOTATION

Law reviews. For article, “A Primer on Liquor License Application Hearings in Colorado”, see 31 Colo. Law. 11 (September 2002).

Annotator’s note. The following annotations include cases decided under this section as it existed prior to the 1997 amendment of title 12,

article 47, which resulted in the relocation of provisions.

In forfeiture removal action, absent the owner’s permission, it is a trespass for the officers to remain on the premises longer than is necessary to remove the seized property. Walker

v. City of Denver, 720 P.2d 619 (Colo. App. 1986).

While the right of public officers to seize personal property carries with it the right to remove the property from the premises, such removal is unjustified if it would result in the destruction or substantial damage to the real property. Walker v. City of Denver, 720 P.2d 619 (Colo. App. 1986).

The fact that a particular type of license is not authorized in the neighborhood does not require the issuance of such a license if, in fact, the needs of the neighborhood, with respect to the type of beverage authorized to be sold by the license requested, are being met by the existing licenses. Canjar v. Huerta, 193 Colo. 388, 566 P.2d 1071 (1977) (decided under § 12-47-116 before the 1976 repeal and reenactment of this article).

Date of city council's written decision commenced 30-day period. Where the city council approved an application for a package liquor license and entered its written decision in the form of a statement of approval upon the license application form, which was signed by the mayor and attested by the city clerk, it is the date of the written decision, endorsed upon the application form, and not the date on which applicants received the letter of notification, which commences the 30-day period within which to appeal the decision. White v. City Council, 33 Colo. App. 97, 515 P.2d 487 (1973).

The period of limitation under subsection (3) of this section was properly measured from the conclusion of a second hearing where, at the conclusion of the first hearing on the license application, the matter was tabled for further consideration, and no final action was taken. U-Tote-M of Colo., Inc. v. City of Greenwood Vill., 39 Colo. App. 28, 563 P.2d 373 (1977).

The intent of a law which grants discretionary power to licensing officers, whether expressly or by necessary implication, is that the discretionary decision shall be the outcome of examination and consideration, in other words, that it shall constitute a discharge of official duty, and not a mere expression of personal will. Goehring v. Bd. of County Comm'rs, 172 Colo. 1, 469 P.2d 137 (1970).

Basis for capricious or arbitrary exercise of discretion. Capricious or arbitrary exercise of discretion by an administrative board can arise by failing to give candid and honest consideration of the evidence before it on which it is authorized to act in exercising its discretion, and by exercising its discretion in such manner after a consideration of the evidence before it as to clearly indicate that its action is based on conclusions from the evidence such that reasonable men fairly and honestly considering the evidence must reach contrary conclusions. Anderson v. Spencer, 162 Colo. 328, 426 P.2d 970

(1967); Goehring v. Bd. of County Comm'rs, 172 Colo. 1, 469 P.2d 137 (1970).

"Neighborhood" doesn't include whole county. No authority justifies the conclusion that the "neighborhood" involved in an application for a liquor license can be expanded to include and entire county. Bolton v. Bd. of County Comm'rs, 164 Colo. 112, 432 P.2d 761 (1967).

Boundary lines of a city do not exclude residents on one side or the other from the "neighborhood" to be considered in connection with applications for liquor licenses. Anderson v. Spencer, 162 Colo. 328, 426 P.2d 970 (1967).

The existence or nonexistence of outlets on either side of a city boundary are to be considered by the licensing authority in determining whether reasonable requirements of the neighborhood are being met. Anderson v. Spencer, 162 Colo. 328, 426 P.2d 970 (1967).

"In or near" are spatial concepts; "in" means inside of, within the bounds or limits of, and "near" denotes close by, neighboring, or not far from. Anderson v. Spencer, 162 Colo. 328, 426 P.2d 970 (1967).

In noting the "nearness" of the other outlets the board must consider also their "availability", and "availability" contemplates suitability for the accomplishment of a given purpose, capability of advantageous use or employment. Anderson v. Spencer, 162 Colo. 328, 426 P.2d 970 (1967).

The licensing authority can require compliance with a zoning law before permitting a store to open. Goehring v. Bd. of County Comm'rs, 172 Colo. 1, 469 P.2d 137 (1970).

Opportunity to comply with the zoning laws and restrictions would of necessity be granted to anyone desiring to open a lawful business. Goehring v. Bd. of County Comm'rs, 172 Colo. 1, 469 P.2d 137 (1970).

If the absence of adequate toilet facilities violated a county zoning resolution, it would not be ground in and of itself for denial of the application for a liquor license. Goehring v. Bd. of County Comm'rs, 172 Colo. 1, 469 P.2d 137 (1970).

The existence of "desire" for a new outlet is some evidence that the reasonable requirements of the neighborhood were not being met. Anderson v. Spencer, 162 Colo. 328, 426 P.2d 970 (1967).

Consideration of size of outlet. In the absence of guidelines on the size of a proposed outlet in the statute and in the absence of a county zoning requirement for the location involved, a denial based on such grounds is not lawful. Goehring v. Bd. of County Comm'rs, 172 Colo. 1, 469 P.2d 137 (1970).

What findings must include. When a board considers "other pertinent matters" during the course of making its investigation, it must in its

findings point out how it feels the applicant's qualifications to conduct the proposed business were affected by those matters. *Wadlow v. Hartman*, 191 Colo. 196, 551 P.2d 201 (1976).

Trial court had no jurisdiction. Where there was no showing in the trial court that protestants had exhausted their administrative remedies or that certiorari proceedings to review the decision of a local licensing authority to grant an application for a retail liquor store license were not moot, the trial court had no jurisdiction over the subject matter of the certiorari proceedings and should have dismissed the action. *Larson v. City & County of Denver*, 33 Colo. App. 153, 516 P.2d 448 (1973).

Specifications and inspection mandatory. Under subsection (4), the filing of plans and specifications is mandatory and may not be waived and prior to granting a liquor license the

local authority must inspect the premises to determine that the applicant has complied with the architect's drawing and plans and specifications submitted upon the application. *Norris v. Grimsley*, 41 Colo. App. 231, 585 P.2d 925 (1978).

City council's denial of liquor license application was unsupported by competent evidence and was arbitrary where evidence presented by applicant established a *prima facie* case for issuance and the only rebuttal evidence was the existence of other liquor stores and a survey result that 26% percent expressed opposition. *Brass Monkey v. Louisville City Council*, 870 P.2d 636 (Colo. App. 1994).

Applied in *Kornfeld v. Yost*, 37 Colo. App. 483, 551 P.2d 219 (1976), *rev'd* on other grounds *sub nom.* *Kornfeld v. Perl Mack Liquors, Inc.*, 193 Colo. 442, 567 P.2d 383 (1977).

12-47-313. Restrictions for applications for new license. (1) No application for the issuance of any license specified in section 12-47-309 (1) or 12-46-107 (1) shall be received or acted upon:

(a) (I) If the application for a license described in section 12-47-309 (1) concerns a particular location that is the same as or within five hundred feet of a location for which, within the two years next preceding the date of the application, the state or a local licensing authority denied an application for the same class of license for the reason that the reasonable requirements of the neighborhood and the desires of the adult inhabitants were satisfied by the existing outlets.

(II) Subparagraph (I) of this paragraph (a) shall not apply to cities in which limited gaming is permitted pursuant to section 9 of article XVIII of the state constitution.

(III) No licensing authority shall consider an application for any license to sell fermented malt beverages at retail pursuant to section 12-46-107 (1) if, within one year before the date of the application, the state or a local licensing authority has denied an application at the same location for the reason that the reasonable requirements of the neighborhood or the desires of the inhabitants were satisfied by the existing outlets.

(b) Until it is established that the applicant is, or will be, entitled to possession of the premises for which application is made under a lease, rental agreement, or other arrangement for possession of the premises, or by virtue of ownership thereof;

(c) For a location in an area where the sale of alcohol beverages as contemplated is not permitted under the applicable zoning laws of the municipality, city and county, or county;

(d) (I) If the building in which the alcohol beverages are to be sold pursuant to a license described in section 12-47-309 (1) is located within five hundred feet of any public or parochial school or the principal campus of any college, university, or seminary; except that this provision shall not affect the renewal or reissuance of a license once granted or apply to licensed premises located or to be located on land owned by a municipality, or apply to an existing licensed premises on land owned by the state, or apply to a liquor license in effect and actively doing business before the principal campus was constructed, or apply to any club located within the principal campus of any college, university, or seminary that limits its membership to the faculty or staff of the institution.

(II) The distances referred to in subparagraph (I) of this paragraph (d) are to be computed by direct measurement from the nearest property line of the land used for school purposes to the nearest portion of the building in which liquor is to be sold, using a route of direct pedestrian access.

(III) The local licensing authority of any city and county, by rule or regulation, the governing body of any other municipality, by ordinance, and the governing body of any other county, by resolution, may eliminate or reduce the distance restrictions imposed by this paragraph (d) for any class of license, or may eliminate one or more types of schools

or campuses from the application of any distance restriction established by or pursuant to this paragraph (d).

(IV) In addition to the requirements of section 12-47-312 (2), the local licensing authority shall consider the evidence and make a specific finding of fact as to whether the building in which the liquor is to be sold is located within any distance restrictions established by or pursuant to this section. This finding shall be subject to judicial review pursuant to section 12-47-802.

(2) An application for the issuance of a tavern or retail liquor store license may be denied under this article if the local licensing authority or the state on state-owned property determines, pursuant to section 12-47-301 (2) (b), that the issuance of such license would result in or add to an undue concentration of the same class of license and, as a result, require the use of additional law enforcement resources.

Source: **L. 97:** (2) added, p. 328, § 2, effective April 16; entire article amended with relocations, p. 253, § 3, effective July 1. **L. 2011:** (1)(a)(I), (1)(a)(III), and (1)(d)(I) amended, (SB 11-060), ch. 171, p. 607, § 23, effective May 13.

Editor's note: (1) This section is similar to former § 12-47-138, and subsection (1)(a)(III) is similar to former § 12-46-106 (11), as they existed prior to 1997.

(2) Section 12-47-138 (2), created by House Bill 97-1222, was renumbered to § 12-47-313 (2) and harmonized with amendments made by House Bill 97-1076.

ANNOTATION

Annotator's note. Section 12-47-313 is similar to §§ 12-46-106 and 12-47-138 as they existed prior to the 1997 amendment of title 12, articles 46 and 47, which resulted in the relocation of provisions. Relevant cases construing § 12-47-138 have been included in the annotations to this section. Relevant cases construing § 12-46-106 have been included under § 12-47-301.

Previous denial based upon location prohibits application for transfer of license. The holder of a liquor license cannot apply for a transfer of his license to a facility where, during the preceding two years, a license has been denied for the reason that the reasonable requirements of the neighborhood and the desires of the inhabitants were being satisfied by existing outlets. *Sixth Ave. Liquors, Inc. v. Kalbin*, 44 Colo. App. 232, 615 P.2d 56 (1980).

Condition placed upon use review is impermissible attempt to regulate the hours in which alcohol beverages may be sold. The condition placed upon business does not amount to an exercise in zoning because it applies to a particular business only. *Berger v. City of Boulder*, 195 P.3d 1138 (Colo. App. 2008).

Land owned by the school board and used for the purpose of carrying out the physical education and athletic programs of the school is "land used for school purposes" for the purposes of this section. *La Loma, Inc. v. City & County of Denver*, 40 Colo. App. 55, 572 P.2d 1219 (1977).

The university of Colorado medical school is not a principal campus of the university of Colorado for the purposes of subsection (1)(d).

Londer v. Friednash, 38 Colo. App. 350, 560 P.2d 102 (1976).

The university of Colorado at Denver was established as a principal campus in the Denver area. However, the medical school, presently located elsewhere within Denver, was not and has not been declared to be a separate state institution with a constitutionally established principal campus, and its location remains entrusted to the discretion of the regents. *Londer v. Friednash*, 38 Colo. App. 350, 560 P.2d 102 (1976).

The John F. Kennedy child development center is not a public school for the purposes of subsection (1)(d). *Londer v. Friednash*, 38 Colo. App. 350, 560 P.2d 102 (1976).

There was no evidence in the record that the John F. Kennedy child development center, which is associated with the medical school of the university of Colorado and is not subject to open enrollment by the public, is a public school other than the fact of its voluntary participation in a cooperative preschool program. *Londer v. Friednash*, 38 Colo. App. 350, 560 P.2d 102 (1976).

Meaning of subsection (1)(d)(III). In view of the general rule of statutory construction that relative and qualifying words and phrases, where no contrary intention appears, will be construed to refer solely to the last antecedent with which they are closely connected, the last clause of subsection (1)(d)(III) modifies only "to the nearest portion of the building in which liquor is to be sold", and consequently, measurement should proceed from the point nearest a proposed liquor store on the property line of a

school by direct pedestrian route rather than the nearest gateway. *Moschetti v. Liquor Licensing Auth.*, 176 Colo. 281, 490 P.2d 299 (1971).

The measurement between the school and the restaurant of the liquor license applicant begins at the point on the school property line that is nearest to the restaurant for a pedestrian, even though another point on the property line may be closer to the restaurant as the crow flies.

Mariscos Las Islitas, Inc. v. Gonzales, 122 P.3d 1082 (Colo. App. 2005).

A measurement following a path of “pedestrian access” which is artificially circuitous is not valid. *Moschetti v. Liquor Licensing Auth.*, 176 Colo. 281, 490 P.2d 299 (1971).

Applied in *In re Title Pertaining to Sale of Table Wine in Grocery Stores*, 646 P.2d 916 (Colo. 1982).

PART 4

CLASSES OF LICENSES AND PERMITS

12-47-401. Classes of licenses. (1) For the purpose of regulating the manufacture, sale, and distribution of alcohol beverages, the state licensing authority in its discretion, upon application in the prescribed form made to it, may issue and grant to the applicant a license from any of the following classes, subject to the provisions and restrictions provided by this article:

- (a) Manufacturer’s license;
- (b) Limited winery license;
- (c) Nonresident manufacturer’s license;
- (d) Importer’s license;
- (e) Malt liquor importer’s license;
- (f) Wholesaler’s liquor license;
- (g) Wholesaler’s beer license;
- (h) Retail liquor store license;
- (i) Liquor-licensed drugstore license;
- (j) Beer and wine license;
- (k) Hotel and restaurant license;
- (l) Tavern license;
- (m) Brew pub license;
- (n) Club license;
- (o) Arts license;
- (p) Racetrack license;
- (q) Public transportation system license;
- (r) Optional premises license;
- (s) Retail gaming tavern license;
- (t) Vintner’s restaurant license.

Source: L. 97: Entire article amended with relocations, p. 255, § 3, effective July 1. **L. 2004:** (1)(t) added, p. 739, § 3, effective August 4. **L. 2011:** IP(1) amended, (SB 11-060), ch. 171, p. 608, § 24, effective May 13.

Editor’s note: This section is similar to former § 12-47-112 as it existed prior to 1997.

ANNOTATION

Annotator’s note. The following annotations include cases decided under this section as it existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions.

Separate classification for “hotel and restaurant” and “beer and wine” licenses. A license permitting hotels and restaurants to sell spirituous liquors in addition to beer and wine to their patrons is an entirely separate class of

permit from a “beer and wine” license. *Huerta v. Canjar*, 37 Colo. App. 462, 550 P.2d 897 (1976), rev’d on other grounds, 193 Colo. 388, 566 P.2d 1071 (1977).

The need for separate classification is obvious in that an exclusively beer and wine license in a restaurant situation will serve a different clientele than that of a license which also provides for the service of spirituous liquors. *Huerta v. Canjar*, 37 Colo. App. 462, 550 P.2d 897 (1976),

rev'd on other grounds, 193 Colo. 388, 566 P.2d 1071 (1977).

Provision for the separate classifications of hotel and restaurant license and beer and wine license was not an arbitrary or unreasonable act on the part of the general assembly. *Huerta v. Canjar*, 37 Colo. App. 462, 550 P.2d 897 (1976), rev'd on other grounds, 193 Colo. 388, 566 P.2d 1071 (1977).

The fact that a particular type of license is not authorized in the neighborhood does not require the issuance of such a license, if, in fact, the needs of the neighborhood, with respect to the type of beverage authorized to be sold by the license requested, are being met by existing licenses. *Huerta v. Canjar*, 193 Colo. 388, 566 P.2d 1071 (1977).

Ordinance taxing different classes of liquor licenses imposed under city's taxing power. City ordinance, which levied varying occupa-

tion taxes upon holders of different classes of liquor licenses, but which taxed all licensees holding the same type of license the identical amount each year, was a revenue-raising measure imposed under the city's taxing power, and not a regulatory measure imposed under the state's police power. *Springston v. City of Fort Collins*, 184 Colo. 126, 518 P.2d 939 (1974).

Not discriminatory. City ordinance, which levied varying occupational taxes upon holders of different classes of liquor licenses, but which taxed all licensees holding the same type of license the identical amount each year, was not discriminatory. *Springston v. City of Fort Collins*, 184 Colo. 126, 518 P.2d 939 (1974).

Applied in *Dept. of Rev. v. Rosenthal*, 197 Colo. 506, 594 P.2d 580 (1979).

12-47-402. Manufacturer's license. (1) A manufacturer's license shall be issued by the state licensing authority to persons distilling, rectifying, or brewing within this state for the following purposes only:

(a) To produce, manufacture, or rectify malt, vinous, or spirituous liquors;

(b) To sell malt or vinous liquors of their own manufacture within this state. Brewers or winers licensed under this section may solicit business directly from licensed retail persons or consumers by procuring a wholesaler's license as provided in this article; except that any malt liquor sold at wholesale by a brewer that has procured a wholesaler's license shall be unloaded and placed in the physical possession of a licensed wholesaler at the wholesaler's licensed premises in this state and inventoried for purposes of tax collection prior to delivery to a retailer or consumer. Wholesalers of malt liquors receiving products to be held as required by this paragraph (b) shall be liable for the payment of any tax due on such products under section 12-47-503 (1) (a).

(c) To sell vinous or spirituous liquors of their own manufacture within the state to persons licensed by this article without procuring a wholesaler's license;

(d) To sell malt, vinous, or spirituous liquors in other states, the laws of which permit the sale of alcohol beverages;

(e) To sell for export to foreign countries if such export for beverage or medicinal purposes is permitted by the laws of the United States; but Colorado distillers, rectifiers, winers, and brewers licensed under this section may sell their products distilled, rectified, or brewed in this state directly to licensed retail licensees by procuring a wholesaler's license.

(2) Any winery that has received a license pursuant to this section is authorized to conduct tasting and sell vinous liquors of its own manufacture, as well as other vinous liquors manufactured by other Colorado wineries licensed pursuant to this section or section 12-47-403, on the licensed premises of the winery and at one other licensed sales room location at no additional cost, whether included in the license at the time of the original license issuance or by supplemental application.

(2.5) (a) Any winery that has received a license pursuant to this section shall be authorized to manufacture vinous liquors upon an alternating proprietor licensed premises, as approved by the state licensing authority, but retail sales of vinous liquors shall not be conducted from an area licensed or defined as an alternating proprietor licensed premises.

(b) Any brewery that has received a license pursuant to this section shall be authorized to manufacture malt liquors upon an alternating proprietor licensed premises, as approved by the state licensing authority, but retail sales of malt liquors shall not be conducted from an area licensed or defined as an alternating proprietor licensed premises.

(c) Any winery or brewery that holds a wholesaler's license pursuant to section 12-46-104 (1) (b) or 12-47-406 may engage in the wholesale sale of alcohol beverages that

the licensee manufactured at an alternating proprietor licensed premises from both its licensed premises and the alternating proprietor licensed premises where the alcohol beverages were manufactured.

(3) Any winery that has received a license pursuant to this section is authorized to serve and sell food, general merchandise, and nonalcohol beverages for consumption on the premises of any licensed premises or to be taken by the consumer.

(3.5) A winery that has received a license pursuant to this section may ship wine directly to personal consumers if such winery also has received a winery direct shipper's permit under section 12-47-104.

(4) (a) It is unlawful for a manufacturer licensed under this article or any person, partnership, association, organization, or corporation interested financially in or with a licensed manufacturer to be interested financially, directly or indirectly, in the business of any person licensed to sell at retail pursuant to this article.

(b) It is unlawful for any licensed manufacturer of vinous or spirituous liquors or any person, partnership, association, organization, or corporation interested financially in or with such a licensed manufacturer to be interested financially, directly or indirectly, in the business of any vinous or spirituous wholesale licensee; except that any such financial interest that occurred on or before July 1, 1969, shall be lawful.

(5) Each applicant for a license as a brewer shall enter into a written contract with each wholesaler with which the applicant intends to do business that designates the territory within which the product of such applicant is sold by the respective wholesaler. The contract shall be submitted to the state licensing authority with an application, and such applicant, if licensed, shall have a continuing duty to submit any subsequent revisions, amendments, or superseding contracts to the state licensing authority.

(6) (a) Any manufacturer of spirituous liquors that has received a license pursuant to this section is authorized to conduct tastings and sell to customers spirituous liquors of its own manufacture on its licensed premises and at one other licensed sales room location at no additional cost. Such additional sales room location may be included in the license at the time of the original license issuance or by supplemental application.

(b) Any manufacturer of spirituous liquors that has received a license pursuant to this section is authorized to serve and sell food, general merchandise, and nonalcohol beverages for consumption on the premises or to be taken off the premises by the consumer.

(c) Prior to operating an additional sales room location, a manufacturer of spirituous liquors that has received a license pursuant to this section shall send a copy of the application or supplemental application for an additional sales room to the local licensing authority in the jurisdiction in which such sales room is proposed. The local licensing authority may request that the proposed sales room location license be denied by the state licensing authority if the local licensing authority determines that issuance of the proposed sales room license would be in conflict with the reasonable requirements of the neighborhood and the desires of the adult inhabitants as evidenced by petitions, remonstrances, or otherwise.

(d) The state licensing agency shall not grant a license for an additional sales room unless the applicant has complied with local zoning restrictions and the provisions of section 12-47-301 (2) (a).

Source: L. 97: Entire article amended with relocations, p. 256, § 3, effective July 1. L. 2001: (6) added, p. 328, § 1, effective April 12. L. 2006: (3.5) added, p. 435, § 3, effective July 1. L. 2008: (2.5) added, p. 2165, § 4, effective August 5. L. 2009: (2.5) amended, (SB 09-254), ch. 272, p. 1231, § 5, effective May 18.

Editor's note: This section is similar to former § 12-47-113 as it existed prior to 1997.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it

existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of

provisions.

A liquor license cannot be obtained except upon payment of fixed fees. A. D. Jones & Co. v. Parsons, 136 Colo. 434, 319 P.2d 480 (1957).

License fees are required to be paid annually. A. D. Jones & Co. v. Parsons, 136 Colo. 434, 319 P.2d 480 (1957).

12-47-403. Limited winery license. (1) A Colorado limited winery license shall be granted by the state licensing authority to an applicant that certifies that it will manufacture not more than one hundred thousand gallons, or the metric equivalent thereof, of vinous liquors within Colorado. Each limited winery licensee shall annually certify to the state licensing authority its compliance with this subsection (1) and shall be subject to revocation of its license for false certification.

(2) A limited winery licensee is authorized:

(a) (I) To manufacture vinous liquors upon its licensed premises and, in order to enhance the growth and viability of the Colorado wine industry, upon alternating proprietor licensed premises, as approved by the state licensing authority.

(II) Repealed.

(b) To sell vinous liquors of its own manufacture within this state at wholesale, at retail, or to personal consumers, including, if the limited winery also has received a winery direct shipper's permit under section 12-47-104, sales to be delivered by common carrier to personal consumers;

(c) To sell vinous liquors of its own manufacture in other states, the laws of which permit the sale of such wines and liquors;

(d) To sell vinous liquors of its own manufacture for export to foreign countries if such export is permitted by the laws of the United States;

(e) To conduct tastings and sell vinous liquors of its own manufacture, as well as vinous liquors manufactured by other Colorado wineries, on the licensed premises of the limited winery and up to five other licensed premises, whether included in the license at the time of the original license or by supplemental application; except that no retail sales shall be conducted from an area licensed or defined as an alternating proprietor licensed premises.

(f) To serve and sell food, general merchandise, and nonalcohol beverages for consumption on the premises of any licensed premises or to be taken by the consumer.

(2.3) In order to encourage and maintain the integrity and authenticity of Colorado's viticultural identity, support the wine-grape and fruit growing industries in Colorado, and inform the consumer of the source of grapes and fruit used by Colorado limited wineries to produce vinous liquors, the liquor enforcement division shall, after consultation with the Colorado wine industry and other interested parties from the alcohol beverage industry, within one year after June 1, 2005, enact rules for the implementation, standardization, and enforcement of appellation labeling requirements that are consistent with, and, with respect to the origin of the grapes and other fruit used to manufacture the vinous liquor, more informative than currently required by federal wine labeling regulations, 27 CFR, chapter 1, part 4, "labeling and advertising of wine" and related regulations. Colorado's labeling regulations shall apply to a manufacturer licensed pursuant to section 12-47-402 or a Colorado limited winery licensed under this section in the manufacture of the vinous liquor contained in the labeled bottle. Honey wine, including honey wine flavored with fruit, herbs, or spices, shall be exempt from the labeling requirements included in this section.

(2.7) (a) A winery may affix the phrase "Colorado Grown" to bottles of wine described in section 12-47-103 (6.5).

(b) Effective July 1, 2006, it shall be unlawful for a Colorado winery to make any misleading statement on its product label regarding the origin of grapes, fruit, or other agricultural products used to make vinous liquor. This paragraph (b) shall not be construed to apply to the winery's name or address or to an appellation allowed under federal regulations.

(3) A person who has a financial interest in a limited winery license and relinquishes such license to apply for another license under this article shall be prohibited from obtaining a limited winery license for three years from the date of issuance of such other license.

(4) (a) It is unlawful for any limited winery licensee or any person, partnership, association, organization, or corporation interested financially in or with a limited winery

licensee to be interested financially, directly or indirectly, in the business of any person licensed to sell at retail pursuant to this article.

(b) It is unlawful for any limited winery licensee or any person, partnership, association, organization, or corporation interested financially in or with a limited winery licensee to be interested financially, directly or indirectly, in the business of any vinous or spirituous wholesale licensee.

Source: **L. 97:** Entire article amended with relocations, p. 257, § 3, effective July 1. **L. 2005:** (1), (2)(a), and (2)(e) amended and (2.3) and (2.7) added, p. 683, § 2, effective June 1. **L. 2006:** (2)(b) amended, p. 435, § 4, effective July 1. **L. 2008:** (2)(a) and (2)(e) amended, p. 2165, § 5, effective August 5. **L. 2009:** (2)(a)(II) repealed, (SB 09-254), ch. 272, p. 1231, § 6, effective May 18.

Editor's note: This section is similar to former § 12-47-113.1 as it existed prior to 1997.

12-47-403.5. Wine festival permit. (1) A wine festival permit application may be filed with the state licensing authority by any limited winery licensee or by any manufacturer licensee that is licensed to manufacture vinous liquors. The applicant shall specify the licensed premises for the first of the wine festivals to be held, which application shall be filed at least ten business days before such festival is to be held. The applicant shall include a twenty-five dollar annual processing fee with the application filed with the state licensing authority. Such fee shall entitle the permittee to use the wine festival permit for twelve months after the date of issuance, so long as such permittee notifies the state licensing authority and the appropriate local licensing authority of the location of all other wine festivals under this permit at least ten business days before any such festival is to be held. A wine festival permit shall entitle the permittee to hold no more than nine wine festivals during the twelve-month period.

(2) The applicant shall be the licensee filing the application, but any wine festival permit that is issued as a result of such application shall be considered to be jointly held by the permittee and the participating limited winery licensees or manufacturer licensees that are licensed to manufacture vinous liquors.

(3) Notification of all subsequent festivals shall be by supplemental application, as approved by the state licensing authority.

(4) The state licensing authority may deny a wine festival permit or supplemental application for any of the following reasons:

(a) A documented history of violations of this article or rules issued under this article by any participating licensee;

(b) The filing of an incomplete or late application; or

(c) A finding that the application, if granted, would result in violations of this article or rules issued under this article or violations of the laws of a local government.

(5) After the issuance of an initial wine festival permit, all supplemental applications that are complete and filed in a timely manner shall be deemed approved unless the state licensing authority provides the permittee with a notice of denial at least seventy-two hours prior to the date of the event.

(6) The permittee and participating licensees are authorized to use the licensed premises jointly to conduct wine tastings and sell any vinous liquors manufactured by a Colorado limited winery or manufacturer licensed to manufacture vinous liquors. No wine festival permit shall authorize the permittee to use the licensed premises for more than seventy-two hours for any one wine festival.

(7) If a violation of this article occurs during a wine festival and the licensee responsible for the violation can be identified, such licensee may be charged and the appropriate penalties shall apply. If the responsible party cannot be identified, the state licensing authority may send a written notice to every licensee identified on the permit application and may fine each the same dollar amount, which amount shall not exceed twenty-five dollars per licensee or two hundred dollars in the aggregate. No joint fine levied pursuant to this subsection (7) shall apply to the revocation of the licensee's license under section 12-47-601.

(8) A joint fine levied pursuant to subsection (7) of this section shall not create or increase civil liability under section 12-47-801 (3) for a participating licensee or create joint liability for such a licensee.

Source: L. 99: Entire section added, p. 364, § 2, effective April 19. L. 2005: (1), (2), (6), (7), and (8) amended, p. 685, § 3, effective June 1.

12-47-404. Importer's license. (1) (a) An importer's license shall be issued to persons importing vinous or spirituous liquors into this state for the following purposes only:

- (I) To import and sell such liquors to wholesale liquor licensees;
- (II) To solicit orders from retail licensees and fill such orders through wholesale liquor licensees.

(b) Such license shall not permit the licensee to maintain stocks of alcohol beverages in this state.

(2) It is unlawful for any licensed importer of vinous or spirituous liquors or any person, partnership, association, organization, or corporation interested financially in or with such a licensed importer to be interested financially, directly or indirectly, in the business of any vinous or spirituous wholesale licensee; except that any such financial interest that occurred on or before July 1, 1969, shall be lawful.

Source: L. 97: Entire article amended with relocations, p. 259, § 3, effective July 1.

Editor's note: This section is similar to former § 12-47-114 as it existed prior to 1997.

12-47-405. Nonresident manufacturers and importers of malt liquor. (1) A non-resident manufacturer's license shall be issued to persons brewing malt liquor outside the state of Colorado for the purposes listed in subsection (3) of this section.

(2) A malt liquor importer's license shall be issued to persons importing malt liquor into this state for the purposes listed in subsection (3) of this section.

(3) The licenses referred to in subsections (1) and (2) of this section shall be issued for the following purposes only:

(a) To import and sell malt liquors within the state of Colorado to persons licensed as wholesalers pursuant to this article;

(b) To maintain stocks of malt liquors and to operate malt liquor warehouses by procuring a malt liquor wholesaler's license for each such operation as provided in this article;

(c) To solicit orders from retail licensees and fill such orders through malt liquor wholesalers.

(4) Any person holding a nonresident manufacturer's license or a malt liquor importer's license shall also be eligible to obtain a vinous and spirituous liquor importer's license pursuant to section 12-47-404; except that each such license obtained shall be separate and distinct.

(5) Each manufacturer, nonresident manufacturer, and malt liquor importer shall enter into a written contract with each wholesaler with which such manufacturer, nonresident manufacturer, and malt liquor importer intends to do business that designates the territory within which the product of such manufacturer, nonresident manufacturer, and malt liquor importer is sold by the respective wholesaler. A manufacturer, nonresident manufacturer, and malt liquor importer shall not contract with more than one wholesaler to sell their products within the same territory. The contract shall be submitted to the state licensing authority with any application, and such applicant, if licensed, shall have a continuing duty to submit any subsequent revisions, amendments, or superseding contracts to the state licensing authority.

(6) It is unlawful for a nonresident manufacturer licensed under this article, or any person, partnership, association, organization, or corporation interested financially in or with such a licensee, to be interested financially, directly or indirectly, in the business of any person licensed to sell at retail pursuant to this article.

Source: L. 97: Entire article amended with relocations, p. 259, § 3, effective July 1.

Editor's note: This section is similar to former § 12-47-114.1 as it existed prior to 1997.

12-47-406. Wholesaler's license. (1) (a) A wholesaler's liquor license shall be issued to persons selling vinous or spirituous liquors at wholesale for the following purposes only:

(I) To maintain and operate one or more warehouses in this state to handle vinous or spirituous liquors;

(II) To take orders for vinous and spirituous liquors at any place and deliver vinous and spirituous liquors on orders previously taken to any place if the licensee has procured a wholesaler's liquor license and the place where orders are taken and delivered is a place regularly licensed pursuant to the provisions of this article;

(III) To package vinous and spirituous liquors that a licensed importer has legally transported into Colorado or that a licensed manufacturer has legally produced in Colorado.

(b) A wholesaler's beer license shall be issued to persons selling malt liquors at wholesale who designate to the state licensing authority on their application the territory within which the licensee may sell the designated products of any brewer as agreed upon by the licensee and the brewer of such products for the following purposes only:

(I) To maintain and operate warehouses and one salesroom in this state to handle malt liquors to be denominated a wholesale beer store;

(II) To take orders for malt liquors at any place within the territory designated on the license application and deliver malt liquors on orders previously taken to any place within the designated geographical territory, if the licensee has procured a wholesaler's beer license and the place where orders are taken and delivered is a place regularly licensed pursuant to the provisions of this article.

(c) Each license shall be separate and distinct, but any person may secure both licenses upon the payment in advance of both fees provided in this article.

(d) All malt, vinous, and spirituous liquors purchased by any licensee under this section, and all malt, vinous, and spirituous liquors shipped into this state by or to any such licensee, shall be placed in the physical possession of such licensee at the licensee's warehouse facilities prior to delivery to persons holding licenses under this article.

(e) (I) A brewer or importer licensed pursuant to this article shall not sell malt liquors to a wholesaler without having a written contract with such wholesaler that designates the specific products of such brewer or importer to be sold by the wholesaler and that establishes the territory within which the wholesaler may sell the designated products.

(II) A brewer or importer shall not contract with more than one wholesaler to sell the products of such brewer or importer within the same territory.

(2) It is unlawful for any licensed wholesaler or any person, partnership, association, organization, or corporation interested financially in or with a licensed wholesaler to be interested financially, directly or indirectly, in the business of any person licensed to sell at retail pursuant to this article.

(3) It is unlawful for a licensed wholesaler of vinous or spirituous liquors or any person, partnership, association, organization, or corporation interested financially in or with such a wholesaler to be interested financially in the business of any licensed manufacturer or importer of vinous or spirituous liquors; except that any such financial interest that occurred on or before July 1, 1969, shall be lawful.

Source: L. 97: Entire article amended with relocations, p. 260, § 3, effective July 1.

Editor's note: This section is similar to former § 12-47-115 as it existed prior to 1997.

ANNOTATION

Annotator's note. Since § 12-47-406 is similar to § 12-47-115 as it existed prior to the 1997 amendment of title 12, article 46, which

resulted in the relocation of provisions, relevant cases construing that provision have been included in the annotations to this section.

The purchase of beer at retail stores for resale outside Colorado does not require a beer wholesaler's license, since that activity is not covered by this section. *People v. Kagan*, 195 Colo. 76, 575 P.2d 416 (1978).

Section as basis for defense to antitrust action. See *Adolph Coors Co. v. A & S Whsles.*,

Inc., 561 F.2d 807 (10th Cir. 1977) (decided under § 12-47-108 as it existed prior to the 1976 repeal and reenactment of this article).

Applied in *Nobel, Inc. v. Colo. Dept. of Rev.*, 652 P.2d 1084 (Colo. App. 1982).

12-47-406.3. Termination of wholesalers - remedies - definitions. (1) (a) Except as provided in subsections (2) to (4) of this section, no supplier shall terminate an agreement with a wholesaler unless all of the following occur:

(I) The wholesaler fails to comply with a provision of a written agreement between the wholesaler and the supplier;

(II) The wholesaler receives written notification by certified mail, return receipt requested, from the supplier of the alleged noncompliance and is afforded no less than sixty days in which to cure such noncompliance;

(III) The wholesaler fails to cure such noncompliance within the allotted sixty-day cure period; and

(IV) The supplier provides written notice by certified mail, return receipt requested, to the wholesaler of such continued failure to comply with the agreement. The notification shall contain a statement of the intention of the supplier to terminate or not renew the agreement, the reasons for termination or nonrenewal, and the date the termination or nonrenewal shall take effect.

(b) If a wholesaler cures an alleged noncompliance within the cure period provided in subparagraph (II) of paragraph (a) of this subsection (1), any notice of termination from a supplier to a wholesaler shall be null and void.

(2) A supplier may immediately terminate an agreement with a wholesaler, effective upon furnishing written notification to the wholesaler by certified mail, return receipt requested, for any of the following reasons:

(a) The wholesaler's failure to pay any account when due and upon written demand by the supplier for such payment, in accordance with agreed payment terms;

(b) The assignment or attempted assignment by the wholesaler for the benefit of creditors, the institution of proceedings in bankruptcy by or against the wholesaler, the dissolution or liquidation of the wholesaler, or the insolvency of the wholesaler;

(c) The revocation or suspension of, or the failure to renew for a period of more than fourteen days, a state, local, or federal license or permit to sell products in this state;

(d) Failure of an owner of a wholesaler to sell his or her ownership interest in the distribution rights to the supplier's products within one hundred twenty days after such owner of a wholesaler has been convicted of a felony that, in the supplier's sole judgment, adversely affects the goodwill of the wholesaler or supplier;

(e) A wholesaler has been convicted of, found guilty of, or pled guilty or nolo contendere to, a charge of violating a law or regulation of the United States or of this state if it materially and adversely affects the ability of the wholesaler or supplier to continue to sell its products in this state;

(f) Any attempted transfer of ownership of the wholesaler, stock of the wholesaler, or stock of any parent corporation of the wholesaler, or any change in the beneficial ownership or control of any entity, without obtaining the prior written approval of the supplier, except as may otherwise be permitted pursuant to a written agreement between the parties;

(g) Fraudulent conduct in the wholesaler's dealings with the supplier or its products, including the intentional sale of products outside the supplier's established quality standards;

(h) The wholesaler ceases to conduct business for five consecutive business days, unless such cessation is the result of an act of God, war, or a condition of national, state, or local emergency; or

(i) Any sale of products, directly or indirectly, to customers located outside the territory assigned to the wholesaler by the supplier. This paragraph (i) shall not prohibit wholesalers

from making sales to licensed retailers who buy off the wholesaler's dock, so long as the retailer's licensed location is within the wholesaler's assigned territory.

(3) The supplier shall have the right to terminate an agreement with a wholesaler at any time by giving the wholesaler at least ninety days' written notice by certified mail, return receipt requested, with copies by first-class mail to all other wholesalers in all other states who have entered into the same distribution agreement with the supplier.

(4) If a particular brand of products is transferred by purchase or otherwise from a supplier to a successor supplier, the following shall occur:

(a) The successor supplier shall notify the existing wholesaler of the successor supplier's intent not to appoint the existing wholesaler for all or part of the existing wholesaler's territory for the product. The successor supplier shall mail the notice of termination by certified mail, return receipt requested, to the existing wholesaler. The successor supplier shall include in the notice the names, addresses, and telephone numbers of the successor wholesalers.

(b) (I) The successor wholesaler shall negotiate with the existing wholesaler to determine the fair market value of the existing wholesaler's right to distribute the product in the existing wholesaler's territory immediately before the successor supplier acquired rights to the particular brand of products. The successor wholesaler and the existing wholesaler shall negotiate the fair market value in good faith.

(II) The existing wholesaler shall continue to distribute the product until payment of the compensation agreed to under subparagraph (I) of this paragraph (b), or awarded under paragraph (c) of this subsection (4), is received.

(c) (I) If the successor wholesaler and the existing wholesaler fail to reach a written agreement on the fair market value within thirty days after the existing wholesaler receives the notice required pursuant to paragraph (a) of this subsection (4), the successor wholesaler or the existing wholesaler shall send a written notice to the other party requesting arbitration pursuant to the uniform arbitration act, part 2 of article 22 of title 13, C.R.S. Arbitration shall be held for the purpose of determining the fair market value of the existing wholesaler's right to distribute the product in the existing wholesaler's territory immediately before the successor supplier acquired rights to the particular brand of products.

(II) Notice of intent to arbitrate shall be sent, as provided in subparagraph (I) of this paragraph (c), not later than thirty-five days after the existing wholesaler receives the notice required pursuant to paragraph (a) of this subsection (4). The arbitration proceeding shall conclude not later than forty-five days after the date the notice of intent to arbitrate is mailed to a party.

(III) Any arbitration held pursuant to this subsection (4) shall be conducted in a city within this state that:

(A) Is closest to the existing wholesaler; and

(B) Has a population of more than twenty thousand.

(IV) Any arbitration held pursuant to this paragraph (c) shall be conducted before one impartial arbitrator to be selected by the American arbitration association or its successor. The arbitration shall be conducted in accordance with the rules and procedures of the uniform arbitration act, part 2 of article 22 of title 13, C.R.S.

(V) An arbitrator's award in any arbitration held pursuant to this paragraph (c) shall be monetary only and shall not enjoin or compel conduct. Any arbitration held pursuant to this paragraph (c) shall be in lieu of all other remedies and procedures.

(VI) The cost of the arbitrator and any other direct costs of an arbitration held pursuant to this paragraph (c) shall be equally divided by the parties engaged in the arbitration. All other costs shall be paid by the party incurring them.

(VII) The arbitrator in any arbitration held pursuant to this paragraph (c) shall render a written decision not later than thirty days after the conclusion of the arbitration, unless this time is extended by mutual agreement of the parties and the arbitrator. The decision of the arbitrator is final and binding on the parties. The arbitrator's award may be enforced by commencing a civil action in any court of competent jurisdiction. Under no circumstances may the parties appeal the decision of the arbitrator.

(VIII) An existing wholesaler or successor wholesaler who fails to participate in the arbitration hearings in any arbitration held pursuant to this paragraph (c) waives all rights

the existing wholesaler or successor wholesaler would have had in the arbitration and is considered to have consented to the determination of the arbitrator.

(IX) If the existing wholesaler does not receive payment from the successor wholesaler of the settlement or arbitration award required under paragraph (b) or (c) of this subsection (4) within thirty days after the date of the settlement or arbitration award:

(A) The existing wholesaler shall remain the wholesaler of the product in the existing wholesaler's territory to at least the same extent that the existing wholesaler distributed the product immediately before the successor wholesaler acquired rights to the product; and

(B) The existing wholesaler is not entitled to the settlement or arbitration award.

(5) (a) Any wholesaler or supplier who is aggrieved by a violation of any provision of subsections (1) and (3) of this section shall be entitled to recovery of damages caused by the violation. Except for a dispute arising under subsection (4) of this section, damages shall be sought in a civil action in any court of competent jurisdiction.

(b) Any dispute arising under subsections (1) and (3) of this section may also be settled by such dispute resolution procedures as may be provided by a written agreement between the parties.

(6) Nothing in this section shall be construed to limit or prohibit good-faith settlements voluntarily entered into by the parties.

(7) Nothing in this section shall be construed to give an existing wholesaler or a successor wholesaler any right to compensation if an agreement with the existing wholesaler or successor wholesaler is terminated by a successor supplier pursuant to subsections (1) to (3) of this section.

(8) Nothing in this section shall apply to a manufacturer that produces less than three hundred thousand gallons of malt beverages per calendar year.

(9) As used in this section:

(a) "Existing wholesaler" means a wholesaler who distributes a particular brand of products at the time a successor supplier acquires rights to manufacture or import the particular brand of products.

(b) "Fair market value" means the value that would be determined in a transaction entered into without duress or threat of termination of the existing wholesaler's right and shall include all elements of value, including goodwill and going-concern value.

(c) "Products" means fermented malt beverages and malt liquors.

(d) "Successor supplier" means a primary source of supply, a brewer, or an importer that acquires rights to a product from a predecessor supplier.

(e) "Successor wholesaler" means one or more wholesalers designated by a successor supplier to replace the existing wholesaler, for all or part of the existing wholesaler's territory, in the distribution of the existing product or products.

(f) "Supplier" means any person, partnership, corporation, association, or other business enterprise that is engaged in the manufacturing or importing of products.

(g) "Wholesaler" means the holder of a Colorado wholesaler's beer license or wholesaler's license to sell fermented malt beverages.

Source: L. 2007: Entire section added, p. 212, § 1, effective March 26.

12-47-407. Retail liquor store license. (1) A retail liquor store license shall be issued to persons selling only malt, vinous, and spirituous liquors in sealed containers not to be consumed at the place where sold. Malt, vinous, and spirituous liquors in sealed containers shall not be sold at retail other than in retail liquor stores except as provided in section 12-47-408. In addition, retail liquor stores may sell nonfood items related to the consumption of such liquors, liquor-filled candy, and food items approved by the state licensing authority that are prepackaged, labeled, directly related to the consumption of such liquors, and sold solely for the purpose of cocktail garnish in containers up to sixteen ounces. Nothing in this section shall be construed to authorize the sale of food items that could constitute a snack, a meal, or a portion of a meal. Nothing in this section or in section 12-47-103 (31) shall be construed to prohibit the sale of items by a retail liquor store on behalf of or to benefit a charitable organization, as defined in section 39-26-102, C.R.S., or a nonprofit corporation subject to the "Colorado Revised Nonprofit Corporation Act",

articles 121 to 137 of title 7, C.R.S., and determined to be exempt from federal income tax by the federal internal revenue service, if the retail liquor store does not receive compensation for any such sale. Nothing in this section shall prohibit a retail liquor store licensee, at the option of the licensee, from displaying promotional material furnished by a manufacturer or wholesaler, which material permits a customer to purchase other items from a third person if the retail liquor store licensee does not receive payment from the third person and if the ordering of the additional merchandise is done by the customer directly from the third person. Nothing in this subsection (1) shall prohibit a retail liquor store licensee from allowing tastings to be conducted on his or her licensed premises if an authorization for the tastings has been granted pursuant to section 12-47-301.

(2) Every person selling malt, vinous, and spirituous liquors in a retail liquor store shall purchase such malt, vinous, and spirituous liquors only from a wholesaler licensed pursuant to this article.

(3) A person licensed to sell at retail who complies with this subsection (3) and rules promulgated pursuant thereto may deliver malt, vinous, and spirituous liquors to a person of legal age if such person is at a place that is not licensed pursuant to this section. The state licensing authority shall promulgate rules as are necessary for the proper delivery of malt, vinous, and spirituous liquors and shall have the authority to issue a permit to any person who is licensed to sell at retail and delivers such liquors pursuant to this subsection (3). Such permits shall be subject to the same suspension and revocation provisions as are set forth in section 12-47-601 for other licenses granted pursuant to this article.

(4) It is unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in a retail liquor store to conduct, own either in whole or in part, or be directly or indirectly interested in any other business licensed pursuant to this article; except that such a person may have an interest in an arts license or an airline public transportation system license granted under this article, or in a financial institution referred to in section 12-47-308 (4).

(5) A licensee under the provisions of section 12-47-408 with a valid license in effect on July 1, 2000, may apply to a local licensing authority to convert or transfer such license to a retail liquor store license issued under the provisions of this section and may continue to operate as a retail liquor store licensee notwithstanding the limitations with respect to location within five hundred feet from any public or parochial school or the principal campus of any college, university, or seminary pursuant to the provisions of section 12-47-313 (1) (d) (I). The local licensing authority may, but shall not be required to, consider the reasonable requirements of the neighborhood pursuant to section 12-47-312 in making a determination on the conversion or transfer to a retail liquor store license.

Source: L. 97: Entire article amended with relocations, p. 261, § 3, effective July 1; (1) amended, p. 762, § 30, effective July 1, 1998. L. 2000: (5) added, p. 140, § 1, effective March 16. L. 2003: (1) amended, p. 2016, § 118, effective May 22. L. 2004: (1) amended, p. 786, § 8, effective July 1.

Editor's note: (1) This section is similar to former § 12-47-116 as it existed prior to 1997.

(2) Amendments to subsection (1) by Senate Bill 97-091 and House Bill 97-1076 were harmonized effective July 1, 1998.

ANNOTATION

Law reviews. For article, "The Colorado Liquor Code: Distinct and Definite Requirements", see 17 Colo. Law. 841 (1988).

Annotator's note. The following annotations include cases decided under this section as it existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions.

The state has decided that the sale of liquor should be regulated rather than prohibited. Bd. of County Comm'rs v. Johnson, 170 Colo. 259, 460 P.2d 770 (1969).

In the regulatory scheme, limited discretion has been delegated to the board to determine the neighborhood requirements and the inhabitants' desires on the basis of competent

facts relevant to each application. Bd. of County Comm'rs v. Johnson, 170 Colo. 259, 460 P.2d 770 (1969).

Applied in In re Title Pertaining to Sale of Table Wine in Grocery Stores, 646 P.2d 916 (Colo. 1982).

12-47-408. Liquor-licensed drugstore license. (1) A liquor-licensed drugstore license shall be issued to persons selling malt, vinous, and spirituous liquors in sealed containers not to be consumed at the place where sold. Nothing in this subsection (1) shall prohibit a liquor-licensed drugstore licensee from allowing tastings to be conducted on his or her licensed premises if an authorization for the tastings has been granted pursuant to section 12-47-301.

(2) Every person selling malt, vinous, and spirituous liquors as provided in this section shall purchase such malt, vinous, and spirituous liquors only from a wholesaler licensed pursuant to this article.

(3) A liquor-licensed drugstore licensee who complies with this subsection (3) and rules promulgated pursuant thereto may deliver malt, vinous, and spirituous liquors to a person of legal age if such person is at a place that is not licensed pursuant to this section. The state licensing authority shall promulgate rules as are necessary for the proper delivery of malt, vinous, and spirituous liquors and shall have the authority to issue a permit to any liquor-licensed drugstore licensee that will allow such licensee to deliver such liquors pursuant to such rules and this subsection (3). Such permits shall be subject to the same suspension and revocation provisions as are set forth in sections 12-47-306 and 12-47-601 for other licenses granted pursuant to this article.

(4) It is unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in a liquor-licensed drugstore to conduct, own either in whole or in part, or be directly or indirectly interested in any other business licensed pursuant to this article; except that such a person may have an interest in an arts license or an airline public transportation system license granted under this article, or in a financial institution referred to in section 12-47-308 (4).

(5) A licensee under the provisions of this section with a valid license in effect on July 1, 2000, may apply to a local licensing authority to convert or transfer such license to a retail liquor store license issued under the provisions of section 12-47-407 and may continue to operate as a retail liquor store licensee notwithstanding the limitations with respect to location within five hundred feet from any public or parochial school or the principal campus of any college, university, or seminary pursuant to the provisions of section 12-47-313 (1) (d) (I). The local licensing authority may, but shall not be required to, consider the reasonable requirements of the neighborhood pursuant to section 12-47-312 in making a determination on the conversion or transfer to a retail liquor store license.

Source: L. 97: Entire article amended with relocations, p. 262, § 3, effective July 1. L. 2000: (5) added, p. 140, § 2, effective March 16. L. 2004: (1) amended, p. 786, § 9, effective July 1.

Editor's note: This section is similar to former § 12-47-117 as it existed prior to 1997.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions.

Applied in Van DeVeght v. Bd. of County Comm'rs, 98 Colo. 161, 55 P.2d 703 (1936); Geer v. Rabinoff, 138 Colo. 8, 328 P.2d 375 (1958); McIntosh v. Council of City of Littleton, 145 Colo. 533, 360 P.2d 136 (1961).

12-47-409. Beer and wine license. (1) A beer and wine license shall be issued to persons selling malt and vinous liquors and fermented malt beverages for consumption on the premises. Beer and wine licensees shall have sandwiches and light snacks available for consumption on the premises during business hours, but need not have meals available for consumption.

(2) (a) Every person selling malt and vinous liquors and fermented malt beverages as provided in this section shall purchase malt and vinous liquors and fermented malt beverages only from a wholesaler licensed pursuant to this article or article 46 of this title; except that, during a calendar year, any person selling malt and vinous liquors and fermented malt beverages as provided in this section may purchase not more than two thousand dollars' worth of:

(I) Malt and vinous liquors from a retailer licensed pursuant to section 12-47-407 or 12-47-408; and

(II) Fermented malt beverages from a retailer licensed pursuant to section 12-46-104 (1) (c).

(b) A beer and wine licensee shall retain evidence of each purchase of malt and vinous liquors from a retailer licensed pursuant to section 12-47-407 or 12-47-408 and each purchase of fermented malt beverages from a retailer licensed pursuant to section 12-46-104 (1) (c), in the form of a purchase receipt showing the name of the licensed retailer, the date of purchase, a description of the malt or vinous liquor or fermented malt beverages purchased, and the price paid for the purchase. The beer and wine licensee shall retain the receipt and shall make it available to the state and local licensing authorities at all times during business hours.

(3) It is unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in a beer and wine license to conduct, own either in whole or in part, or be directly or indirectly interested in any other business licensed pursuant to this article or article 46 of this title; except that such a person may have an interest in a license described in section 12-46-104 (1) (c), 12-47-401 (1) (j) to (1) (t), or 12-47-410 (1) or in a financial institution referred to in section 12-47-308 (4).

Source: L. 97: Entire article amended with relocations, p. 263, § 3, effective July 1. L. 2005: (3) amended, p. 408, § 1, effective August 8. L. 2011: Entire section amended, (SB 11-060), ch. 171, p. 592, § 1, effective May 13. L. 2012: IP(2)(a) amended, (HB 12-1270), ch. 235, p. 1035, § 1, effective August 8.

Editor's note: This section is similar to former § 12-47-118 as it existed prior to 1997.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions.

Separate classification for "hotel and restaurant" and "beer and wine" licenses. A license permitting hotels and restaurants to sell spirituous liquors in addition to beer and wine to their patrons is an entirely separate class of permit from a "beer and wine" license. *Huerta v. Canjar*, 37 Colo. App. 462, 550 P.2d 897 (1976), rev'd on other grounds, 193 Colo. 388, 566 P.2d 1071 (1977).

The need for separate classification is obvious in that an exclusively beer and wine license in a restaurant situation will serve a different clientele than that of a license which also provides for the service of spirituous liquors. *Huerta v.*

Canjar, 37 Colo. App. 462, 550 P.2d 897 (1976), rev'd on other grounds, 193 Colo. 388, 566 P.2d 1071 (1977).

Provision for the separate classifications of hotel and restaurant license and beer and wine license was not an arbitrary or unreasonable act on the part of the general assembly. *Huerta v. Canjar*, 37 Colo. App. 462, 550 P.2d 897 (1976), rev'd on other grounds, 193 Colo. 388, 566 P.2d 1071 (1977).

The fact that a particular type of license is not authorized in the neighborhood does not require the issuance of such a license, if, in fact, the needs of the neighborhood, with respect to the type of beverage authorized to be sold by the license requested, are being met by existing licenses. *Huerta v. Canjar*, 193 Colo. 388, 566 P.2d 1071 (1977).

12-47-410. Bed and breakfast permit. (1) In lieu of a hotel and restaurant license, a person operating a bed and breakfast with not more than twenty sleeping rooms that offers complimentary alcohol beverages for consumption only on the premises and only by overnight guests may be issued a bed and breakfast permit. A bed and breakfast permittee shall not sell alcohol beverages by the drink and shall not serve alcohol beverages for more

than four hours in any one day.

(2) An applicant for a bed and breakfast permit is exempt from any fee otherwise assessable under section 12-47-501 (2) or 12-47-505 (4) (a), but is subject to all other fees and all other requirements of this article.

(3) A local licensing authority may, at its option, determine that bed and breakfast permits are not available within its jurisdiction.

(4) A bed and breakfast permit may be suspended or revoked in accordance with section 12-47-601 if the permittee violates any provision of this article or any rule adopted pursuant to this article or fails truthfully to furnish any required information in connection with a permit application.

(5) It is unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in a bed and breakfast permit to conduct, own either in whole or in part, or be directly or indirectly interested in any other business licensed pursuant to this article or article 46 of this title; except that a person regulated under this section may have an interest in other bed and breakfast permits, in a license described in section 12-46-104 (1) (c) or 12-47-401 (1) (j) to (1) (t), or in a financial institution referred to in section 12-47-308 (4).

Source: L. 97: Entire article amended with relocations, p. 263, § 3, effective July 1. L. 2005: (5) amended, p. 408, § 2, effective August 8. L. 2011: (1) and (5) amended, (SB 11-060), ch. 171, p. 593, § 2, effective May 13.

Editor's note: This section is similar to former § 12-47-118.5 as it existed prior to 1997.

12-47-411. Hotel and restaurant license - definition - rules. (1) Except as otherwise provided in subsection (2) of this section, a hotel and restaurant license shall be issued to persons selling alcohol beverages in the place where the alcohol beverages are to be consumed, subject to the following restrictions:

(a) Restaurants shall sell alcohol beverages as provided in this section only to customers of the restaurant and only if meals are actually and regularly served and provide not less than twenty-five percent of the gross income from sales of food and drink of the business of the licensed premises over any period of time of at least one year.

(b) Hotels shall sell alcohol beverages as provided in this section only to customers of the hotel and, except in hotel rooms, only on the licensed premises where meals are actually and regularly served and provide not less than twenty-five percent of the gross income from sales of food and drink of the business of the licensed premises over any period of time of at least one year.

(c) Any hotel and restaurant licensee who is open for business and selling alcohol beverages by the drink shall serve meals between the hours of 8 a.m. and 8 p.m. and meals or light snacks and sandwiches after 8 p.m.; except that nothing in this paragraph (c) shall be construed to require a licensee to be open for business between the hours of 8 a.m. and 8 p.m.

(d) A hotel may be designated as a resort complex if it has at least fifty sleeping rooms and has related sports and recreational facilities located contiguous or adjacent to the hotel for the convenience of its guests or the general public. For purposes of a resort complex only, "contiguous or adjacent" means within the overall boundaries or scheme of development or regularly accessible from the hotel by its members and guests.

(2) (a) A resort complex shall designate its principal licensed premises and additional separate, related facilities that are located contiguous or adjacent to the licensed premises of the resort complex. Each related facility shall be identified by the resort complex at the time of initial licensure or upon license renewal. Each related facility shall also be clearly identified by its geographic location within the overall boundaries of the licensed premises of the resort complex. A resort complex may apply for a resort-complex-related facility permit for each related facility at the time of initial licensure, upon license renewal, or at any time upon application by the resort complex.

(b) Customers and guests who purchase alcohol beverages at one related facility are permitted to carry such beverages to other related facilities within the overall licensed premises boundaries of the resort complex.

(c) Each related facility shall remain at all times under the ownership and control of the resort complex licensee. Any subletting or transfer of ownership or change of control of a related facility without proper notification and approval by state and local licensing authorities shall be considered a violation of this article and will be cause for the denial, suspension, revocation, or cancellation of the license of the entire resort complex, including all of its related facilities, pursuant to section 12-47-601.

(d) Except as provided in this subsection (2), for violations of section 12-47-307, and for violations of this article and regulations promulgated pursuant to this article that are intentionally authorized by the ownership or management of a resort complex, each related facility shall be considered separately licensed or permitted for the purpose of application of the sanctions imposed under section 12-47-601.

(e) For purposes of this section, "related facility" means those areas, as approved by the state and local licensing authorities, that are contiguous or adjacent to the resort hotel and that are owned by or under the exclusive possession and control of the resort complex licensee. Related facilities shall include:

(I) Those indoor areas or facilities contiguous or adjacent to the licensed premises of the resort complex that are operated under a separate trade name and are used by resort complex patrons;

(II) Related outdoor sports and recreation facilities located contiguous or adjacent to the resort complex that are used by patrons of the resort complex for a fee; and

(III) Distinct areas or facilities contiguous or adjacent to the resort complex that are directly related to the resort complex use.

(3) Notwithstanding any provision of this article to the contrary, a hotel, licensed pursuant to this article, may:

(a) Furnish and deliver complimentary alcohol beverages in sealed containers for the convenience of its guests;

(b) Sell alcohol beverages provided by the hotel in sealed containers, at any time, by means of a minibar located in hotel guest rooms, to adult registered guests of the hotel for consumption in guest rooms if the price of the alcohol beverages is clearly posted. For purposes of this section, "minibar" means a closed container, either nonrefrigerated or refrigerated in whole or in part, access to the interior of which is restricted by means of a locking device that requires the use of a key, magnetic card, or similar device or which is controlled at all times by the hotel.

(c) Enter into a contract with a lodging facility for the purpose of authorizing the lodging facility to sell alcohol beverages pursuant to paragraph (b) of this subsection (3) if the lodging facility and hotel share common ownership and are located within one thousand feet of one another. The alcohol beverages that may be sold pursuant to this paragraph (c) must be provided by and subject to the control of the licensed hotel. For purposes of this paragraph (c), "common ownership" means a controlling ownership interest that is held by the same person or persons, whether through separate corporations, partnerships, or other legal entities. To determine whether the distance limitation referred to in this paragraph (c) is met, the distance from the property line of the land used for the lodging facility to the portion of the hotel licensed under this article shall be measured using the nearest and most direct routes of pedestrian access.

(3.5) Repealed.

(4) The state licensing authority shall promulgate rules that prohibit the placement of a container of alcohol beverages in a minibar if the container has a capacity of more than five hundred milliliters.

(5) It is the intent of this section to require hotel and restaurant licensees to maintain a bona fide restaurant business and not a mere pretext of such for obtaining a hotel and restaurant license.

(6) (a) Except as provided in paragraph (b) of this subsection (6), every person selling alcohol beverages as provided in this section shall purchase alcohol beverages only from a wholesaler licensed pursuant to this article or article 46 of this title.

(b) (I) During a calendar year, a person selling alcohol beverages as provided in this section may purchase not more than two thousand dollars' worth of:

(A) Malt, vinous, and spirituous liquors from a retailer licensed pursuant to section 12-47-407 or 12-47-408; and

(B) Fermented malt beverages from a retailer licensed pursuant to section 12-46-104 (1) (c).

(II) A hotel and restaurant licensee shall retain evidence of each purchase of malt, vinous, or spirituous liquors from a retailer licensed pursuant to section 12-47-407 or 12-47-408 and each purchase of fermented malt beverages from a retailer licensed pursuant to section 12-46-104 (1) (c), in the form of a purchase receipt showing the name of the licensed retailer, the date of purchase, a description of the alcohol beverages purchased, and the price paid for the alcohol beverages. The licensee shall retain the receipt and make it available to the state and local licensing authorities at all times during business hours.

(7) Each hotel and restaurant license shall be granted for specific premises, and optional premises approved by the state and local licensing authorities, and issued in the name of the owner or lessee of the business.

(8) Each hotel and restaurant licensee shall manage or have a separate and distinct manager and shall register the manager of each liquor-licensed premises with the state and the local licensing authority. No person shall be a registered manager for more than one hotel and restaurant license.

(9) The registered manager for each hotel and restaurant license or the hotel and restaurant licensee shall purchase alcohol beverages for one licensed premises only, and the purchases shall be separate and distinct from purchases for any other hotel and restaurant license.

(10) When a person ceases to be a registered manager of a hotel and restaurant license, for whatever reason, the hotel and restaurant licensee shall notify the licensing authorities within five days and shall designate a new registered manager within thirty days.

(11) Either the state or the local licensing authority may refuse to accept any person as a registered manager unless the person is satisfactory to the respective licensing authorities as to character, record, and reputation. In determining a registered manager's character, record, and reputation, the state or local licensing authority may have access to criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency.

(12) The hotel and restaurant licensee shall pay a registration fee not to exceed seventy-five dollars to the state and to the local licensing authority for actual and necessary expenses incurred in establishing the character, record, and reputation of each registered manager.

(13) (a) It is unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in a hotel and restaurant license to conduct, own either in whole or in part, or be directly or indirectly interested in any other business licensed pursuant to this article or article 46 of this title.

(b) Notwithstanding paragraph (a) of this subsection (13), an owner, part owner, shareholder, or person interested directly or indirectly in a hotel and restaurant license may conduct, own either in whole or in part, or be directly or indirectly interested in a license described in section 12-46-104 (1) (c), 12-47-401 (1) (j) to (1) (t), or 12-47-410 (1) or in a financial institution referred to in section 12-47-308 (4).

Source: **L. 97:** Entire article amended with relocations, p. 264, § 3, effective July 1. **L. 2000:** (1)(d) added and (2) amended, pp. 1167, 1168, §§ 2, 3, effective May 26. **L. 2003:** (13)(b) amended, p. 1638, § 2, effective August 6. **L. 2004:** (13)(b) amended, p. 1184, § 1, effective May 27; (3.5) added and (6)(b)(I) amended, pp. 788, 786, §§ 12, 10, effective July 1; (13) amended, p. 189, § 2, effective August 4; (13)(b) amended, p. 742, § 11, effective August 4. **L. 2005:** (3.5) repealed, p. 367, § 1, effective April 22; (13)(b) amended, p. 408, § 3, effective August 8. **L. 2011:** (1), (3), (4), (6), (9), (13) amended, (SB 11-060), ch. 171, p. 593, § 3, effective May 13. **L. 2012:** (1)(a) and (1)(b) amended, (SB 12-118), ch. 201, p. 803, § 1, effective August 8; IP(6)(b)(I) amended, (HB 12-1270), ch. 235, p. 1035, § 2, effective August 8.

Editor's note: (1) This section is similar to former § 12-47-119, and subsection (1)(c) is similar to former § 12-47-103 (12)(b), as they existed prior to 1997.

(2) Amendments to subsection (13)(b) by Senate Bill 04-237 and House Bill 04-1357 were harmonized.

ANNOTATION

Annotator's note. Section 12-47-411 is similar to §§ 12-47-103 and 12-47-119 as they existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions. Relevant cases construing § 12-47-119 have been included in the annotations to this section. Relevant cases construing § 12-47-103 have been included in the annotations to § 12-47-103.

Separate classification for "hotel and restaurant" and "beer and wine" licenses. A license permitting hotels and restaurants to sell spirituous liquors in addition to beer and wine to their patrons is an entirely separate class of permit from a "beer and wine" license. *Huerta v. Canjar*, 37 Colo. App. 462, 550 P.2d 897 (1976), rev'd on other grounds, 193 Colo. 388, 566 P.2d 1071 (1977).

The need for separate classification is obvious in that an exclusively beer and wine license in a restaurant situation will serve a different clientele than that of a license which also provides for the service of spirituous liquors. *Huerta v. Canjar*, 37 Colo. App. 462, 550 P.2d 897 (1976), rev'd on other grounds, 193 Colo. 388, 566 P.2d 1071 (1977).

Provision for the separate classifications of hotel and restaurant license and beer and wine license was not an arbitrary or unreasonable act on the part of the general assembly. *Huerta v. Canjar*, 37 Colo. App. 462, 550 P.2d 897 (1976),

rev'd on other grounds, 193 Colo. 388, 566 P.2d 1071 (1977).

The requirement that a licensee maintain a bona fide restaurant business does not impose a reasonable man standard of what constitutes a conventional restaurant. The fact that the licensee has a lack of tables in the facility and has late hours of operation does not support a conclusion that the licensee was not a bona fide restaurant. *Kantara, Inc. v. State of Colo.*, 991 P.2d 332 (Colo. App. 1999).

The fact that a particular type of license is not authorized in the neighborhood does not require the issuance of such a license, if, in fact, the needs of the neighborhood, with respect to the type of beverage authorized to be sold by the license requested, are being met by existing licenses. *Huerta v. Canjar*, 193 Colo. 388, 566 P.2d 1071 (1977).

Regulation prohibiting employees from mingling and soliciting drinks proper. Regulation of department of revenue, prohibiting liquor establishment licensee from employing a person to "mingle with patrons" and personally solicit the purchase or sale of drinks for use of one soliciting, was a proper exercise of authority delegated by the general assembly. *People v. Wilson*, 187 Colo. 141, 528 P.2d 1315 (1974).

Applied in *Nobel, Inc. v. Colo. Dept. of Rev.*, 652 P.2d 1084 (Colo. App. 1982); *Mountain's Shadow Inn, Inc. v. Colo. Dept. of Labor & Emp.*, 672 P.2d 522 (Colo. 1983).

12-47-412. Tavern license. (1) A tavern license shall be issued to persons selling alcohol beverages by the drink only to customers for consumption on the premises. A tavern licensee shall have sandwiches and light snacks available for consumption on the premises during business hours, but need not have meals available for consumption.

(2) (a) Every person selling alcohol beverages as provided in this section shall purchase alcohol beverages only from a wholesaler licensed pursuant to this article or article 46 of this title; except that, during a calendar year, a person selling alcohol beverages as provided in this section may purchase not more than two thousand dollars' worth of:

(I) Malt, vinous, and spirituous liquors from a retailer licensed pursuant to section 12-47-407 or 12-47-408; and

(II) Fermented malt beverages from a retailer licensed pursuant to section 12-46-104 (1) (c).

(b) A tavern licensee shall retain evidence of each purchase of malt, vinous, or spirituous liquors from a retailer licensed pursuant to section 12-47-407 or 12-47-408 and each purchase of fermented malt beverages from a retailer licensed pursuant to section 12-46-104 (1) (c), in the form of a purchase receipt showing the name of the licensed retailer, the date of purchase, a description of the alcohol beverages purchased, and the price paid for the alcohol beverages. The tavern licensee shall retain the receipt and make it available to the state and local licensing authorities at all times during business hours.

(3) It is unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in tavern licenses to conduct, own either in whole or in part, or be directly or

indirectly interested in any other business licensed pursuant to this article or article 46 of this title; except that such a person may have an interest in a license described in section 12-46-104 (1) (c), 12-47-401 (1) (j) to (1) (t), or 12-47-410 (1) or in a financial institution referred to in section 12-47-308 (4).

(4) Each tavern licensee shall manage or have a separate and distinct manager for each licensed premises and shall register the manager of each licensed premises with both the state and the local licensing authority. No person shall be a registered manager for more than one tavern license.

(5) The registered manager for each tavern license or the tavern licensee shall purchase alcohol beverages for one licensed premises only, and the purchases shall be separate and distinct from purchases for any other tavern license.

(6) When a person ceases to be a registered manager for a tavern license, for whatever reason, the tavern licensee shall notify the licensing authorities within five days and shall designate a new registered manager within thirty days.

(7) The state licensing authority or the local licensing authority may refuse to accept any person as a registered manager unless the person is satisfactory to the respective licensing authorities as to character, record, and reputation. In determining a registered manager's character, record, and reputation, the state or local licensing authority may have access to criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency.

(8) The tavern licensee shall pay a registration fee not to exceed seventy-five dollars for actual and necessary expenses incurred in determining the character, record, and reputation of each registered manager. Such fee shall be paid to both the state and the local licensing authority.

Source: **L. 97:** Entire article amended with relocations, p. 267, § 3, effective July 1. **L. 98:** (1) and (3) amended and (4) to (8) added, p. 117, § 1, effective March 24. **L. 2003:** (1) and (3) amended, p. 1638, § 1, effective August 6. **L. 2004:** (3) amended, p. 1184, § 2, effective May 27. **L. 2005:** (3) amended, p. 409, § 4, effective August 8. **L. 2011:** (1), (2), (3), and (5) amended, (SB 11-060), ch. 171, p. 595, § 4, effective May 13. **L. 2012:** IP(2)(a) amended, (HB 12-1270), ch. 235, p. 1035, § 3, effective August 8.

Editor's note: This section is similar to former § 12-47-119.5 as it existed prior to 1997.

12-47-413. Optional premises license. (1) An optional premises license shall be granted for optional premises approved by the state and local licensing authorities to persons selling alcohol beverages by the drink only to customers for consumption on the optional premises and for storing alcohol beverages in a secure area on or off the optional premises for future use on the optional premises.

(2) (a) It is unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in an optional premises license to conduct, own either in whole or in part, or be directly or indirectly interested in any other business licensed pursuant to this article or article 46 of this title.

(b) Notwithstanding paragraph (a) of this subsection (2), an owner, part owner, shareholder, or person interested directly or indirectly in an optional premises license may own, either in whole or in part, or be directly or indirectly interested in a license described in section 12-46-104 (1) (c), 12-47-401 (1) (j) to (1) (t), or 12-47-410 (1) or in a financial institution referred to in section 12-47-308 (4).

Source: **L. 97:** Entire article amended with relocations, p. 267, § 3, effective July 1. **L. 2000:** (2) amended, p. 150, § 1, effective August 2. **L. 2005:** (2)(b) amended, p. 409, § 5, effective August 8. **L. 2011:** Entire section amended, (SB 11-060), ch. 171, p. 596, § 5, effective May 13.

Editor's note: This section is similar to former § 12-47-119.6 as it existed prior to 1997.

12-47-414. Retail gaming tavern license. (1) A retail gaming tavern license shall be issued to persons who are licensed pursuant to section 12-47.1-501 (1) (c), who sell alcohol beverages by individual drink for consumption on the premises, and who sell sandwiches or light snacks or who contract with an establishment that provides such food services within the same building as the licensed premises. In no event shall any person hold more than three retail gaming tavern licenses.

(2) (a) Every person selling alcohol beverages as described in this section shall purchase the alcohol beverages only from a wholesaler licensed pursuant to this article or article 46 of this title; except that, during a calendar year, a person selling alcohol beverages as provided in this section may purchase not more than two thousand dollars' worth of:

(I) Malt, vinous, or spirituous liquors from a retailer licensed pursuant to section 12-47-407 or 12-47-408; and

(II) Fermented malt beverages from a retailer licensed pursuant to section 12-46-104 (1) (c).

(b) A retail gaming tavern licensee shall retain evidence of each purchase of malt, vinous, or spirituous liquors from a retailer licensed pursuant to section 12-47-407 or 12-47-408 and each purchase of fermented malt beverages from a retailer licensed pursuant to section 12-46-104 (1) (c), in the form of a purchase receipt showing the name of the licensed retailer, the date of purchase, a description of the alcohol beverages purchased, and the price paid for the alcohol beverages. The licensee shall retain the receipt and make it available to the state and local licensing authorities at all times during business hours.

(3) Nothing in this article shall permit more than one retail gaming tavern license per building where the licensed premises are located.

(4) It is unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in a retail gaming tavern license to conduct, own either in whole or in part, or be directly or indirectly interested in any other business licensed pursuant to this article or article 46 of this title; except that such a person may have an interest in a license described in section 12-46-104 (1) (c), 12-47-401 (1) (j) to (1) (t), or 12-47-410 (1) or in a financial institution referred to in section 12-47-308 (4).

Source: L. 97: Entire article amended with relocations, p. 268, § 3, effective July 1. L. 2004: (4) amended, p. 189, § 1, effective August 4. L. 2005: (4) amended, p. 409, § 6, effective August 8. L. 2011: (1), (2), and (4) amended, (SB 11-060), ch. 171, p. 597, § 6, effective May 13. L. 2012: IP(2)(a) amended, (HB 12-1270), ch. 235, p. 1036, § 4, effective August 8.

Editor's note: This section is similar to former § 12-47-119.7 as it existed prior to 1997.

12-47-415. Brew pub license. (1) (a) A brew pub license may be issued to any person operating a brew pub and also selling alcohol beverages for consumption on the premises.

(b) A brew pub licensed pursuant to this section to manufacture malt liquors or fermented malt beverages upon its licensed premises may, upon approval of the state licensing authority, manufacture malt liquors or fermented malt beverages upon alternating proprietor licensed premises within the restrictions specified in section 12-47-103 (4).

(2) (a) Except as provided in paragraph (b) of this subsection (2), during the hours established in section 12-47-901 (5) (b), malt liquors or fermented malt beverages manufactured by a brew pub licensee on the licensed premises or alternating proprietor licensed premises may be:

(I) Furnished for consumption on the premises;

(II) Sold to independent wholesalers for distribution to licensed retailers;

(III) Sold to the public in sealed containers for off-premises consumption. Only malt liquors or fermented malt beverages manufactured and packaged on the licensed premises or alternating proprietor licensed premises by the licensee shall be sold in sealed containers.

(IV) Sold at wholesale to licensed retailers in an amount up to three hundred thousand gallons per calendar year.

(b) A brew pub authorized to manufacture malt liquors or fermented malt beverages upon alternating proprietor licensed premises shall not conduct retail sales of malt liquors or fermented malt beverages from an area licensed or defined as an alternating proprietor licensed premises.

(3) (a) Every person selling alcohol beverages pursuant to this section shall purchase alcohol beverages, other than those that are manufactured at the licensed brew pub, from a wholesaler licensed pursuant to this article or article 46 of this title; except that, during a calendar year, a person selling alcohol beverages as provided in this section may purchase not more than two thousand dollars' worth of:

(I) Malt, vinous, and spirituous liquors from a retailer licensed pursuant to section 12-47-407 or 12-47-408; and

(II) Fermented malt beverages from a retailer licensed pursuant to section 12-46-104 (1) (c).

(b) The brew pub licensee shall retain evidence of each purchase of malt, vinous, and spirituous liquors from a retailer licensed pursuant to section 12-47-407 or 12-47-408 and each purchase of fermented malt beverages from a retailer licensed pursuant to section 12-46-104 (1) (c), in the form of a purchase receipt showing the name of the licensed retailer, the date of purchase, a description of the alcohol beverages purchased, and the price paid for the alcohol beverages. The licensee shall retain the receipt and make it available to state and local licensing authorities at all times during business hours.

(4) A brew pub licensee shall sell alcohol beverages for on-premises consumption only if at least fifteen percent of the gross on-premises food and drink income of the business of the licensed premises is from the sale of food. For purposes of this subsection (4), "food" means a quantity of foodstuffs of such nature as is ordinarily consumed by an individual at regular intervals for the purpose of sustenance.

(5) (a) It is unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in a brew pub license to conduct, own either in whole or in part, or be directly or indirectly interested in any other business licensed pursuant to this article or article 46 of this title.

(b) Notwithstanding paragraph (a) of this subsection (5), a person interested directly or indirectly in a brew pub license may conduct, own either in whole or in part, or be directly or indirectly interested in a license described in section 12-46-104 (1) (c), 12-47-401 (1) (j) to (1) (t), or 12-47-410 (1) or in a financial institution referred to in section 12-47-308 (4).

Source: **L. 97:** Entire article amended with relocations, p. 268, § 3, effective July 1. **L. 2004:** (5)(b) amended, p. 742, § 12, effective August 4. **L. 2005:** (5)(b) amended, p. 409, § 7, effective August 8. **L. 2009:** (1) and (2) amended, (SB 09-254), ch. 272, p. 1231, § 7, effective May 18. **L. 2011:** (1), IP(2)(a), (2)(a)(III), (2)(b), and (3) to (5) amended, (SB 11-060), ch. 171, p. 598, § 7, effective May 13. **L. 2012:** IP(3)(a) amended, (HB 12-1270), ch. 235, p. 1036, § 5, effective August 8.

Editor's note: This section is similar to former § 12-47-119.8 as it existed prior to 1997.

12-47-416. Club license - legislative declaration. (1) A club license shall be issued to persons selling alcohol beverages by the drink only to members of the club and guests and only for consumption on the premises of the club.

(2) (a) Every person selling alcohol beverages as provided in this section shall purchase the alcohol beverages only from a wholesaler licensed pursuant to this article or article 46 of this title; except that, during a calendar year, a person selling alcohol beverages as provided in this section may purchase not more than two thousand dollars' worth of:

(I) Malt, vinous, and spirituous liquors from a retailer licensed pursuant to section 12-47-407 or 12-47-408; and

(II) Fermented malt beverages from a retailer licensed pursuant to section 12-46-104 (1) (c).

(b) The club licensee shall retain evidence of each purchase of malt, vinous, or spirituous liquors from a retailer licensed pursuant to section 12-47-407 or 12-47-408 and each purchase of fermented malt beverages from a retailer licensed pursuant to section

12-46-104 (1) (c), in the form of a purchase receipt showing the name of the licensed retailer, the date of purchase, a description of the alcohol beverages purchased, and the price paid for the alcohol beverages. The licensee shall retain the receipt and make it available to the state and local licensing authorities at all times during business hours.

(3) (a) The general assembly finds, determines, and declares that the people of the state of Colorado desire to promote and achieve tax equity and fairness among all the state's citizens and further desire to conform to the public policy of nondiscrimination. The general assembly further declares that the provisions of this subsection (3) are enacted for these reasons and for no other purpose.

(b) Any club licensee that has a policy to restrict membership on the basis of sex, sexual orientation, marital status, race, creed, religion, color, ancestry, or national origin shall, when issuing a receipt for expenses which may otherwise be used by taxpayers for deduction purposes pursuant to section 162 (a) of the federal "Internal Revenue Code of 1986", as amended, for purposes of determining taxes owed pursuant to article 22 of title 39, C.R.S., incorporate a printed statement on the receipt as follows:

The expenditures covered by this receipt are
nondeductible for state income tax purposes.

(4) It is unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in a club license to conduct, own either in whole or in part, or be directly or indirectly interested in any other business licensed pursuant to this article or article 46 of this title; except that:

(a) Such a person may have an interest in an arts license or an airline public transportation system license granted under this article, or in a financial institution referred to in section 12-47-308 (4);

(b) Any person who owns, in whole or in part, directly or indirectly, any other license issued pursuant to this article or article 46 of this title may be listed as an officer or director on a club license if the person does not individually manage or receive any direct financial benefit from the operation of the license.

Source: L. 97: Entire article amended with relocations, p. 269, § 3, effective July 1. L. 99: (4) amended, p. 77, § 2, effective September 30. L. 2008: (3)(b) amended, p. 1599, § 16, effective May 29. L. 2011: (1), (2), IP(4), and (4)(b) amended, (SB 11-060), ch. 171, p. 599, § 8, effective May 13. L. 2012: IP(2)(a) amended, (HB 12-1270), ch. 235, p. 1036, § 6, effective August 8.

Editor's note: This section is similar to former § 12-47-120 as it existed prior to 1997.

Cross references: For the legislative declaration contained in the 2008 act amending subsection (3)(b), see section 1 of chapter 341, Session Laws of Colorado 2008.

12-47-417. Arts license. (1) (a) An arts license may be issued to any nonprofit arts organization that sponsors and presents productions or performances of an artistic or cultural nature, and the arts license permits the licensee to sell alcohol beverages only to patrons of the productions or performances for consumption on the licensed premises in connection with the productions or performances. No person licensed pursuant to this section shall permit any exterior or interior advertising concerning the sale of alcohol beverages on the licensed premises.

(b) An arts license may be issued to any municipality owning arts facilities at which productions or performances of an artistic or cultural nature are presented, in the same manner as provided for in paragraph (a) of this subsection (1) and subject to the same restrictions.

(2) Any provision of this article to the contrary notwithstanding, the proximity of premises licensed pursuant to this section to any public or parochial school or the principal campus of a college, university, or seminary shall not, in and of itself, affect the granting or denial of such license by the state and the local licensing authority, but a public or

parochial school shall not contain a licensed premises. The campus of a college, university, or seminary may contain a licensed premises.

(3) As used in this section, “nonprofit arts organization” means only an organization subject to the provisions of articles 121 to 137 of title 7, C.R.S., and held to be tax-exempt by the federal internal revenue service.

(4) (a) Every person selling alcohol beverages as provided in this section shall purchase the alcohol beverages only from a wholesaler licensed pursuant to this article or article 46 of this title; except that, during a calendar year, a person selling alcohol beverages as provided in this section may purchase not more than two thousand dollars’ worth of:

(I) Malt, vinous, and spirituous liquors from a retailer licensed pursuant to section 12-47-407 or 12-47-408; and

(II) Fermented malt beverages from a retailer licensed pursuant to section 12-46-104 (1) (c).

(b) An arts licensee shall retain evidence of each purchase of malt, vinous, or spirituous liquors from a retailer licensed pursuant to section 12-47-407 or 12-47-408 and each purchase of fermented malt beverages from a retailer licensed pursuant to section 12-46-104 (1) (c), in the form of a purchase receipt showing the name of the licensed retailer, the date of purchase, a description of the alcohol beverages purchased, and the price paid for the alcohol beverages. The licensee shall retain the receipt and make it available to the state and local licensing authorities at all times during business hours.

Source: L. 97: Entire article amended with relocations, p. 270, § 3, effective July 1; (3) amended, p. 762, § 31, effective July 1, 1998. L. 2003: (2) amended, p. 567, § 2, effective March 13. L. 2011: (1)(a) and (4) amended, (SB 11-060), ch. 171, p. 600, § 9, effective May 13. L. 2012: IP(4)(a) amended, (HB 12-1270), ch. 235, p. 1036, § 7, effective August 8.

Editor’s note: (1) This section is similar to former § 12-47-120.5 as it existed prior to 1997.

(2) Amendments to subsection (3) by Senate Bill 97-091 and House Bill 97-1076 were harmonized effective July 1, 1998.

12-47-418. Racetrack license. (1) A racetrack licensee may sell alcohol beverages by the drink for consumption on the licensed premises only to customers of the racetrack and shall serve food as well as alcohol beverages.

(2) (a) Every person selling alcohol beverages as provided in this section shall purchase the alcohol beverages only from a wholesaler licensed pursuant to this article or article 46 of this title; except that, during a calendar year, a person selling alcohol beverages as provided in this section may purchase not more than two thousand dollars’ worth of:

(I) Malt, vinous, and spirituous liquors from a retailer licensed pursuant to section 12-47-407 or 12-47-408; and

(II) Fermented malt beverages from a retailer licensed pursuant to section 12-46-104 (1) (c).

(b) A racetrack licensee shall retain evidence of each purchase of malt, vinous, or spirituous liquors from a retailer licensed pursuant to section 12-47-407 or 12-47-408 and each purchase of fermented malt beverages from a retailer licensed pursuant to section 12-46-104 (1) (c), in the form of a purchase receipt showing the name of the licensed retailer, the date of purchase, a description of the alcohol beverages purchased, and the price paid for the alcohol beverages. The licensee shall retain the receipt and make it available to the state and local licensing authorities at all times during business hours.

(3) If any person holds a valid license pursuant to this article to sell alcohol beverages by the drink for consumption on the licensed premises, the person is not required to obtain a racetrack class license pursuant to this section if simulcast races with pari-mutuel wagering occur on the licensed premises.

(4) It is unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in a racetrack license to conduct, own either in whole or in part, or be directly or indirectly interested in any other business licensed pursuant to this article or article 46

of this title; except that a person licensed under this section may have an interest in a license described in section 12-46-104 (1) (c), 12-47-401 (1) (j) to (1) (t), or 12-47-410 (1) or in a financial institution referred to in section 12-47-308 (4).

Source: L. 97: Entire article amended with relocations, p. 271, § 3, effective July 1. L. 2004: (4) amended, p. 1185, § 3, effective May 27. L. 2005: (4) amended, p. 410, § 8, effective August 8. L. 2011: Entire section amended, (SB 11-060), ch. 171, p. 601, § 10, effective May 13. L. 2012: IP(2)(a) amended, (HB 12-1270), ch. 235, p. 1036, § 8, effective August 8.

Editor's note: This section is similar to former § 12-47-121 as it existed prior to 1997.

12-47-419. Public transportation system license. (1) The state licensing authority shall issue a public transportation system license to every person operating a public transportation system that sells alcohol beverages by the drink to be served and consumed in or upon any dining, club, or parlor car; plane; bus; or other conveyance of the public transportation system. A public transportation system license issued to a commercial airline authorizes the licensee to sell alcohol beverages by the drink in an airport or airport concourse private club room that is in existence and operated by the licensee on or before April 1, 1995. A public transportation system license issued to a common carrier railroad authorizes the licensee to sell alcohol beverages by the drink at any event not open to the public that is held in a museum owned and operated by the licensee if the licensee notifies the appropriate local law enforcement agency of the event no later than fourteen days prior to the scheduled date of the event.

(2) It is unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in a public transportation system license to conduct, own either in whole or in part, or be directly or indirectly interested in any other business licensed pursuant to this article or article 46 of this title; except that a person licensed under this section may be interested in any other retail license issued pursuant to this article or article 46 of this title or in a financial institution referred to in section 12-47-308 (4).

Source: L. 97: Entire article amended with relocations, p. 272, § 3, effective July 1. L. 99: (1) amended, p. 201, § 1, effective March 31. L. 2004: (2) amended, p. 742, § 13, effective August 4. L. 2005: (2) amended, p. 410, § 9, effective August 8. L. 2011: Entire section amended, (SB 11-060), ch. 171, p. 602, § 11, effective May 13.

Editor's note: This section is similar to former § 12-47-122 as it existed prior to 1997.

12-47-420. Vintner's restaurant license. (1) A vintner's restaurant license may be issued to a person operating a vintner's restaurant and also selling alcohol beverages for consumption on the premises.

(2) During the hours established in section 12-47-901 (5) (b), vinous liquors manufactured by a vintner's restaurant licensee on the licensed premises may be:

(a) Furnished for consumption on the premises;

(b) Sold to independent wholesalers for distribution to licensed retailers;

(c) Sold to the public in sealed containers for off-premises consumption. Only vinous liquors fermented, manufactured, and packaged on the premises by the licensee shall be sold in sealed containers.

(d) Sold at wholesale to licensed retailers in an amount up to fifty thousand gallons per calendar year.

(3) (a) Every person selling alcohol beverages pursuant to this section shall purchase the alcohol beverages, other than those that are manufactured at the licensed vintner's restaurant, from a wholesaler licensed pursuant to this article or article 46 of this title; except that, during a calendar year, a person may purchase not more than two thousand dollars' worth of:

(I) Malt, vinous, and spirituous liquors from a retailer licensed pursuant to section 12-47-407 or 12-47-408; and

(II) Fermented malt beverages from a retailer licensed pursuant to section 12-46-104 (1) (c).

(b) The vintner's restaurant licensee shall retain evidence of each purchase of malt, vinous, and spirituous liquors from a retailer licensed pursuant to section 12-47-407 or 12-47-408 and each purchase of fermented malt beverages from a retailer licensed pursuant to section 12-46-104 (1) (c), in the form of a purchase receipt showing the name of the licensed retailer, the date of purchase, a description of the alcohol beverages purchased, and the price paid for the alcohol beverages. The licensee shall retain the receipt and make it available to state and local licensing authorities at all times during business hours.

(4) A vintner's restaurant licensee may sell alcohol beverages for on-premises consumption only if at least fifteen percent of the gross on-premises food and drink income of the business of the licensed premises is from the sale of food.

(5) (a) Subject to paragraph (b) of this subsection (5), it is unlawful for an owner, part owner, shareholder, or person interested directly or indirectly in a vintner's restaurant license to conduct, own either in whole or in part, or be directly or indirectly interested in another business licensed pursuant to this article or article 46 of this title.

(b) A person interested directly or indirectly in a vintner's restaurant license may conduct, own either in whole or in part, or be directly or indirectly interested in a license described in section 12-46-104 (1) (c), 12-47-401 (1) (j) to (1) (t), or 12-47-410 (1) or in a financial institution referred to in section 12-47-308 (4).

Source: L. 2004: Entire section added, p. 739, § 4, effective August 4. **L. 2005:** (5)(b) amended, p. 410, § 10, effective August 8. **L. 2011:** (1), (3), (4), and (5) amended, (SB 11-060), ch. 171, p. 602, § 12, effective May 13. **L. 2012:** IP(3)(a) amended, (HB 12-1270), ch. 235, p. 1037, § 9, effective August 8.

12-47-421. Removal of vinous liquor from licensed premises. (1) Notwithstanding any provision of this article to the contrary, a licensee described in subsection (2) of this section may permit a customer of the licensee to reseal and remove from the licensed premises one opened container of partially consumed vinous liquor purchased on the premises so long as the originally sealed container did not contain more than 750 milliliters of vinous liquor.

(2) The provisions of this section shall apply to a licensee:

(a) That is duly licensed as a manufacturer's licensee under section 12-47-402, a limited winery licensee under section 12-47-403, a beer and wine licensee under section 12-47-409, a hotel and restaurant licensee under section 12-47-411, a tavern licensee under section 12-47-412, a brew pub licensee under section 12-47-415, or a vintner's restaurant licensee under section 12-47-420; and

(b) That has meals, as defined in section 12-47-103 (20), available for consumption on the licensed premises.

Source: L. 2005: Entire section added, p. 367, § 2, effective April 22.

12-47-422. Art gallery permit - definition. (1) A person operating an art gallery that offers complimentary alcohol beverages for consumption only on the premises may be issued an art gallery permit, which shall be renewed annually. An art gallery permittee shall not, directly or indirectly, sell alcohol beverages by the drink, shall not serve alcohol beverages for more than four hours in any one day, and shall not serve alcohol beverages more than fifteen days per year of licensure.

(2) (a) The state or local licensing authority may reject the application for an art gallery permit if the applicant fails to establish that the applicant is able to offer complimentary alcohol beverages without violating this section or creating a public safety risk to the neighborhood.

(b) Upon initial application, and for each renewal, the applicant shall list each day that alcohol beverages will be served, which days shall not be changed without a minimum of fifteen days' written notice to the state and local licensing authority.

(3) An art gallery shall not be denied an art gallery permit based solely on the art gallery's proximity to any public or private school or the principal campus of a college, university, or seminary.

(4) An art gallery shall not charge an entrance fee or a cover charge in connection with offering complimentary alcohol beverages for consumption only on the premises.

(5) An art gallery permit may be suspended or revoked in accordance with section 12-47-601 if the permittee violates any provision of this article or any rule adopted pursuant to this article or fails to truthfully furnish any required information in connection with a permit application.

(6) It is unlawful for any owner, part owner, shareholder, or person interested directly or indirectly in an art gallery permit to conduct, own either in whole or in part, or be directly or indirectly interested in any other business licensed pursuant to this article or article 46 of this title; except that a person regulated under this section may have an interest in other art gallery permits, in a license described in section 12-46-104 (1) (c), 12-47-401 (1) (j) to (1) (t), or 12-47-410 (1), or in a financial institution referred to in section 12-47-308 (4).

(7) As used in this section, "art gallery" means an establishment whose primary purpose is to exhibit and offer for sale works of fine art as defined in section 6-15-101, C.R.S., or precious or semiprecious metals or stones as defined in section 18-16-102, C.R.S.

(8) An art gallery issued a permit shall not intentionally allow more than two hundred fifty people to be on the premises at one time when alcohol beverages are being served.

(9) Nothing in this section shall be construed to abrogate any insurance coverage required by law; to authorize a licensed art gallery to violate section 12-47-901, including, without limitation, serving a visibly intoxicated person and taking an alcohol beverage off the licensed premises; or to violate any zoning or occupancy ordinances or laws.

Source: L. 2008: Entire section added, p. 1555, § 1, effective July 1. **L. 2011:** (1), (4), (6), and (8) amended, (SB 11-060), ch. 171, p. 603, § 13, effective May 13.

PART 5

LICENSE FEES AND EXCISE TAXES

12-47-501. State fees. (1) The following license fees shall be paid to the department of revenue annually in advance:

- (a) For each resident and nonresident manufacturer's license, the fee shall be:
- (I) For each brewery, three hundred dollars;
- (II) For each winery, three hundred dollars;
- (III) For each distillery or rectifier, one thousand fifty dollars;
- (IV) For each limited winery, seventy dollars;
- (b) For each importer's license, three hundred dollars;
- (c) For each wholesaler's liquor license, one thousand fifty dollars;
- (d) For each wholesaler's beer license, five hundred fifty dollars;
- (e) For each retail liquor store license, one hundred dollars;
- (f) For each liquor-licensed drugstore license, one hundred dollars;
- (g) For each beer and wine license, seventy-five dollars;
- (h) For each hotel and restaurant license, seventy-five dollars;
- (h.5) For each resort-complex-related facility permit, seventy-five dollars per related facility as defined in section 12-47-411 (2) (e);
- (i) For each tavern license, seventy-five dollars;
- (j) For each optional premises license, seventy-five dollars;
- (k) For each retail gaming tavern license, seventy-five dollars;
- (l) For each brew pub or vintner's restaurant license, three hundred twenty-five dollars;
- (m) For each club license, seventy-five dollars;
- (n) For each arts license, seventy-five dollars;

- (o) For each racetrack license, seventy-five dollars;
- (p) For each public transportation system license, seventy-five dollars for each dining, club, or parlor car; plane; bus; or other vehicle in which such liquor is sold. No additional license fee shall be required by any municipality, city and county, or county for the sale of such liquor in dining, club, or parlor cars; planes; buses; or other conveyances.
- (q) For each bed and breakfast permit, fifty dollars;
- (r) For each art gallery permit, fifty dollars.

(1.5) Notwithstanding the amount specified for any fee in subsection (1) of this section, the executive director of the department of revenue by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(2) (a) The state licensing authority shall establish fees for processing the following types of applications, notices, or reports required to be submitted to the state licensing authority:

(I) Applications for new liquor licenses pursuant to section 12-47-304 and rules adopted pursuant to that section;

(II) Applications to change location pursuant to section 12-47-301 (9) and rules adopted pursuant to that section;

(III) Applications for transfer of ownership pursuant to section 12-47-303 (1) (c) and rules adopted pursuant to that section;

(IV) Applications for modification of licensed premises pursuant to section 12-47-301 and rules adopted pursuant to that section;

(V) Applications for alternating use of premises pursuant to section 12-46-104 (1) (a), 12-47-402 (2.5), 12-47-403 (2) (a), or 12-47-415 (1) (b) and rules adopted pursuant to those sections;

(VI) Applications for branch warehouse permits pursuant to section 12-47-406 and rules adopted pursuant to that section;

(VII) Applications for approval of a contract to sell alcohol beverages pursuant to section 12-47-411 (3) (c);

(VIII) Applications for warehouse storage permits pursuant to section 12-47-202 and rules adopted pursuant to that section;

(IX) Applications for duplicate licenses;

(X) Applications for wine shipment permits pursuant to section 12-47-104;

(XI) Sole source registrations or new product registrations pursuant to section 12-47-901 (3) (b);

(XII) Hotel and restaurant optional premises registrations;

(XIII) Expired license renewal applications pursuant to section 12-47-302; and

(XIV) Notice of change of name or trade name pursuant to section 12-47-301 and rules adopted pursuant to that section.

(b) The amounts of such fees, when added to the other fees transferred to the liquor enforcement division and state licensing authority cash fund pursuant to sections 12-46-105, 12-47-502 (1), and 12-48-104, shall reflect the direct and indirect costs of the liquor enforcement division and the state licensing authority in the administration and enforcement of this article and articles 46 and 48 of this title.

(c) The state licensing authority may charge corporate applicants and limited liability companies licensed under articles 46 and 47 of this title a fee for the cost of each fingerprint analysis and background investigation undertaken to qualify new officers, directors, stockholders, members, or managers pursuant to the requirements of section 12-47-307 (1); however, the state licensing authority shall not collect such a fee if the applicant has already undergone a background investigation by and paid a fee to a local licensing authority.

(d) At least annually, the amounts of the fees shall be reviewed and, if necessary, adjusted to reflect the direct and indirect costs of the liquor enforcement division and the state licensing authority.

(3) Except as provided in subsection (4) of this section, the state licensing authority shall establish a basic fee which shall be paid at the time of service of any subpoena upon the state licensing authority or upon any employee of the division, plus a fee for meals and a fee for mileage at the rate prescribed for state officers and employees in section 24-9-104, C.R.S., for each mile actually and necessarily traveled in going to and returning from the place named in the subpoena. If the person named in the subpoena is required to attend the place named in the subpoena for more than one day, there shall be paid, in advance, a sum to be established by the state licensing authority for each day of attendance to cover the expenses of the person named in the subpoena.

(4) The subpoena fee established pursuant to subsection (3) of this section shall not be applicable to any state or local governmental agency.

Source: **L. 97:** Entire article amended with relocations, p. 272, § 3, effective July 1. **L. 98:** (1.5) added, p. 1329, § 37, effective June 1. **L. 99:** (2) amended, p. 78, § 3, effective September 30. **L. 2000:** (1)(h.5) added, p. 1169, § 4, effective May 26. **L. 2002:** (1) and (2) amended, p. 657, § 3, effective July 1. **L. 2004:** (1)(l) amended, p. 741, § 6, effective August 4. **L. 2008:** (1)(r) added, p. 1556, § 2, effective July 1; (2) amended, p. 2166, § 6, effective August 5. **L. 2009:** (2)(a)(V) amended, (SB 09-254), ch. 272, p. 1232, § 8, effective May 18.

Editor's note: This section is similar to former § 12-47-123 as it existed prior to 1997.

12-47-502. Fees and taxes - allocation. (1) (a) All state license fees and taxes provided for by this article and all fees provided for by section 12-47-501 (2) and (3) for processing applications, reports, and notices shall be paid to the department of revenue, which shall transmit the fees and taxes to the state treasurer. The state treasurer shall credit eighty-five percent of the fees and taxes to the old age pension fund and the balance to the general fund.

(b) An amount equal to the revenues attributable to fifty dollars of each state license fee provided for by this article and the processing fees provided for by section 12-47-501 (2) and (3) for processing applications, reports, and notices shall be transferred out of the general fund to the liquor enforcement division and state licensing authority cash fund. Such transfer shall be made by the state treasurer as soon as possible after the twentieth day of the month following the payment of such fees.

(c) The expenditures of the state licensing authority and the liquor enforcement division shall be paid out of appropriations from the liquor enforcement division and state licensing authority cash fund as provided in section 24-35-401, C.R.S.

(2) Eighty-five percent of the local license fees shall be paid to the department of revenue, which shall transmit the fees to the state treasurer to be credited to the old age pension fund.

Source: **L. 97:** Entire article amended with relocations, p. 274, § 3, effective July 1. **L. 2002:** (1)(b) and (1)(c) amended, p. 659, § 4, effective July 1.

Editor's note: This section is similar to former § 12-47-124 as it existed prior to 1997.

ANNOTATION

Law reviews. For article, "Antitrust", see 55 Den. L.J. 415 (1978).

12-47-503. Excise tax - records. (1) (a) An excise tax at the rate of 8.0 cents per gallon, or the same per unit volume tax applied to metric measure, on all malt liquors, fermented malt beverages, and hard cider, 7.33 cents per liter on all vinous liquors except hard cider, and 60.26 cents per liter on all spirituous liquors is imposed, and such taxes shall be collected on all such respective beverages, not otherwise exempt from the tax, sold,

offered for sale, or used in this state; except that, upon the same beverages, only one such tax shall be paid in this state. The manufacturer thereof, the holder of a winery direct shipper's permit, or the first licensee receiving alcohol beverages in this state if shipped from without the state, shall be primarily liable for the payment of any tax or tax surcharge imposed pursuant to this section; but, if such beverage is transported by a manufacturer or wholesaler to a point outside of the state and there disposed of, then such manufacturer or wholesaler, upon the filing with the state licensing authority of a duplicate bill of lading, invoice, or affidavit showing such transaction, shall not be subject to the tax provided in this section on such beverages, and, if such tax has already been paid, it shall be refunded to said manufacturer or wholesaler. For purposes of this section, "manufacturer" includes brew pub licensees and vintner's restaurant licensees.

(b) (I) Repealed.

(II) Effective July 1, 2000, a wine development fee at the rate of 1.0 cent per liter is imposed on all vinous liquors except hard cider sold, offered for sale, or used in this state. An amount equal to one hundred percent of the wine development fee collected pursuant to this subparagraph (II) shall be transferred from the general fund to the Colorado wine industry development fund created in section 35-29.5-105, C.R.S. Such transfers shall be made by the state treasurer as soon as possible after the twentieth day of the month following the collection of such wine development fee.

(III) In addition to the excise tax imposed pursuant to paragraph (a) of this subsection (1) and the excise tax surcharge imposed pursuant to subparagraph (I) of this paragraph (b), an additional excise tax surcharge at the rate of 5.0 cents per liter for the first nine thousand liters, 3.0 cents per liter for the next thirty-six thousand liters, and 1.0 cent per liter for all additional amounts, is imposed on all vinous liquors except hard cider produced by Colorado licensed wineries and sold, offered for sale, or used in this state. An amount equal to one hundred percent of the excise tax surcharge collected pursuant to this subparagraph (III) shall be transferred from the general fund to the Colorado wine industry development fund created in section 35-29.5-105, C.R.S. Such transfers shall be made by the state treasurer as soon as possible after the twentieth day of the month following the collection of such excise tax surcharge.

(c) An excise tax of ten dollars per ton of grapes is imposed upon all grapes of the vinifera varieties or other produce used in the production of wine in this state by a licensed Colorado winery or vintner's restaurant, whether true or hybrid. The excise tax imposed pursuant to this paragraph (c) shall be paid to the department of revenue by the licensed winery or vintner's restaurant at the time of purchase of the product by the winery or vintner's restaurant or of importation of the product, whichever is later. An amount equal to one hundred percent of such excise tax shall be transferred from the general fund to the Colorado wine industry development fund created in section 35-29.5-105, C.R.S. Such transfers shall be made by the state treasurer as soon as possible after the twentieth day of the month following the collection of such excise tax.

(d) The policy of this state is that alcoholics and intoxicated persons may not be subjected to criminal prosecution because of their consumption of alcohol beverages, but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society. The general assembly finds that the cost of implementing a statewide treatment plan is greater than originally estimated. By increasing the excise tax on alcohol beverages in Colorado, it is the intent of this general assembly that the increased revenues derived from this subsection (1) be viewed as one of the sources of funding for the future development of alcoholism treatment programs under the statute enacted in 1973 and for the payment of other related direct and indirect costs caused by the consumption of alcohol beverages.

(2) The state licensing authority shall make and publish such rules and regulations to secure and enforce the collection and payment of such tax as it may deem proper if such rules and regulations are not inconsistent with the provisions of this article.

(3) Except as provided in paragraph (c) of subsection (1) of this section, the excise taxes and excise tax surcharges provided for in this section shall be paid to the department of revenue upon the filing of the return provided for in subsection (4) of this section and shall be delivered to the department on or before the twentieth day of the month following

the month in which such alcohol beverages are first sold in this state. As used in this subsection (3), "first sold" means the sale or disposal that occurs when a licensed wholesaler sells, transfers, or otherwise disposes of a product, when a manufacturer sells to a licensed wholesaler or a consumer, or when a holder of a winery direct shipper's permit ships to a personal consumer in this state.

(4) Each licensed manufacturer and wholesaler of alcohol beverages within this state shall file, on or before the twentieth day of each month, an exact, verified return with the state licensing authority showing for the preceding calendar month the quantities of alcohol beverages:

- (a) Constituting the licensee's beginning and ending inventory for such month;
- (b) Manufactured by the licensee in this state;
- (c) Shipped to the licensee from within this state and received by the licensee in this state;
- (d) Shipped to the licensee from outside this state and received by the licensee in this state;
- (e) Sold or disposed of by the licensee to persons or purchasers in this state;
- (f) Sold or disposed of by the licensee to persons or purchasers outside this state, separately indicating those sales or transactions of alcohol beverages to which the excise tax is not applicable; and
- (g) For persons licensed pursuant to section 12-46-104 (1) (a), 12-47-402 (2.5), 12-47-403 (2) (a), or 12-47-415 (1) (b), a separate report of vinous liquors, malt liquors, or fermented malt beverages, as applicable, that were manufactured or inventoried in, or transferred from, an alternating proprietor licensed premises.

(4.5) Each holder of a winery direct shipper's permit under section 12-47-104 shall file, on or before the twentieth day of each calendar month, an exact, verified return with the state licensing authority showing for the preceding calendar month the quantities of vinous liquor shipped to personal consumers in this state.

(5) The return, on forms prescribed by the state licensing authority, shall also show the amount of excise tax payable, after allowances for all proper deductions, for alcohol beverages sold by the manufacturer, wholesaler, or holder of a winery direct shipper's permit in this state and shall include such additional information as the state licensing authority may require for the proper administration of this article. The payment of the excise tax provided for in this section, in the amount disclosed by the return, shall accompany the return and shall be paid to the department of revenue. Each manufacturer, wholesaler, or holder of a winery direct shipper's permit required to file a return shall keep complete and accurate books and records, accounts, and other documents as may be necessary to substantiate the accuracy of his or her return and the amount of excise tax due and shall retain such records for a period of three years.

(6) The state licensing authority, after public hearing of which the licensee shall have due notice as provided in this article, shall suspend or revoke any license or winery direct shipper's permit issued pursuant to this article for a failure to pay any excise tax required by this article and may suspend or revoke such license or permit for a violation of or failure to comply with the rules promulgated by said authority.

(7) If the excise tax is not paid when due, there shall be added to the amount of the tax as a penalty a sum equivalent to ten percent thereof and, in addition thereto, interest on the tax and a penalty at the rate of one percent a month or fraction of a month from the date the tax became due until paid. Nothing in this section shall be construed to relieve any person otherwise liable from liability for payment of the excise tax.

(8) The department of revenue shall make a refund or allow a credit to the manufacturer, the wholesaler, or the holder of a winery direct shipper's permit, as the case may be, of the amount of the excise tax paid on alcohol beverages sold in this state when, after payment of the excise tax, such alcohol beverages are rendered unsalable by reason of destruction or damage upon submission of evidence satisfactory to the state licensing authority that such excise tax has actually been paid. Such refund or credit shall be made by the department within sixty days after the submission of evidence satisfactory to the department.

(9) (a) In order to economize and to simplify administrative procedures, the state licensing authority may authorize a procedure whereby a manufacturer or wholesaler of alcohol beverages or holder of a winery direct shipper's permit entitled by law to a refund of the tax provided in this section may instead receive a credit against the tax due on other sales by claiming said credit on the next month's return and attaching a duplicate bill of lading, invoice, or affidavit showing such transaction.

(b) To the extent and so long as federal law precludes this state from collecting its excise tax on vinous and spirituous liquors sold and delivered on ceded federal property, any manufacturer or wholesaler of such liquors making any such sales and deliveries on such federal property within the boundaries of this state may receive a refund of or a credit for the excise tax paid this state on such liquors.

Source: **L. 97:** Entire article amended with relocations, p. 274, § 3, effective July 1. **L. 2004:** (1)(a) and (1)(c) amended, p. 740, § 5, effective August 4. **L. 2006:** (1)(a), (3), (5), (6), (8), and (9)(a) amended and (4.5) added, p. 435, § 5, effective July 1. **L. 2008:** (4)(g) added, p. 2167, § 7, effective August 5. **L. 2009:** (4)(g) amended, (SB 09-254), ch. 272, p. 1232, § 9, effective May 18.

Editor's note: (1) This section is similar to former § 12-47-127 as it existed prior to 1997.

(2) Subsection (1)(b)(I)(B) provided for the repeal of subsection (1)(b)(I), effective July 1, 2000. (See L. 97, p. 274.)

ANNOTATION

Law reviews. For article, "Has the Doctrine of Stare Decisis been Abandoned in Colorado?", see 25 Dicta 91 (1948).

Annotator's note. The following annotations include cases decided under this section as it existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions.

Extent of department of revenue's regulatory power. The general assembly did not in-

tend department of revenue's regulatory power under the liquor code to extend to regulation and taxation of liquor sales occurring outside the state. *Frontier Airlines v. Dept. of Rev.*, 194 Colo. 230, 571 P.2d 1088 (1977).

Amount of excise tax is matter for legislative determination. *Springston v. City of Fort Collins*, 184 Colo. 126, 518 P.2d 939 (1974).

Applied in *Cass v. Colo. Beverage Co.*, 122 Colo. 101, 220 P.2d 867 (1950).

12-47-504. Lien to secure payment of taxes - exemptions - recovery. (1) (a) The state of Colorado and the department of revenue shall have a lien, to secure the payment of the taxes, penalties, and interest imposed pursuant to section 12-47-503 upon all the assets and property of the wholesaler or manufacturer owing such tax, including the stock in trade, business fixtures, and equipment owned or used by the wholesaler or manufacturer in the conduct of business, as long as a delinquency in the payment of such tax continues. Such lien shall be prior to any lien of any kind whatsoever, including existing liens for taxes.

(b) Any wholesaler and manufacturer or person in possession shall provide a copy of any lease pertaining to the assets and property described in paragraph (a) of this subsection (1) to the department of revenue within ten days after seizure by the department of such assets and property. The department shall verify that such lease is bona fide and notify the owner that such lease has been received by the department. The department shall use its best efforts to notify the owner of the real or personal property that might be subject to the lien created in paragraph (a) of this subsection (1). The real or personal property of an owner who has made a bona fide lease to a wholesaler or manufacturer shall be exempt from the lien created in paragraph (a) of this subsection (1) if such property can reasonably be identified from the lease description or if the lessee is given an option to purchase in such lease and has not exercised such option to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease. Such exemption shall also apply if the lease is recorded with the county clerk and recorder of the county where the property is located or based or a memorandum of the lease is filed with the department of revenue on such forms as may be prescribed by said department after the execution of the lease at a cost for such filing of two dollars and fifty cents per document.

Motor vehicles that are properly registered in this state, showing the lessor as owner thereof, shall be exempt from the lien created in paragraph (a) of this subsection (1); except that said lien shall apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed fair market value, or similar interest which is or may be credited to the lessee. Where the lessor and lessee are blood relatives or relatives by law or have twenty-five percent or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for the purposes of this section.

(2) (a) Any wholesaler or manufacturer who files a return pursuant to section 12-47-503 but who fails to accompany it with payment of the excise tax disclosed on the return shall be sent a notice by the executive director of the department of revenue. Such notice shall state that the excise tax is due and unpaid and shall state the amount of the tax, penalty, and interest owed pursuant to section 12-47-503. The notice shall be sent by first-class mail and shall be directed to the last address of such wholesaler or manufacturer on file with the department of revenue.

(b) (I) If a wholesaler or manufacturer fails to file both the return and the payment required by section 12-47-503, the executive director of the department of revenue shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the wholesaler or manufacturer is delinquent and shall add any penalty and interest authorized in section 12-47-503. The executive director shall give the delinquent taxpayer written notice of such estimated tax, penalty, and interest, which notice shall be sent by first-class mail, and shall be directed to the last address of such person on file with the department of revenue.

(II) The remedies available to a taxpayer pursuant to article 21 of title 39, C.R.S., shall be available to any wholesaler or manufacturer who seeks to contest the estimated tax, penalty, or interest specified in the notice mailed pursuant to subparagraph (I) of this paragraph (b).

(3) If any taxes, penalties, or interest imposed pursuant to section 12-47-503 are not paid within ten days after the notice is mailed pursuant to subsection (2) of this section, the executive director of the department of revenue may seek to enforce collection of the unpaid amounts in accordance with the provisions of article 21 of title 39, C.R.S., to the extent that such provisions are not in conflict with or inconsistent with the provisions of this article.

Source: L. 97: Entire article amended with relocations, p. 278, § 3, effective July 1.

Editor's note: This section is similar to former § 12-47-127.5 as it existed prior to 1997.

12-47-505. Local license fees. (1) The following license fees shall be paid to the treasurer of the municipality, city and county, or county where the licensed premises is located annually in advance:

(a) (I) For each retail liquor store license for premises located within any municipality or city and county, one hundred fifty dollars;

(II) For each retail liquor store license for premises located outside the municipal limits of any municipality or city and county, two hundred fifty dollars;

(b) (I) For each liquor-licensed drugstore license for premises located within any municipality or city and county, one hundred fifty dollars;

(II) For each liquor-licensed drugstore license for premises located outside the municipal limits of any municipality or city and county, two hundred fifty dollars;

(c) (I) For each beer and wine license for premises located within any municipality or city and county, except as provided in subparagraph (III) of this paragraph (c), three hundred twenty-five dollars;

(II) For each beer and wine license for premises located outside the municipal limits of any municipality or city and county, except as provided in subparagraph (III) of this paragraph (c), four hundred twenty-five dollars;

(III) For each beer and wine license issued to a resort hotel, three hundred seventy-five dollars;

(d) For each hotel and restaurant license, five hundred dollars;

(e) For each tavern license, five hundred dollars;

- (f) For each optional premises license, five hundred dollars;
 - (g) For each retail gaming tavern license, five hundred dollars;
 - (h) For each application for approval of a contract to sell alcohol beverages pursuant to section 12-47-411 (3) (c), three hundred twenty-five dollars;
 - (i) For each brew pub or vintner's restaurant license, five hundred dollars;
 - (j) For each club license, two hundred seventy-five dollars;
 - (k) For each arts license, two hundred seventy-five dollars;
 - (l) For each racetrack license, five hundred dollars;
 - (m) For each bed and breakfast permit, twenty-five dollars;
 - (n) For each resort-complex-related facility permit, one hundred dollars per related facility as defined in section 12-47-411 (2) (e);
 - (o) For each art gallery permit, twenty-five dollars.
- (2) No rebate shall be paid by any municipality, city and county, or county of any alcohol beverage license fee paid for any such license issued by it except upon affirmative action by the respective local licensing authority rebating a proportionate amount of such license fee.
- (3) Eighty-five percent of the local license fees provided for in this article and article 46 of this title shall be paid to the department of revenue, which shall transmit said fees to the state treasurer to be credited to the old age pension fund.
- (4) (a) Each application for a license provided for in this article and article 46 of this title filed with a local licensing authority shall be accompanied by an application fee in an amount determined by the local licensing authority to cover actual and necessary expenses, subject to the following limitations:
- (I) For a new license, not to exceed the following:
 - (A) On or before July 1, 2008, six hundred twenty-five dollars;
 - (B) After July 1, 2008, and before July 2, 2009, seven hundred fifty dollars;
 - (C) After July 1, 2009, and before July 2, 2010, eight hundred seventy-five dollars;
 - (D) After July 2, 2010, one thousand dollars;
 - (II) For a transfer of location or ownership, not to exceed the following for each:
 - (A) On or before July 1, 2008, six hundred twenty-five dollars;
 - (B) After July 1, 2008, seven hundred fifty dollars;
 - (III) For a renewal of license, not to exceed the following; except that an expired license renewal fee shall not exceed five hundred dollars:
 - (A) On or before July 1, 2008, seventy-five dollars;
 - (B) After July 1, 2008, one hundred dollars;
 - (IV) For a new license or renewal application for an art gallery permit, not to exceed one hundred dollars.
- (b) No fees or charges of any kind, except as provided in this article or article 46 of this title, may be charged by the local licensing authority to the license holder or applicant for the purposes of granting or renewing a license or transferring ownership or location of a license.
- (5) The local licensing authority may charge corporate applicants and limited liability companies up to one hundred dollars for the cost of each fingerprint analysis and background investigation undertaken to qualify new officers, directors, stockholders, members, or managers pursuant to the requirements of section 12-47-307 (1); however, no local licensing authority shall collect such a fee if the applicant has already undergone a background investigation by and paid a fee to the state licensing authority.

Source: **L. 97:** Entire article amended with relocations, p. 279, § 3, effective July 1. **L. 99:** (5) amended, p. 78, § 4, effective September 30. **L. 2000:** (1)(n) added, p. 1169, § 5, effective May 26. **L. 2004:** (1)(i) amended, p. 741, § 7, effective August 4. **L. 2007:** (4)(a) amended, p. 599, § 1, effective August 3. **L. 2008:** (1)(o) and (4)(a)(IV) added, pp. 1556, 1557, §§ 3, 4, effective July 1.

Editor's note: This section is similar to former § 12-47-139, subsection (3) is similar to former § 12-47-124 (2), and subsection (4) is similar to former § 12-47-135 (3), as they existed prior to 1997.

ANNOTATION

Law reviews. For article, "Antitrust", see 55 Den. L.J. 415 (1978).

Annotator's note. Section 12-47-505 is similar to § 12-47-135 as it existed prior to the

1997 amendment of title 12, article 47, which resulted in the relocation of provisions. Relevant cases construing § 12-47-135 have been included in the annotations to § 12-47-309.

PART 6

DISCIPLINARY ACTIONS

12-47-601. Suspension - revocation - fines. (1) In addition to any other penalties prescribed by this article or article 46 or 48 of this title, the state or any local licensing authority has the power, on its own motion or on complaint, after investigation and public hearing at which the licensee shall be afforded an opportunity to be heard, to suspend or revoke any license or permit issued by such authority for any violation by the licensee or by any of the agents, servants, or employees of such licensee of the provisions of this article, or any of the rules or regulations authorized pursuant to this article or of any of the terms, conditions, or provisions of the license or permit issued by such authority. Any licensing authority has the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of any hearing that the licensing authority is authorized to conduct.

(2) Notice of suspension or revocation, as well as any required notice of such hearing, shall be given by mailing the same in writing to the licensee at the address contained in such license or permit. No such suspension shall be for a longer period than six months. If any license or permit is suspended or revoked, no part of the fees paid therefor shall be returned to the licensee. Any license or permit may be summarily suspended by the issuing licensing authority without notice pending any prosecution, investigation, or public hearing. Nothing in this section shall prevent the summary suspension of such license or permit for a temporary period of not more than fifteen days.

(3) (a) Whenever a decision of the state or any local licensing authority suspending a license or permit for fourteen days or less becomes final, whether by failure of the licensee to appeal the decision or by exhaustion of all appeals and judicial review, the licensee may, before the operative date of the suspension, petition for permission to pay a fine in lieu of having the license or permit suspended for all or part of the suspension period. Upon the receipt of the petition, the state or the local licensing authority may, in its sole discretion, stay the proposed suspension and cause any investigation to be made which it deems desirable and may, in its sole discretion, grant the petition if it is satisfied:

(I) That the public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes;

(II) That the books and records of the licensee are kept in such a manner that the loss of sales of alcohol beverages that the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy therefrom; and

(III) That the licensee has not had his or her license or permit suspended or revoked, nor had any suspension stayed by payment of a fine, during the two years immediately preceding the date of the motion or complaint which has resulted in a final decision to suspend the license or permit.

(b) The fine accepted shall be the equivalent to twenty percent of the licensee's estimated gross revenues from sales of alcohol beverages during the period of the proposed suspension; except that the fine shall be not less than two hundred dollars nor more than five thousand dollars.

(c) Payment of any fine pursuant to the provisions of this subsection (3) shall be in the form of cash or in the form of a certified check or cashier's check made payable to the state or local licensing authority, whichever is appropriate.

(4) Upon payment of the fine pursuant to subsection (3) of this section, the state or the local licensing authority shall enter its further order permanently staying the imposition of

the suspension. If the fine is paid to a local licensing authority, the governing body of the authority shall cause such moneys to be paid into the general fund of the local licensing authority. Fines paid to the state licensing authority pursuant to subsection (3) of this section shall be transmitted to the state treasurer who shall credit the same to the general fund.

(5) In connection with any petition pursuant to subsection (3) of this section, the authority of the state or local licensing authority is limited to the granting of such stays as are necessary for it to complete its investigation and make its findings and, if it makes such findings, to the granting of an order permanently staying the imposition of the entire suspension or that portion of the suspension not otherwise conditionally stayed.

(6) If the state or the local licensing authority does not make the findings required in paragraph (a) of subsection (3) of this section and does not order the suspension permanently stayed, the suspension shall go into effect on the operative date finally set by the state or the local licensing authority.

(7) The provisions of subsections (3) to (6) of this section shall be effective and may be implemented by the state licensing authority upon its decision to accept and adopt the optional procedures set forth in said subsections. The provisions of subsections (3) to (6) of this section shall be effective and may be implemented by a local licensing authority only after the governing body of the municipality, the governing body of the city and county, or the board of county commissioners of the county chooses to do so and acts, by appropriate resolution or ordinance, to accept and adopt the optional procedures set forth in said subsections. Any such actions may be revoked in a similar manner.

(8) Each local licensing authority shall report all actions taken to impose fines, suspensions, and revocations to the state licensing authority in a manner as required by the state licensing authority. No later than January 15 of each year, a report of the preceding year's actions in which fines, suspensions, or revocations were imposed by local licensing authorities and by the state licensing authority shall be compiled by the state licensing authority. One copy of said report shall be filed with the chief clerk of the house of representatives, one copy shall be filed with the secretary of the senate, and six copies shall be filed in the joint legislative library.

(9) When penalizing a vendor who has violated section 12-47-901 (1) (a) by serving a minor during an underage compliance check, state and local licensing authorities shall consider it a mitigating factor if the vendor is a responsible alcohol beverage vendor as defined by part 10 of this article.

Source: L. 97: Entire article amended with relocations, p. 281, § 3, effective July 1.
L. 2000: (1), (2), IP(3)(a), and (3)(a)(III) amended, p. 1169, § 6, effective May 26.
L. 2004: (9) added, p. 492, § 2, effective July 1.

Editor's note: This section is similar to former § 12-47-110 as it existed prior to 1997.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions.

Due process standard applicable. The test of whether a liquor licensee's procedural due process rights have been violated is one of "fundamental fairness". *Chroma Corp. v. County of Adams*, 36 Colo. App. 345, 543 P.2d 83 (1975).

The holder of a liquor license has sufficient interest therein to require procedural due process protection. *Chroma Corp. v. County of Adams*, 36 Colo. App. 345, 543 P.2d 83 (1975).

Promulgation of rules is not necessary to ensure due process rights for a license suspen-

sion under this section because judicial review adequately protects those rights. *Brownlee v. Dept. of Rev.*, 686 P.2d 1372 (Colo. App. 1984).

This section is constitutional on its face when a hearing is provided as soon as possible within the 15-day limitation set out in the statute. *New Safari Lounge, Inc. v. City of Colo. Springs*, 193 Colo. 428, 567 P.2d 372 (1977).

This section prescribes procedures to revoke a license to sell intoxicating liquors with an alcoholic content in excess of 3.2 percent. *Bunzel v. City of Golden*, 151 Colo. 352, 378 P.2d 208 (1963).

This section has no application to a license to sell 3.2 percent beer. *Bunzel v. City of Golden*, 151 Colo. 352, 378 P.2d 208 (1963).

Though not technically property, a liquor license is a valuable right and possesses some of the characteristics of property, and it may be revoked for breach of the conditions upon which it was issued. *A. D. Jones & Co. v. Parsons*, 136 Colo. 434, 319 P.2d 480 (1957).

A liquor license can be recalled with all other similar licenses during the year only by legislative action, otherwise, it is revocable during the year only for breach of the conditions upon which it was issued, and as thus viewed, it is property within the meaning of the due process clause of the federal constitution. *A. D. Jones & Co. v. Parsons*, 136 Colo. 434, 319 P.2d 480 (1957).

Boards of county commissioners have power to revoke licenses to sell intoxicating liquors whenever the board is satisfied that the licensee has abused the privilege of the license or violated the general law, and for the purpose of determining whether or not a license should be revoked the board may hear evidence and determine for itself whether or not the law has been violated and it is not necessary that the licensee should first have been tried and proven guilty of violating the law in a court of competent jurisdiction before his license can be revoked. *Bd. of County Comm'rs v. Mayr*, 31 Colo. 173, 74 P. 458 (1903) (decided prior to earliest source, L. 35, p. 612, § 10).

Basis for revocation. Licenses may be revoked by the licensing authority, after notice and hearing, for any violation by the licensee or by any of the agents, servants, or employees of such licensee of the provisions of this article, or any of the rules or regulations authorized hereunder, or of any of the terms, conditions or provisions of the license issued by such authority. *A. D. Jones & Co. v. Parsons*, 136 Colo. 434, 319 P.2d 480 (1957).

Sanctions criteria set forth in this section do not govern a decision not to renew under § 12-47-302 (1). *Morris-Schindler, LLC v. City & County of Denver*, 251 P.3d 1076 (Colo. App. 2010).

Licensee presumed to know regulations. Having applied for and received a license pur-

suant to the state liquor code, a licensee is presumed to know the regulations governing use of that license. *Chroma Corp. v. County of Adams*, 36 Colo. App. 345, 543 P.2d 83 (1975).

The test of the sufficiency of notice is whether charges are described with reasonable certainty so that licensee can prepare a defense. *Chroma Corp. v. County of Adams*, 36 Colo. App. 345, 543 P.2d 83 (1975).

This section does not require in a county license suspension hearing that the notice of hearing identify the specific statute or regulation that the licensee is alleged to have violated. *Chroma Corp. v. County of Adams*, 36 Colo. App. 345, 543 P.2d 83 (1975).

Governed by liquor code on local level. Since the general assembly has not adopted legislation requiring that license suspension proceedings by a county be conducted pursuant to the state administrative procedure act and since a county does not have statewide jurisdiction, the notice requirements, suspension of a liquor license, are governed by the state liquor code. *Chroma Corp. v. County of Adams*, 36 Colo. App. 345, 543 P.2d 83 (1975).

Director could move court to release documents in custodia legis. Where director initiated proceedings to determine possible revocation or suspension of license, but the district court had possession of the necessary documents for use by the grand jury, and the district court could not be subpoenaed, the director could properly move, in the alternative, for the court to release the documents in custodia legis. *Granbery v. District Court*, 187 Colo. 316, 531 P.2d 390 (1975).

License suspended for sale of wine to minor. *DiManna v. Kalbin*, 646 P.2d 403 (Colo. App. 1982).

Forty-five days suspension for gambling is reasonable for a violation of § 12-47-128 (5)(n). *Brownlee v. Dept. of Rev.*, 686 P.2d 1372 (Colo. App. 1984).

Applied in *Continental Liquor Co. v. Kalbin*, 43 Colo. App. 438, 608 P.2d 353 (1977); *Chroma Corp. v. Campbell*, 44 Colo. App. 387, 619 P.2d 74 (1980).

PART 7

INSPECTION OF BOOKS AND RECORDS

12-47-701. Inspection procedures. Each licensee shall keep a complete set of books of account, invoices, copies of orders, shipping instructions, bills of lading, weigh bills, correspondence, and all other records necessary to show fully the business transactions of such licensee, all of which shall be open at all times during business hours for the inspection and examination of said state licensing authority or its duly authorized representatives. The state licensing authority may require any licensee to furnish such information as it considers necessary for the proper administration of this article, and may require an audit to be made of such books of account and records on such occasions as it may consider necessary by an auditor to be selected by said state licensing authority who shall likewise have access to all books and records of such licensee, and the expense thereof shall be paid by said licensee.

Source: L. 97: Entire article amended with relocations, p. 284, § 3, effective July 1.

Editor's note: This section is similar to former § 12-47-109 as it existed prior to 1997.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions.

Director has authority to issue subpoenas compelling production of documents. *Granbery v. District Court*, 187 Colo. 316, 531 P.2d 390 (1975).

Director could move court to release documents in custodia legis. Where director initi-

ated proceedings to determine possible revocation or suspension of license, but the district court had possession of the necessary documents for use by the grand jury, and the district court could not be subpoenaed, the director could properly move, in the alternative, for the court to release the documents in custodia legis. *Granbery v. District Court*, 187 Colo. 316, 531 P.2d 390 (1975).

PART 8

JUDICIAL REVIEW AND CIVIL LIABILITY

12-47-801. Civil liability - legislative declaration. (1) The general assembly hereby finds, determines, and declares that this section shall be interpreted so that any common law cause of action against a vendor of alcohol beverages is abolished and that in certain cases the consumption of alcohol beverages rather than the sale, service, or provision thereof is the proximate cause of injuries or damages inflicted upon another by an intoxicated person except as otherwise provided in this section.

(2) As used in this section, "licensee" means a person licensed under the provisions of this article or article 46 or 48 of this title and the agents or servants of such person.

(3) (a) No licensee is civilly liable to any injured individual or his or her estate for any injury to such individual or damage to any property suffered because of the intoxication of any person due to the sale or service of any alcohol beverage to such person, except when:

(I) It is proven that the licensee willfully and knowingly sold or served any alcohol beverage to such person who was under the age of twenty-one years or who was visibly intoxicated; and

(II) The civil action is commenced within one year after such sale or service.

(b) No civil action may be brought pursuant to this subsection (3) by the person to whom the alcohol beverage was sold or served or by his or her estate, legal guardian, or dependent.

(c) In any civil action brought pursuant to this subsection (3), the total liability in any such action shall not exceed one hundred fifty thousand dollars.

(4) (a) No social host who furnishes any alcohol beverage is civilly liable to any injured individual or his or her estate for any injury to such individual or damage to any property suffered, including any action for wrongful death, because of the intoxication of any person due to the consumption of such alcohol beverages, except when:

(I) It is proven that the social host knowingly served any alcohol beverage to such person who was under the age of twenty-one years or knowingly provided the person under the age of twenty-one a place to consume an alcoholic beverage; and

(II) The civil action is commenced within one year after such service.

(b) No civil action may be brought pursuant to this subsection (4) by the person to whom such alcohol beverage was served or by his or her estate, legal guardian, or dependent.

(c) The total liability in any such action shall not exceed one hundred fifty thousand dollars.

(4.5) An instructor or entity that complies with section 18-13-122 (3) (c), C.R.S., shall not be liable for civil damages resulting from the intoxication of a minor due to the minor's

unauthorized consumption of alcohol beverages during instruction in culinary arts, food service, or restaurant management pursuant to section 18-13-122 (3) (c), C.R.S.

(5) (a) The limitations on damages set forth in paragraph (c) of subsection (3) and paragraph (c) of subsection (4) of this section shall be adjusted for inflation as of January 1, 1998, and January 1, 2008. The adjustments made on January 1, 1998, and January 1, 2008, shall be based on the cumulative annual adjustment for inflation for each year since the effective date of the damages limitations in paragraph (c) of subsection (3) and paragraph (c) of subsection (4) of this section. The adjustments made pursuant to this paragraph (a) shall be rounded upward or downward to the nearest ten-dollar increment.

(b) As used in this subsection (5), "inflation" means the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Boulder, all items, all urban consumers, or its successor index.

(c) The secretary of state shall certify the adjusted limitation on damages within fourteen days after the appropriate information is available, and:

(I) The adjusted limitation on damages as of January 1, 1998, shall be the limitation applicable to all claims for relief that accrue on or after January 1, 1998, and before January 1, 2008; and

(II) The adjusted limitation on damages as of January 1, 2008, shall be the limitation applicable to all claims for relief that accrue on and after January 1, 2008.

Source: **L. 97:** Entire article amended with relocations, p. 284, § 3, effective July 1; (5) added, p. 922, § 3, effective August 6. **L. 2004:** (4.5) added, p. 1097, § 2, effective July 1. **L. 2005:** (4)(a)(I) amended, p. 1244, § 6, effective July 1. **L. 2007:** (5)(a) and (5)(c) amended, p. 329, § 2, effective July 1.

Editor's note: (1) This section is similar to former § 12-47-128.5 as it existed prior to 1997.

(2) Section 12-47-801 (5) was originally numbered as § 12-47-128.5 (5) in House Bill 97-1239 but has been renumbered on revision for ease of location.

Cross references: (1) For the legislative declaration contained in the 1997 act enacting subsection (5), see section 1 of chapter 172, Session Laws of Colorado 1997. For the legislative declaration contained in the 2005 act amending subsection (4)(a)(I), see section 1 of chapter 282, Session Laws of Colorado 2005. For the legislative declaration contained in the 2007 act amending subsections (5)(a) and (5)(c), see section 1 of chapter 83, Session Laws of Colorado 2007.

(2) For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2009, see sections 1 and 5 of chapter 83, Session Laws of Colorado 2007. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

ANNOTATION

Annotator's note. Since § 12-47-801 is similar to §§ 12-46-112.5 and 12-47-128.5 as they existed prior to the 1997 amendment of title 12, articles 46 and 47, which resulted in the relocation of provisions, relevant cases construing those provisions have been included in the annotations to this section.

Employer that made alcohol beverages available to an employee on its premises after work hours was acting as a social host and not liable for injuries sustained by third parties as a result of the employee's operation of a motor vehicle after consuming the alcohol beverages. *Rojas v. Engineered Plastic Designs, Inc.*, 68 P.3d 591 (Colo. App. 2003).

A victim need not show his or her injuries were a reasonable foreseeable consequence of licensed alcohol vendor serving a visibly intoxicated person. It suffices that the vendor's

improper service of alcohol caused the patron's intoxication and patron's intoxication caused the victim's injuries. *Strauch v. Build It*, 226 P.3d 1235 (Colo. App. 2009), *aff'd*, 253 P.3d 302 (Colo. 2011).

Cases Decided Under Former § 12-46-112.5.

Law reviews. For comment, "Crespin v. Largo Corporation and the Legislative Response: The Turbulent State of Dram Shop Liability in Colorado", see 57 U. Colo., L. Rev. 419 (1986). For article, "1986 Colorado Tort Reform Legislation", see 15 Colo. Law. 1363 (1986). For article, "1988 Update on Colorado Tort Reform Legislation — Part II", see 17 Colo. Law. 1949 (1988). For article, "Recovery of Interest: Part I — Personal Injury", see 18 Colo. Law. 1063 (1989).

This section is not intended to apply retroactively and does not apply to claims which accrued prior to its effective date. *Jenkins v. Wine & Dine, Inc.*, 784 P.2d 854 (Colo. App. 1989).

One-year statute of limitation period within which to file a claim under this section is not unreasonably limited in duration. *Estate of Stevenson v. Hollywood Bar*, 832 P.2d 718 (Colo. 1992).

One-year limitation period established by this section is constitutional. *Estate of Stevenson v. Hollywood Bar*, 832 P.2d 718 (Colo. 1992).

"Willfully and knowingly served" as used in subsection (3)(a)(I) occurs only when a social host has control over or takes an active part in supplying a minor with alcohol. Providing a home at which alcohol is consumed by minors, without more, does not create social host liability. *Forrest v. Lorrigan*, 833 P.2d 873 (Colo. App. 1992).

The fact that the host collected money for the purchase of beer was not enough to permit a finding of social host liability, absent evidence that he also bought or exercised control over the beer. *Forrest v. Lorrigan*, 833 P.2d 873 (Colo. App. 1992).

Social host liability for injuries to third party under this section not established where parent provided home where minors could consume alcoholic beverages and helped collect money to purchase alcoholic beverages unless it could be shown that parent willfully and knowingly served alcoholic beverages to minors. *Forrest v. Lorrigan*, 833 P.2d 873 (Colo. App. 1992).

Cases Decided Under Former § 12-47-128.5.

Law reviews. For comment, "Crespin v. Largo Corporation and the Legislative Response: The Turbulent State of Dram Shop Liability in Colorado", see 57 U. Colo. L. Rev. 419 (1986). For article, "1986 Colorado Tort Reform Legislation", see 15 Colo. Law. 1363 (1986). For article, "Recovery of Interest: Part I — Personal Injury", see 18 Colo. Law. 1063 (1989).

This statute found constitutional in that it does not violate due process by being unconstitutionally vague, does not violate equal protection rights of heirs of intoxicated person because the statute is rationally related to the legitimate state purpose of preventing negligence by consumers of alcohol, does not unconstitutionally limit access to courts, and is not constitutionally-prohibited special legislation. *Sigman v. Seafood Ltd. P'ship I*, 817 P.2d 527 (Colo. 1991).

Subsection (4) does not deny equal protection. The classification is based on a previously established distinction between minors and adults with respect to alcohol consumption and

the state has a legitimate interest in deterring alcohol-related injuries caused by minors. *Charlton v. Kimata*, 815 P.2d 946 (Colo. 1991).

Under the plain language of this section, a licensee may be held civilly liable only if the licensee knows that he or she is serving alcohol to a person under twenty-one years of age and willfully does so. *Dickman v. Jackalope, Inc.*, 870 P.2d 1261 (Colo. App. 1994).

The terms "willfully and knowingly" in this section apply both to the words "sold or served" and to the phrase "to such person who was under the age of twenty-one years", and a different interpretation would render the "willful and knowing" language meaningless since it is difficult to imagine any sales or service of alcohol by a licensee which are not deliberate. *Dickman v. Jackalope, Inc.*, 870 P.2d 1261 (Colo. App. 1994).

Whether a licensee "willfully and knowingly" sold or served alcohol to a visibly intoxicated person is generally a question of fact which may be proved by either direct or circumstantial evidence. *Christoph v. Colo. Comm. Corp.*, 946 P.2d 519 (Colo. App. 1997).

The addition of the words "willfully and knowingly" to this section relating to imposition of civil liability, together with the fact that the civil liability section does not include the good-faith defense contained in § 12-47-128 (5)(a)(I), buttresses the conclusion that the general assembly did not intend that this be a strict liability provision, but rather one requiring a plaintiff to prove knowledge and intention on the part of the vendor. *Dickman v. Jackalope, Inc.*, 870 P.2d 1261 (Colo. App. 1994).

Heirs of fatally injured intoxicated person may not maintain wrongful death action against vendor of alcoholic beverages because this statute abolishes such actions by the consumers of alcohol and the wrongful death statute permits heirs to maintain such actions only if the deceased could have done so had the deceased's injuries not been fatal. *Sigman v. Seafood Ltd. P'ship I*, 817 P.2d 527 (Colo. 1991).

One-year statute of limitation period within which to file a claim under this section is not unreasonably limited in duration. *Estate of Stevenson v. Hollywood Bar*, 832 P.2d 718 (Colo. 1992).

Social host liability for injuries to third party under this section not established where parent provided home where minors could consume alcoholic beverages and helped collect money to purchase alcoholic beverages unless it could be shown that parent willfully and knowingly served alcoholic beverages to minors. *Forrest v. Lorrigan*, 833 P.2d 873 (Colo. App. 1992).

Section imposes no duty on employer who is neither an innkeeper nor a social host to prevent an employee from becoming intoxicated at work where employer did not know

employee had consumed, on the day in question or at any other time, wine employer kept for business purposes nor was employer aware if employee had a history of alcohol-related problems. *Biel v. Alcott*, 876 P.2d 60 (Colo. App. 1993).

Trial court did not err in determining that two plaintiffs' combined recovery against two separate establishments was limited to \$150,000. This section describes the civil action as one in which a single licensee is civilly liable to an injured individual. If the statute required plaintiffs to maintain separate actions against

each licensee, each plaintiff would have been required to file separate actions against both licensees, a waste of judicial resources not intended by the general assembly. *Brown v. Hollywood Bar and Cafe*, 942 P.2d 1363 (Colo. App. 1997).

Plaintiff entitled to interest and costs insofar as those amounts exceed the statutory cap. This section makes clear that the total liability is specified for any injury to an individual, thus only damages for the injury are covered by the statutory cap. *Brown v. Hollywood Bar and Cafe*, 942 P.2d 1363 (Colo. App. 1997).

12-47-802. Judicial review. Any person applying to the courts for a review of the state or any local licensing authority's decision shall apply for review within thirty days after the date of decision of refusal by a local licensing authority or, in the case of approval by a local licensing authority, within thirty days after the date of decision by the state licensing authority and shall be required to pay the cost of preparing a transcript of proceedings before the licensing authority when such a transcript is demanded by the person taking the appeal or when such a transcript is furnished by the licensing authority pursuant to court order.

Source: L. 97: Entire article amended with relocations, p. 285, § 3, effective July 1.

Editor's note: This section is similar to former § 12-47-141 as it existed prior to 1997.

ANNOTATION

Annotator's note. Since § 12-47-802 is similar to §§ 12-46-118 and 12-47-141 as they existed prior to the 1997 amendment of title 12, articles 46 and 47, which resulted in the relocation of provisions, relevant cases construing those provisions have been included in the annotations to this section.

Cases Decided Under Former § 12-46-118.

No unbridled authority. Licensing authority's power to act is not a completely unbridled one because their action is subject to judicial review. *Bd. of County Comm'rs v. Nat'l Tea Co.*, 149 Colo. 80, 367 P.2d 909 (1962).

Three principles of review pervade all pertinent decisions of the supreme court: (1) The licensing authorities are vested with a very wide discretion; (2) all reasonable doubts as to the correctness of the board's rulings are to be resolved in favor of the board; (3) the determination of the board will not be disturbed by the courts unless it appears that the board has "abused its discretion". *La Junta Easy Shops, Inc. v. Hendren*, 164 Colo. 55, 432 P.2d 754 (1967); *Kerr v. Bd. of County Comm'rs*, 170 Colo. 227, 460 P.2d 235 (1969).

A reviewing court is concerned only with the question of whether the decision of the licensing authority was supported by competent evidence, and not whether the trial court or the reviewing court would have arrived at a different conclusion were they the licensing au-

thority. *City of Manitou Springs v. Walk*, 149 Colo. 43, 367 P.2d 744 (1961).

Abuse of discretion grounds for disturbing determination. The determination of the board of county commissioners will not be disturbed by the courts unless it appears that the board has abused its discretion. *Bailey v. Bd. of County Comm'rs*, 151 Colo. 115, 376 P.2d 519 (1962).

Arbitrary and capricious refusal basis for order to issue license. Since the licensing authority's rulings are subject to review by the courts, if its action in refusing to grant a license is found to be arbitrary or capricious, then a court has the authority, and the duty, to order the license to issue. *Bd. of County Comm'rs v. Salardino*, 136 Colo. 421, 318 P.2d 596 (1957); *Adams County Golf, Inc. v. Colo. Dept. of Rev.*, 199 Colo. 423, 610 P.2d 97 (1980).

Findings of fact sufficient for review. It is not required that the licensing authority make findings of fact equivalent to that of a trial court, but they must be sufficient to furnish a basis for judicial review if the statutory requirements are to be fulfilled. *Le Pore v. Larkin*, 146 Colo. 311, 361 P.2d 343 (1961).

Findings of fact should be sufficient in content to apprise the parties and a reviewing court of the factual basis of an action of the administrative agency, so that the parties and the reviewing tribunal may determine whether the decision has support in the evidence and in the law. *Bd. of County Comm'rs v. Salardino*, 136 Colo. 421, 318 P.2d 596 (1957).

Reversal because of imperfect and contradictory findings. Where the findings and determination of the board are so imperfect and contradictory as to preclude a trial court from basing a considered judgment thereon, the supreme court, being in no better position than a trial judge, has but one course to pursue, reversal. *Bd. of County Comm'rs v. Salardino*, 136 Colo. 421, 318 P.2d 596 (1957).

Cases Decided Under Former § 12-47-141.

Special proceedings. The proceedings provided for reviewing the action of the state licensing authority in refusing a license is a special proceeding, and is subject to, and controlled by, the special provisions, if any, contained in this section and article. *Saunders v. Norton*, 98 Colo. 537, 58 P.2d 482 (1936).

If the local licensing authority denies the license, appeal therefrom to the district court would lie because the state alone could not authorize the issuance. *Kornfeld v. Yost*, 37 Colo. App. 483, 551 P.2d 219 (1976), rev'd on other grounds sub nom. *Kornfeld v. Perl Mack Liquors, Inc.*, 193 Colo. 442, 567 P.2d 383 (1977).

Such review predicated on exhaustion of administrative remedies. Before one protesting issuance of a license may seek review in the district court, he must first exhaust his administrative remedies before the state licensing authority. *Kornfeld v. Yost*, 37 Colo. App. 483, 551 P.2d 219 (1976), rev'd on other grounds sub nom. *Kornfeld v. Perl Mack Liquors, Inc.*, 193 Colo. 442, 567 P.2d 383 (1977).

Evidence before authority and arbitrary and capricious nature of action subject to review. The question before the supreme court is not as to whether there was any evidence to support the decision of the trial court, but rather whether there was any evidence to support the decision of the licensing authority, or whether he acted arbitrarily and capriciously. *Geer v. Stathopoulos*, 135 Colo. 146, 309 P.2d 606 (1957).

The findings and conclusions of the licensing authority should not be too uncertain for judicial interpretation, and administrative hearings should be decided according to the evidence and the law. *Geer v. Presto*, 135 Colo. 536, 313 P.2d 980 (1957).

Even where the final order rests in whole or in part upon judicial notice of facts, specific findings must appear in sufficient detail to enable the court on appeal to determine whether proper limits, in supplementing the testimony by judicial knowledge, have been observed. *Geer v. Stathopoulos*, 135 Colo. 146, 309 P.2d 606 (1957).

A determination on review cannot be made unless the basis for denial is disclosed, and if the court fails to require disclosure it cannot properly perform its function of review, and

thereby the statute is circumvented. *Geer v. Stathopoulos*, 135 Colo. 146, 309 P.2d 606 (1957).

Basis must appear on record for review. When a court is called upon to review the action of an administrative agency, it should be placed in the same position as such agency, and if the administrative agency has knowledge of some fact and acts upon such knowledge, the agency should see to it that what it knows becomes part of the record in order to permit the reviewing court to evaluate the matter so known, only then can the court be in the same position as the agency in a consideration of the problem successively confronting agency and court. *Geer v. Stathopoulos*, 135 Colo. 146, 309 P.2d 606 (1957).

In a proceeding to review the granting of a liquor license, the reviewing court is limited to the proceedings before the licensing officer, and it is error to consider matters outside the record and for the trial court to substitute its judgment for that of the licensing officer. *Cronin v. Ward*, 144 Colo. 192, 355 P.2d 655 (1960).

The reviewing court is only concerned as to whether or not the decision of the licensing authority was supported by competent evidence. *MacArthur v. Presto*, 122 Colo. 202, 221 P.2d 934 (1950); *MacArthur v. Sanzalone*, 123 Colo. 166, 225 P.2d 1044 (1950); *Kornfeld v. Yost*, 37 Colo. App. 483, 551 P.2d 219 (1976), rev'd on other grounds sub nom. *Kornfeld v. Perl Mack Liquors, Inc.*, 193 Colo. 442, 567 P.2d 383 (1977).

The reviewing court may not substitute its opinion for the determination made by the local licensing authority in granting or denying a license, nor interfere with the exercise of its discretion where its action is based on evidence from which reasonable men might draw different conclusions. *Bd. of County Comm'rs v. Bova*, 153 Colo. 230, 385 P.2d 590 (1963).

Neither the supreme court nor the trial court may substitute its opinion for the determination made by the local licensing authority in granting or denying a license nor interfere with the exercise of its discretion where its action is based on evidence from which reasonable men might honestly draw different conclusions. *Bd. of County Comm'rs v. Bova*, 153 Colo. 230, 385 P.2d 590 (1963).

If there is evidence to support the board's determination, it is the duty of the trial court and it is the duty of the supreme court to affirm the action of the board. *Bd. of County Comm'rs v. Bova*, 153 Colo. 230, 385 P.2d 590 (1963).

If there is evidence to support the determination of the board of county commissioners, it is the duty of the trial court to affirm the action of the board. *Jennings v. Hoskinson*, 152 Colo. 276, 382 P.2d 807 (1963).

All reasonable doubt must be resolved in

favor of the findings of the licensing authority and unless it clearly appears that under the whole record an action of that authority is arbitrary and capricious the supreme court may not order a different result. *Gem Beverage Co. v. Geer*, 138 Colo. 420, 334 P.2d 744 (1959); *Quedens v. J. S. Dillon Co.*, 146 Colo. 161, 360 P.2d 984 (1961).

Where the courts review the decisions of a licensing authority regarding the issuance of licenses for the sale of spirituous liquors all reasonable doubts must be resolved in favor of the licensing authority. *MacArthur v. Presto*, 122 Colo. 202, 221 P.2d 934 (1950); *MacArthur v. Sanzalone*, 123 Colo. 166, 225 P.2d 1044 (1950); *Lab Dev. Co. v. Hill*, 152 Colo. 338, 381 P.2d 811 (1963).

Arbitrary and capricious actions subject to change on review. The various licensing authorities have discretionary power in granting or denying licenses and their actions will not be disturbed on review unless arbitrary or capricious. *Bd. of County Comm'rs v. Bonicelli*, 151 Colo. 308, 377 P.2d 124 (1962).

The refusal of a local licensing authority to grant a license may be reviewed by the court, as in the case of a refusal of license by the state licensing authority, by writ of certiorari or otherwise, and if the court having jurisdiction shall determine that such action was capricious or arbitrary it shall order the issuance of the license. *MacArthur v. Presto*, 122 Colo. 202, 221 P.2d 934 (1950); *MacArthur v. Sanzalone*, 123 Colo. 166, 225 P.2d 1044 (1950).

Capricious or arbitrary exercise of discretion by an administrative board can arise in only three ways: (a) By neglecting or refusing to use reasonable diligence and care to procure such evidence as it is by law authorized to consider in exercising the discretion vested in it; (b) by failing to give candid and honest consideration of the evidence before it on which it is authorized to act in exercising its discretion; (c) by exercising its discretion in such manner after a consideration of evidence before it as clearly to indicate that its action is based on conclusions from the evidence such that reasonable men fairly and honestly considering the evidence must reach contrary conclusions. *Goehring v. Bd. of County Comm'rs*, 172 Colo. 1, 469 P.2d 137 (1970).

Where there is no showing in the record that a city council has abused its discretion or exceeded its authority in a refusal to grant a liquor license, and it seems to have acted in the premises according to law and its own conception of right and duty, a decree of the district court directing the city council forthwith to issue a liquor license to the plaintiff is wrong. *Heuston v. Gilman*, 98 Colo. 301, 56 P.2d 40 (1936).

Mandamus. In harmony with the rule that resort may be had to mandamus to compel the

exercise of authority or discretion vested in an administrative body or board, courts cannot control or direct how such authority or discretion shall be exercised unless it appears clearly that its action has been capricious or arbitrary. *Van DeVegt v. Bd. of County Comm'rs*, 98 Colo. 161, 55 P.2d 703 (1936).

Mandamus to compel issuance of license must be brought in county where application was made. See *Saunders v. Norton*, 98 Colo. 537, 58 P.2d 482 (1936).

The rule ordinarily applicable to writs of error before the supreme court is that the supreme court must approach the facts of a case by constantly keeping in mind the exclusive vantage point of the trial judge in that he was able in the trial to use his eyes, ears, and intelligence to discern wherein was truth, and wherein credit and weight should be given to the testimony of witnesses. *Geer v. Stathopoulos*, 135 Colo. 146, 309 P.2d 606 (1957).

Granting of license to other applicant while review proceeding. Where a party applied for a liquor license which was denied, a proceeding to review such denial under this section does not operate to stay the hand of the licensing officer in receiving and acting upon the application of another party for a license to operate at the same location. *Cronin v. Ward*, 144 Colo. 192, 355 P.2d 655 (1960).

Order to republish notice and hold hearing proper. In an action to compel a board of county commissioners to issue a liquor license, where it is shown that the board refuses to issue the license but held no hearing and gave no reasons for such refusal, an order requiring the applicant to republish his notice and directing the board to hold a regular hearing thereon with a court reporter present is proper, since a liquor license cannot be secured by default. *Sheeley v. Bd. of County Comm'rs*, 137 Colo. 350, 325 P.2d 275 (1958).

No court order available to interfere with issuance, etc. Since the statutes give the liquor licensing authority the exclusive jurisdiction in the matter of issuing, transferring, or revocation of a liquor license, the superior court does not have by injunctive proceedings or any other court order, jurisdiction to interfere with the functions of the manager of safety in his capacity as the Denver liquor licensing authority. *Hilst v. Bennett*, 175 Colo. 78, 485 P.2d 880 (1971).

The actions of the Denver liquor licensing authority are subject to judicial review, but until he has exercised his authority, the courts do not have jurisdiction to interfere with the administrative authority vested in the manager. *Hilst v. Bennett*, 175 Colo. 78, 485 P.2d 880 (1971).

Competitor may not appeal issuance of license. An operator of a competing liquor store does not have standing to appeal a decision of a local licensing authority granting issuance of a liquor license, either under this section or as a

person "substantially aggrieved" by the disposition of a case in the lower court, pursuant to Rule 106, C.R.C.P., since economic injury from lawful competition does not confer standing to

question the legality of a competitor's operations. *Norris v. Grimsley*, 41 Colo. App. 231, 585 P.2d 925 (1978).

PART 9

UNLAWFUL ACTS - ENFORCEMENT

12-47-901. Unlawful acts - exceptions. (1) Except as provided in section 18-13-122, C.R.S., it is unlawful for any person:

(a) To sell, serve, give away, dispose of, exchange, or deliver, or permit the sale, serving, giving, or procuring of, any alcohol beverage to a visibly intoxicated person or to a known habitual drunkard;

(a.5) (I) To sell, serve, give away, dispose of, exchange, or deliver or permit the sale, serving, giving, or procuring of any alcohol beverage to or for any person under the age of twenty-one years.

(II) If a person is convicted of an offense pursuant to subparagraph (I) of this paragraph (a.5) for serving, giving away, disposing of, exchanging, or delivering or permitting the serving, giving, or procuring of any alcohol beverage to a person under the age of twenty-one years, the court shall consider the following in mitigation:

(A) After consuming the alcohol, the underage person was in need of medical assistance as a result of consuming alcohol; and

(B) Within six hours after the underage person consumed the alcohol, the defendant contacted the police or emergency medical personnel to report that the underage person was in need of medical assistance as a result of consuming alcohol.

(b) To obtain or attempt to obtain any alcohol beverage by misrepresentation of age or by any other method in any place where alcohol beverages are sold when such person is under twenty-one years of age;

(c) To possess alcohol beverages in any store, in any public place, including public streets, alleys, roads, or highways, or upon property owned by the state of Colorado or any subdivision thereof, or inside vehicles while upon the public streets, alleys, roads, or highways when such person is under twenty-one years of age;

(d) To knowingly, or under conditions that an average parent or guardian should have knowledge of, suffer or permit any person under twenty-one years of age, of whom such person may be a parent or guardian, to violate the provisions of paragraph (b) or (c) of this subsection (1);

(e) To buy any vinous or spirituous liquor from any person not licensed to sell at retail as provided by this article except as otherwise provided in this article;

(f) To sell at retail any malt, vinous, or spirituous liquors in sealed containers without holding a retail liquor store or liquor-licensed drugstore license, except as permitted by section 12-47-301 (6) (b) or any other provision of this article;

(g) To manufacture, sell, or possess for sale any alcohol beverage unless licensed to do so as provided by this article or article 46 or 48 of this title and unless all licenses required are in full force and effect;

(h) (I) To consume malt, vinous, or spirituous liquor in any public place except on any licensed premises permitted under this article to sell such liquor by the drink for consumption thereon; to consume any alcohol beverage upon any premises licensed to sell liquor for consumption on the licensed premises, the sale of which is not authorized by the state licensing authority; to consume alcohol beverages at any time on such premises other than such alcohol beverage as is purchased from such establishment; or to consume alcohol beverages in any public room on such premises during such hours as the sale of such beverage is prohibited under this article.

(II) Notwithstanding subparagraph (I) of this paragraph (h), it is not unlawful for a person who is at least twenty-one years of age to consume malt, vinous, or spirituous liquors while the person is a passenger aboard a luxury limousine or a charter bus, as those terms are defined in section 40-10.1-301, C.R.S. Nothing in this subparagraph (II) authorizes an

owner or operator of a luxury limousine or charter bus to sell or distribute alcohol beverages without obtaining a public transportation system license pursuant to section 12-47-419.

(III) Notwithstanding subparagraph (I) of this paragraph (h), it shall not be unlawful for adult patrons of a retail liquor store or liquor-licensed drugstore licensee to consume malt, vinous, or spirituous liquors on the licensed premises when the consumption is conducted within the limitations of the licensee's license and is part of a tasting if authorization for the tasting has been granted pursuant to section 12-47-301.

(IV) Notwithstanding subparagraph (I) of this paragraph (h), it is not unlawful for adult patrons of an art gallery permittee to consume alcohol beverages on the premises when the consumption is conducted within the limitations of a valid permit granted pursuant to section 12-47-422.

(V) Notwithstanding subparagraph (I) of this paragraph (h), it is not unlawful for adult patrons of the Colorado state fair to consume malt, vinous, or spirituous liquor upon unlicensed areas within the designated fairgrounds of the Colorado state fair authority or at a licensed premises on the fairgrounds when not purchased at the licensed premises, but this subparagraph (V) does not authorize a patron to remove an alcohol beverage from the fairgrounds.

(VI) Notwithstanding subparagraph (I) of this paragraph (h), it is not unlawful for adult patrons of a licensed premises that is attached to a common consumption area to consume alcohol beverages upon unlicensed areas within a common consumption area, but this subparagraph (VI) does not authorize a patron to remove an alcohol beverage from the common consumption area.

(i) To regularly provide premises, or any portion thereof, together with soft drinks or other mix, ice, glasses, or containers at a direct or indirect cost or charge to any person who brings alcohol beverages upon such premises for the purpose of consuming such beverages on said premises during the hours in which the sale of such beverages is prohibited or to consume such beverages upon premises operated in the manner described in this paragraph (i);

(j) To possess any package, parcel, or container on which the excise tax has not been paid;

(k) With knowledge, to permit or fail to prevent the use of his or her identification, including a driver's license, by a person who is under twenty-one years of age, for the unlawful purchase of any alcohol beverage;

(l) Who is a common carrier regulated under article 10 or 11 of title 40, C.R.S., or is an agent or employee of such common carrier, to deliver alcohol beverages for any person who has not been issued a license or permit pursuant to this article;

(m) To remove an alcohol beverage from a licensed retail gaming facility where the liquor license for such facility allows only on-premises consumption of alcohol beverages.

(1.5) An underage person shall be immune from criminal prosecution under paragraph (b) or (c) of subsection (1) of this section if he or she establishes the following:

(a) The underage person called 911 and reported that another underage person was in need of medical assistance due to alcohol consumption;

(b) The underage person who called 911 provided his or her name to the 911 operator;

(c) The underage person was the first person to make the 911 report; and

(d) The underage person who made the 911 call remained on the scene with the underage person in need of medical assistance until assistance arrived and cooperated with medical assistance or law enforcement personnel on the scene.

(2) It is unlawful for any person licensed as a manufacturer, limited winery, or brew pub pursuant to this article or article 46 of this title to manufacture alcohol beverages except in the permanent location specifically designated in the license for such manufacture, except as allowed pursuant to section 12-46-104 (1) (a), 12-47-402 (2.5), 12-47-403 (2) (a), or 12-47-415 (1) (b).

(3) (a) It is unlawful for any person to import or sell any imported alcohol beverage in this state unless such person is the primary source of supply in the United States for the brand of such liquor to be imported into or sold within this state and unless such person holds a valid importer's license issued under the provisions of this article.

(b) If it is determined by the state licensing authority, in its discretion, as not constituting unfair competition or unfair practice, any importer may be authorized by said state licensing authority to import and sell under and subject to the provisions of such importer's license any brand of alcohol beverage for which he or she is not the primary source of supply in the United States if such licensee is the sole source of supply of that brand of alcohol beverage in the state of Colorado and such authorization is determined by the state licensing authority as not constituting a violation of section 12-47-308.

(c) Any such manufacturer or importer shall, at least thirty days before the importation or sale of any such alcohol beverage in this state, file with the state licensing authority notice of intent to import one or more specified brands of such beverage, together with a statement that such manufacturer or importer is the primary source of supply in the United States for any such brand, unless exempted pursuant to paragraph (b) of this subsection (3), in which case, a statement that such manufacturer or importer is the sole source of supply of that brand of beverage in the state of Colorado, and, upon the request of the state licensing authority, a copy of the manufacturer's federal brand label approval form as required by the federal bureau of alcohol, tobacco, and firearms or any of its successor agencies. Thereafter, said licensee shall file with the state licensing authority a copy of each sales invoice with a monthly sales report as required by section 12-47-503 (4) and (5).

(d) As used in this subsection (3), the term "primary source of supply in the United States" means the manufacturer, the producer, the owner of such alcohol beverage at the time it becomes a marketable product, the bottler in the United States, or the exclusive agent within the United States, or any of the states, of any such manufacturer, producer, owner, or bottler outside the United States. To be the "primary source of supply in the United States", the said manufacturer or importer must be the first source, such as the manufacturer or the source closest to the manufacturer, in the channel of commerce from which the product can be secured by Colorado alcohol beverage wholesalers.

(e) It is unlawful for any person licensed as an importer of alcohol beverages pursuant to this article to deliver any such beverages to any person not in possession of a valid wholesaler's license.

(4) It is unlawful for any person licensed to sell at wholesale pursuant to this article or article 46 of this title:

(a) To peddle malt, vinous, or spirituous liquor at wholesale or by means of a truck or other vehicle if the sale is consummated and delivery made concurrently, but nothing in this paragraph (a) shall prevent delivery from a truck or other vehicle of orders previously taken;

(b) To deliver fermented malt beverages or malt liquors to any retail licensee located outside the geographic territory designated on the license application filed with the state licensing authority if such person holds a wholesaler's beer license;

(c) To purchase or receive any alcohol beverage from any person not licensed pursuant to this article or article 46 of this title, unless otherwise provided in this article;

(d) To sell or serve any alcohol beverage to consumers for consumption on or off the licensed premises during any hours retailers are prohibited from selling or serving such liquors pursuant to subsection (5) of this section.

(5) It is unlawful for any person licensed to sell at retail pursuant to this article:

(a) (I) To sell an alcohol beverage to any person under the age of twenty-one years, to a habitual drunkard, or to a visibly intoxicated person, or to permit any alcohol beverage to be sold or dispensed by a person under eighteen years of age, or to permit any such person to participate in the sale or dispensing thereof. If a person who, in fact, is not twenty-one years of age exhibits a fraudulent proof of age, any action relying on such fraudulent proof of age shall not constitute grounds for the revocation or suspension of any license issued under this article or article 46 of this title. Notwithstanding any provision in this subparagraph (I) to the contrary, no person under twenty-one years of age shall be employed to sell or dispense malt, vinous, or spirituous liquors unless he or she is supervised by another person who is on premise and has attained twenty-one years of age. No employee of a tavern licensed pursuant to section 12-47-412, that does not regularly serve meals as defined in section 12-47-103 (20), or a retail liquor store shall sell malt, vinous, or spirituous liquors unless such person is at least twenty-one years of age.

(II) (A) If a licensee or a licensee's employee has reasonable cause to believe that a person is under twenty-one years of age and is exhibiting fraudulent proof of age in an attempt to obtain any alcohol beverage, the licensee or employee shall be authorized to confiscate such fraudulent proof of age, if possible, and shall, within seventy-two hours after the confiscation, turn it over to a state or local law enforcement agency. The failure to confiscate such fraudulent proof of age or to turn it over to a state or local law enforcement agency within seventy-two hours after the confiscation shall not constitute a criminal offense, notwithstanding section 12-47-903 (1) (a).

(B) If a licensee or a licensee's employee believes that a person is under twenty-one years of age and is exhibiting fraudulent proof of age in an attempt to obtain any alcohol beverage, the licensee or the licensee's employee or any peace or police officer, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person in a reasonable manner for the purpose of ascertaining whether the person is guilty of any unlawful act under this section. Such questioning of a person by a licensee or a licensee's employee or a peace or police officer does not render the licensee, the licensee's employee, or a peace or police officer civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention.

(III) Each licensee shall display a printed card that contains notice of the provisions of this paragraph (a).

(IV) Any licensee or licensee's employee acting in good faith in accordance with the provisions of subparagraph (II) of this paragraph (a) shall be immune from any liability, civil or criminal; except that a licensee or employee acting willfully or wantonly shall not be immune from liability pursuant to subparagraph (II) of this paragraph (a).

(b) To sell, serve, or distribute any malt, vinous, or spirituous liquors at any time other than the following:

(I) For consumption on the premises on any day of the week, except between the hours of 2 a.m. and 7 a.m.;

(II) In sealed containers, beginning at 8 a.m. until 12 midnight each day; except that no malt, vinous, or spirituous liquors shall be sold, served, or distributed in a sealed container on Christmas day;

(c) Except as provided in section 18-13-122, C.R.S., for any person to sell fermented malt beverages to any person under the age of twenty-one years or to any person between the hours of 12 midnight and 5 a.m.;

(d) To offer for sale or solicit any order for vinous or spirituous liquors in person at retail except within the licensed premises;

(e) To have in possession or upon the licensed premises any alcohol beverage, the sale of which is not permitted by said license;

(f) To buy any alcohol beverages from any person not licensed to sell at wholesale as provided by this article except as otherwise provided in this article;

(g) To sell at retail alcohol beverages except in the permanent location specifically designated in the license for such sale;

(h) To fail to display at all times in a prominent place a printed card with a minimum height of fourteen inches and a width of eleven inches with each letter to be a minimum of one-half inch in height, which shall read as follows:

WARNING

IT IS ILLEGAL TO SELL WHISKEY, WINE, OR BEER TO ANY PERSON UNDER TWENTY-ONE YEARS OF AGE AND IT IS ILLEGAL FOR ANY PERSON UNDER TWENTY-ONE YEARS OF AGE TO POSSESS OR TO ATTEMPT TO PURCHASE THE SAME.

IDENTIFICATION CARDS WHICH APPEAR TO BE FRAUDULENT WHEN PRESENTED BY PURCHASERS MAY BE CONFISCATED BY THE ESTABLISHMENT AND TURNED OVER TO A LAW ENFORCEMENT AGENCY.

IT IS ILLEGAL IF YOU ARE TWENTY-ONE YEARS OF AGE OR OLDER FOR YOU TO PURCHASE WHISKEY, WINE, OR BEER FOR A PERSON UNDER TWENTY-ONE YEARS OF AGE.

FINES AND IMPRISONMENT MAY BE IMPOSED BY THE COURTS FOR VIOLATION OF THESE PROVISIONS.

(i) (I) To sell malt, vinous, or spirituous liquors or fermented malt beverages in a place where the alcohol beverages are to be consumed, unless the place is a hotel, restaurant, tavern, racetrack, club, retail gaming tavern, or arts licensed premises or unless the place is a dining, club, or parlor car; plane; bus; or other conveyance or facility of a public transportation system.

(II) Notwithstanding subparagraph (I) of this paragraph (i), it shall not be unlawful for a retail liquor store or liquor-licensed drugstore licensee to allow tastings to be conducted on his or her licensed premises if authorization for the tastings has been granted pursuant to section 12-47-301.

(j) To display or cause to be displayed, on the licensed premises, any exterior sign advertising any particular brand of malt liquors or fermented malt beverages unless the particular brand so designated in the sign is dispensed on draft or in sealed containers within the licensed premises wherein the sign is displayed;

(k) (I) To have on the licensed premises, if licensed as a retail liquor store or liquor-licensed drugstore, any container that shows evidence of having once been opened or that contains a volume of liquor less than that specified on the label of such container; except that a person holding a retail liquor store or liquor-licensed drugstore license may have upon the licensed premises malt, vinous, or spirituous liquors in open containers, when the open containers were brought on the licensed premises by and remain solely in the possession of the sales personnel of a person licensed to sell at wholesale pursuant to this article for the purpose of sampling malt, vinous, or spirituous liquors by the retail licensee only. Nothing in this paragraph (k) shall apply to any liquor-licensed drugstore where the contents, or a portion thereof, have been used in compounding prescriptions.

(II) Notwithstanding subparagraph (I) of this paragraph (k), it shall not be unlawful for a retail liquor store or liquor-licensed drugstore licensee to allow tastings to be conducted on his or her licensed premises if authorization for the tastings has been granted pursuant to section 12-47-301.

(l) To employ or permit, if such person is licensed to sell alcohol beverages for on-premises consumption or is the agent or manager of said licensee, any employee, waiter, waitress, entertainer, host, hostess, or agent of said licensee to solicit from patrons in any manner, for himself or herself or for any other employee, the purchase of any food, beverage, or any other thing of value;

(m) To require a wholesaler to make delivery to any premises other than the specific hotel and restaurant premises where the alcohol beverage is to be sold and consumed if the person is a hotel and restaurant licensee or the registered manager of a hotel and restaurant license requires the delivery;

(n) (I) To authorize or permit any gambling, or the use of any gambling machine or device, except as provided by the "Bingo and Raffles Law", article 9 of this title. The provisions of this paragraph (n) shall not apply to those activities, equipment, and devices authorized and legally operated pursuant to articles 47.1 and 60 of this title.

(II) Any person who violates any provision of this paragraph (n) is guilty of a class 5 felony and, upon conviction thereof, shall be punished as provided in section 18-1.3-401, C.R.S.

(o) To authorize or permit toughperson fighting as defined in section 12-10-103.

(6) It is unlawful for any importer, manufacturer, or brewer to sell or to bring into this state for purposes of sale any fermented malt beverage or any malt liquor without causing the same to be unloaded and placed in the physical possession of a licensed wholesaler at the wholesaler's licensed premises in this state and to be inventoried for purposes of tax collection prior to delivery to a retailer or consumer.

(7) (a) It is unlawful for any person licensed pursuant to this article or article 46 of this title to give away fermented malt beverages for the purpose of influencing the sale of any

particular kind, make, or brand of any malt beverage and to furnish or supply any commodity or article at less than its market price for said purpose, except advertising material and signs.

(b) Notwithstanding paragraph (a) of this subsection (7), it shall not be unlawful for a retail liquor store or liquor-licensed drugstore licensee to allow tastings to be conducted on his or her licensed premises if authorization for the tastings has been granted pursuant section 12-47-301.

(8) It is unlawful for any manufacturer or wholesaler licensed pursuant to article 46 of this title to sell, deliver, or cause to be delivered to any person licensed pursuant to section 12-47-407 or 12-47-408 any beverage containing alcohol in excess of three and two-tenths percent by weight or four percent by volume, or for any fermented malt beverage retailer licensed pursuant to article 46 of this title to sell, possess, or permit the consumption on the premises of any of the beverages containing alcohol in excess of three and two-tenths percent by weight or four percent by volume, or for any fermented malt beverage retail licensee licensed pursuant to article 46 of this title to hold or operate under any license for the sale of any beverages containing alcohol in excess of three and two-tenths percent by weight or four percent by volume for the same premises. Any violation of this subsection (8) by any fermented malt beverage licensee licensed pursuant to article 46 of this title immediately invalidates the license granted under article 46 of this title.

(9) It is unlawful for a retail gaming licensee who holds a license issued by the limited gaming commission to knowingly permit the removal of an alcohol beverage from a licensed premises that is licensed only for on-premises consumption of alcohol beverages. A retail gaming licensee who holds a license issued by the limited gaming commission shall not be charged with permitting the removal of an alcohol beverage from the licensed premises when the licensee has either:

(a) Stationed personnel at each exit used by the public in order to prevent the removal of an alcohol beverage from the premises; or

(b) Posted a sign at least twelve inches wide and eighteen inches high by each exit used by the public that contains the following notice in type that is at least one-half inch in height:

WARNING

DO NOT LEAVE THE PREMISES OF THIS ESTABLISHMENT WITH AN ALCOHOL BEVERAGE.

IT IS ILLEGAL TO CONSUME AN ALCOHOL BEVERAGE IN A PUBLIC PLACE.

A FINE OF UP TO \$250 MAY BE IMPOSED BY THE COURTS FOR A VIOLATION OF THIS PROVISION.

Source: **L. 97:** Entire article amended with relocations, p. 285, § 3, effective July 1; (1)(h) amended, p. 306, § 1, effective August 6. **L. 98:** (1)(h)(II) amended, p. 1057, § 4, effective July 1; (1)(h)(II) amended, p. 818, § 11, effective August 5. **L. 2001:** (9) added, p. 313, § 1, effective July 1. **L. 2002:** (5)(a)(I) amended, p. 1014, § 14, effective June 1; (1)(m) added and (9) amended, p. 120, §§ 1, 2, effective August 7; (5)(n)(II) amended, p. 1482, § 92, effective October 1. **L. 2004:** (5)(o) added, p. 1072, § 3, effective May 21; (1)(h), (5)(i), (5)(k), and (7) amended, p. 787, § 11, effective July 1; (5)(b)(II) amended, p. 741, § 9, effective August 4. **L. 2005:** (1)(a) amended and (1)(a.5) added, p. 603, § 2, effective July 1; (1)(a) amended and (1)(a.5) and (1.5) added, pp. 1242, 1243, §§ 2, 3, effective July 1. **L. 2007:** (3)(c) amended, p. 2022, § 19, effective June 1. **L. 2008:** (1)(h)(IV) added, p. 1557, § 5, effective July 1; (5)(b)(II) amended, p. 403, § 1, effective July 1; (2) amended, p. 2167, § 8, effective August 5. **L. 2009:** (2) amended, (SB 09-254), ch. 272, p. 1233, § 10, effective May 18; (1)(h)(IV) amended, (SB 09-292), ch. 369, p. 1947, § 24, effective August 5. **L. 2010:** (1)(f) amended, (HB 10-1170), ch. 81, p. 274, § 2, effective April 12; (1)(h)(V) added, (HB 10-1099), ch. 318, p. 1481, § 2, effective August 11; (5)(c) amended, (HB 10-1422), ch. 419, p. 2068, § 19, effective August 11.

L. 2011: (1)(h)(II), (1)(h)(IV), (5)(i)(I), (5)(j), (5)(m), and (8) amended, (SB 11-060), ch. 171, p. 604, § 14, effective May 13; (1)(h)(II) amended, (HB11-1198), ch. 127, p. 417, § 7, effective August 10; (1)(h)(VI) added, (SB11-273), ch. 233, p. 1006, § 3, effective August 10. **L. 2012:** IP(1.5), (1.5)(a), (1.5)(b), and (1.5)(d) amended, (SB 12-020), ch. 225, p. 989, § 9, effective May 29.

Editor's note: (1) This section is similar to former § 12-47-128, and subsections (5)(c), (7), and (8) are similar to former § 12-46-112 (1)(a), (2)(a), and (3), as they existed prior to 1997.

(2) Amendments to subsection (1)(h) by House Bill 97-1078 and House Bill 97-1076 were harmonized.

(3) Amendments to subsection (1)(h)(II) by Senate Bill 98-200 and Senate Bill 98-190 were harmonized.

(4) Amendments to subsections (1)(a) and (1)(a.5) by House Bill 05-1306 and House Bill 05-1183 were harmonized.

(5) Amendments to subsection (1)(h)(II) by Senate Bill 11-060 and House Bill 11-1198 were harmonized.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (5)(n)(II), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration contained in the 2005 act amending subsection (1)(a) and enacting subsections (1)(a.5) and (1.5), see section 1 of chapter 282, Session Laws of Colorado 2005. For the legislative declaration in the 2012 act amending the introductory portion to subsection (1.5) and subsections (1.5)(a), (1.5)(b), and (1.5)(d), see section 1 of chapter 225, Session Laws of Colorado 2012.

ANNOTATION

Annotator's note. Since § 12-47-901 is similar to §§ 12-46-112 and 12-47-128 as they existed prior to the 1997 amendment of title 12, articles 46 and 47, which resulted in the relocation of provisions, relevant cases construing those provisions have been included in the annotations to this section.

Subsection (1)(a) requires a showing of constructive knowledge. It is not a strict liability offense. Constructive knowledge means "knowledge that one using reasonable care or diligence should have and, therefore, that is attributed by law to a given person". The holder of a liquor license and the licensee's agents have an affirmative responsibility to reasonably conduct the business with a view to compliance with the law. *Full Moon Saloon, Inc. v. City of Loveland*, 111 P.3d 568 (Colo. App. 2005) (decided under former law); *Morris-Schindler, LLC v. City & County of Denver*, 251 P.3d 1076 (Colo. App. 2010).

The word "permit" requires a showing of actual or constructive knowledge. *Full Moon Saloon, Inc. v. City of Loveland*, 111 P.3d 568 (Colo. App. 2005); *Morris-Schindler, LLC v. City & County of Denver*, 251 P.3d 1076 (Colo. App. 2010).

"Habitual drunkard" has a common meaning. Whether a person is a habitual drunkard is an issue of fact based upon the circumstances of each case. The knowledge of the vendor may be shown by direct or circumstantial evidence and does not require a formal notice or prior court adjudication. *K & S Corp. v. Greeley Liquor Licensing Auth.*, 183 P.3d 710 (Colo. App. 2008).

Affirmative defense set forth in subsection (5) only available when minor presents a currently valid form of identification. A license shall not be revoked or suspended for the sale of alcohol to a person under the age of 21 if the person presents a fraudulent proof of age. Nevertheless, the department may revoke or suspend a license if the fraudulent proof of age is not currently valid. "Currently valid identification" includes being facially valid, not expired, and valid as to form. *Minh Le v. Colo. Dept. of Rev.*, 198 P.3d 1247 (Colo. App. 2008).

Paper tickets that contain a coupon on one side and a cash prize game on the other and the machine that dispenses them are gambling devices that are illegal under this section. Accordingly, the trial court did not err in declaring that the machine, tickets, and money were subject to confiscation and forfeiture. *Sniezek v. Dept. of Rev.*, 113 P.3d 1280 (Colo. App. 2005).

Cases Decided Under Former § 12-46-112.

Law reviews. For article, "One Year Review of Agency, Partnerships, Corporations, and Municipal Corporations", see 41 Den. L. Ctr. J. 61 (1964). For article, "1986 Colorado Tort Reform Legislation", see 15 Colo. Law. 1363 (1986).

No legislative intent to assume exclusive control of hours. A resolution adopted by the board of county commissioners prohibiting the sale of malt or vinous liquors and fermented malt beverages between the hours of 12:00 midnight on Saturday and 8:00 A.M. on Monday is valid as there is not evident a legislative intent in this section to assume exclusive control of the

hours of establishment dispensing alcoholic beverages. *Gettman v. Bd. of County Comm'rs*, 122 Colo. 185, 221 P.2d 363 (1950).

This section merely prohibits the sale of 3.2 fermented malt beverages between the specified hours and does not by implication create any right under the statute to sell such at all other times. *Kelly v. City of Fort Collins*, 163 Colo. 520, 431 P.2d 785 (1967).

For actions arising prior to legislation enacted in 1985 and 1986, if it is ascertained that a tavern owner violated this section and that the violation proximately caused injury, this section may be the basis for a claim of negligence per se. *Lyons v. Nasby*, 770 P.2d 1250 (Colo. 1989).

Tavern owner has both a statutory and common-law duty to exercise due care not to serve alcoholic beverages to a visibly intoxicated patron and a tavern owner who breaches that duty will be liable in tort to third persons who are harmed as a result of the owner's breach of duty. *Observatory Corp. v. Daly*, 780 P.2d 462 (Colo. 1989).

It was incumbent upon plaintiff to establish a legal duty on the part of the tavern to protect him from the bodily harm caused to him by the act of a tavern patron. The foreseeability element of legal duty required the plaintiff to establish that the employees of the tavern had some notice, either actual or constructive, that the tavern patron posed an unreasonable risk of harm to the plaintiff or other persons legitimately on the tavern premises. *Observatory Corp. v. Daly*, 780 P.2d 462 (Colo. 1989).

A city cannot enlarge on the state-provided hours of sale. *Kelly v. City of Fort Collins*, 163 Colo. 520, 431 P.2d 785 (1967).

However, where local conditions have been found to require reasonably fewer hours of dispensing fermented malt beverage, such action does not infringe upon the state's legislative prerogative or objectives. *Kelly v. City of Fort Collins*, 163 Colo. 520, 431 P.2d 785 (1967).

It is not necessary for the holder of a 3.2 beer license to surrender the same before making application for a broader license to dispense alcoholic beverages. *Bacher v. Bd. of County Comm'rs*, 136 Colo. 67, 314 P.2d 607 (1957).

Where at the time a party applies for a three-way license he holds a 3.2 beer license, he cannot hold two licenses for the same establishment at the same time, but it would only be necessary for him to surrender the limited license in order to hold the broader three-way privilege, should it be granted. *Bacher v. Bd. of County Comm'rs*, 136 Colo. 67, 314 P.2d 607 (1957).

Insufficient evidence to sustain suspension of license. *Dennis, Inc. v. Office of Dir. of Excise & Licenses*, 620 P.2d 53 (Colo. App. 1980).

Applied in *People v. Sherman*, 197 Colo. 442, 593 P.2d 971 (1979).

Cases Decided Under Former § 12-47-128.

- I. General Consideration.
- II. Unlawful to Sell to Drunkard or Person under Twenty-one.
- III. Sale Only at Permanent Location.
- IV. Gambling.

I. GENERAL CONSIDERATION.

Legal sale activities. Sales activities which are not restricted, limited, or otherwise regulated by art. 47 of title 12 are not illegal. *People v. Kagan*, 195 Colo. 76, 575 P.2d 416 (1978).

Paragraph (d) of subsection (1) (now paragraphs (b) and (c) of subsection (5)) of this section is constitutional. *McClain v. People*, 111 Colo. 271, 141 P.2d 685 (1943).

Subsection (5)(l), which prohibited any liquor licensee's employee from soliciting patrons to purchase "any alcoholic beverage or any other thing of value" for the soliciting employee or other employee, was not unconstitutionally vague or overbroad and was rationally related to a legitimate state interest. *People v. Becker*, 759 P.2d 26 (Colo. 1988) (decided under law in effect prior to 1986 amendment).

Licensee's affirmative responsibility to see business not conducted in violation of law. The holder of a license for the sale of alcoholic beverages has an affirmative responsibility to see that his business is not conducted by his employees or by his employees in concert with other persons in violation of the law. *Clown's Den, Inc. v. Canjar*, 33 Colo. App. 212, 518 P.2d 957 (1974).

The prohibition against selling without a license being first secured is one of the conditions imposed by this article. *Van DeVegt v. Bd. of County Comm'rs*, 98 Colo. 161, 55 P.2d 703 (1936).

A contract to buy or sell liquor in violation of this condition is illegal and unenforceable, and, upon breach of the contract by the seller, the buyer may not recover a part payment made on the purchase price. *Potter v. Swinehart*, 117 Colo. 23, 184 P.2d 149 (1947).

Where the statute makes the character of beverages sold the substance of the offense, such character must be proved by the state. *Woods v. People*, 156 Colo. 212, 397 P.2d 871 (1964).

Consumption at social club not violative. Where members of a social club would purchase liquor at a licensed establishment, and then would bring the liquor to the club premises to be consumed by all members, the consumption was permissible even though the club had no liquor license, because there is no prohibition against consuming liquor where no sale is involved.

City & County of Denver v. Protocrats, Inc., 136 Colo. 384, 318 P.2d 600 (1957).

Action as basis for defense to antitrust action. See Adolph Coors Co. v. A & S Whsles., Inc., 561 F.2d 807 (10th Cir. 1977).

Applied in People v. Kagan, 195 Colo. 76, 575 P.2d 416 (1978); In re Title Pertaining to Sale of Table Wine in Grocery Stores, 646 P.2d 916 (Colo. 1982); Citizens for Free Enter. v. Dept. of Rev., 649 P.2d 1054 (Colo. 1982).

II. UNLAWFUL TO SELL TO DRUNKARD OR PERSON UNDER TWENTY-ONE.

Law reviews. For comment, "Crespin v. Largo Corporation and the Legislative Response: The Turbulent State of Dram Shop Liability in Colorado", see 57 U. Colo. L. Rev. 419 (1986). For article, "1986 Colorado Tort Reform Legislation", see 15 Colo. Law. 1363 (1986).

The prohibition under this section is primarily directed against the employer or owner. Hershorn v. People, 108 Colo. 43, 113 P.2d 680 (1941).

The employer or owner cannot escape guilt by attempting to shift the crime to his employee, and he is liable for an unlawful sale made by his agent or servant within the scope of his authority. Hershorn v. People, 108 Colo. 43, 113 P.2d 680 (1941).

A licensed liquor dealer must see that his customer is not within a proscribed class, proceeding otherwise, he does so at his peril. People v. Wilson, 106 Colo. 437, 106 P.2d 352 (1940).

To make unlawful the sale of intoxicants to minors and inebriates, regardless of intent, is a reasonable legislative regulation of the liquor traffic, so long as the proscribed act amounts only to a misdemeanor. Hershorn v. People, 108 Colo. 43, 113 P.2d 680 (1941).

This section is a penal law and bears no relationship to liability under statutes commonly known as "civil damage acts" or "dram-shop acts". Hull v. Rund, 150 Colo. 425, 374 P.2d 351 (1962).

Where plaintiffs claimed damages from tavern owner for assault from intoxicated person, their remedy is under the common law and not under the statutes. Hull v. Rund, 150 Colo. 425, 374 P.2d 351 (1962).

Violation of this section may constitute negligence per se and, thus, may be a breach of the duty of due care. Whether it was foreseeable that the breach by defendant would cause damage to plaintiff's legally protected interest is one of fact and must be submitted to a fact-finder. Bartley v. Floyd, 695 P.2d 781 (Colo. App. 1984), aff'd, 727 P.2d 1109 (Colo. 1986); Largo Corp. v. Crespin, 727 P.2d 1098 (Colo. 1986).

While this section is not a civil damage act or dram shop act, a violation of this section may be used as evidence of negligence under the common law. Crespin v. Largo Corp., 698 P.2d 826 (Colo. App. 1984), aff'd, 727 P.2d 1098 (Colo. 1986); Thomas v. Pete's Satire, Inc., 717 P.2d 509 (Colo. App. 1985) (decided prior to 1986 enactment of § 12-47-128.5).

Criminal statute may be relied upon to establish negligence per se, even though statute is silent on issue of civil liability. Largo Corp. v. Crespin, 727 P.2d 1098 (Colo. 1986) (decided prior to 1986 enactment of § 12-47-128.5).

Intentionally tortious or criminal act of third party does not break causal chain of defendant's negligence, where third party's act is reasonably foreseeable by defendant. Largo Corp. v. Crespin, 727 P.2d 1098 (Colo. 1986) (decided prior to 1986 enactment of § 12-47-128.5).

This section's prohibition of the sale of liquor to intoxicated persons was designed to protect widow from type of injury she suffered when husband was struck by intoxicated motorist, so that bar owner's violation of statute could be relied upon by widow to conclusively establish bar owner's negligence in wrongful death action arising out of collusion. Largo Corp. v. Crespin, 727 P.2d 1098 (Colo. 1986) (decided prior to 1986 enactment of § 12-47-128.5).

Finding that commercial seller of alcohol had not exercised reasonable care to avoid selling alcoholic beverages to intoxicated patron was sufficiently supported by evidence that seller's employees continued to serve ten to thirteen beers to patron over four to five-hour period, even though patron stumbled over chairs and tables and periodically blacked out. Largo Corp. v. Crespin, 727 P.2d 1098 (Colo. 1986) (decided prior to 1986 enactment of § 12-47-128.5).

Tavern owner has both a statutory and common-law duty to exercise due care not to serve alcoholic beverages to a visibly intoxicated patron, and a tavern owner who breaches that duty will be liable in tort to third persons who are harmed as a result of the owner's breach of duty. Observatory Corp. v. Daly, 780 P.2d 462 (Colo. 1989).

It was incumbent upon plaintiff to establish a legal duty on the part of the tavern to protect him from the bodily harm caused to him by the act of a tavern patron. The foreseeability element of legal duty required the plaintiff to establish that the employees of the tavern had some notice, either actual or constructive, that the tavern patron posed an unreasonable risk of harm to the plaintiff or other persons legitimately on the tavern premises. Observatory Corp. v. Daly, 780 P.2d 462 (Colo. 1989).

Foreseeability of harm is a prominent, but not exclusive, element in determining a tavern proprietor's legal duty to patrons and other persons legitimately on the tavern premises. A court must also consider, in addition to the foresee-

ability of harm, the social utility of the proprietor's conduct, the magnitude of the burden of guarding against the injury, the consequences of placing that burden upon the defendant, and any other relevant factors implicated by the facts of the case. *Observatory Corp. v. Daly*, 780 P.2d 462 (Colo. 1989).

While the foreseeability element of legal duty does not require a tavern proprietor to foresee the specific type of harm which a tavern patron will perpetrate against another or the manner in which that harm will likely be caused, it does require that the proprietor have actual or constructive notice that the patron poses an unreasonable risk of physical harm to other persons legitimately on the premises. Only then, when the tavern proprietor has such notice, is the proprietor under a duty to exercise reasonable measures to protect others legitimately on the premises from harm. *Observatory Corp. v. Daly*, 780 P.2d 462 (Colo. 1989).

For actions arising prior to legislation enacted in 1985 and 1986, if it is ascertained that a tavern owner violated this section and that the violation proximately caused injury, this section may be the basis for a claim of negligence per se. *Lyons v. Nasby*, 770 P.2d 1250 (Colo. 1989).

This section is not a bar to the defense of contributory negligence. *Thomas v. Pete's Squire, Inc.*, 717 P.2d 509 (Colo. App. 1985).

License suspended for sale of wine to minor. *DiManna v. Kalbin*, 646 P.2d 403 (Colo. App. 1982).

Ignorance or mistake as to minor's age is no defense in a criminal prosecution for the sale of liquor to a minor. *Hershorn v. People*, 108 Colo. 43, 113 P.2d 680 (1941).

Minor who transfers intoxicants to other minor qualifies as "person", for purpose of statute making it unlawful for any "person" to deliver intoxicants to minor, though transfer is made without consideration and in furtherance of joint undertaking to obtain alcoholic beverages. *Floyd v. Bartley*, 727 P.2d 1109 (Colo. 1986).

Where accused manager of a night club was charged with selling liquor to an intoxicated minor, an instruction that a corporation can only act through its agents, officers, or employees, and that if the accused was president and general manager, having control of its employees and policies, he would be responsible for the violation of this section by a waiter acting as agent or employee of the corporation within the general scope of his employment, correctly stated the law. *Hershorn v. People*, 108 Colo. 43, 113 P.2d 680 (1941).

General assembly's reenactment of criminal code provisions do not supersede provisions of the liquor code, and person violating liquor code must be prosecuted for those violations and not provisions of the criminal code. *People v. O'Donnell*, 926 P.2d 114 (Colo. App. 1996).

III. SALE ONLY AT PERMANENT LOCATION.

Law reviews. For comment on *Page v. Blunt*, appearing below, see 25 *Rocky Mt. L. Rev.* 259 (1953).

Personal license right restricted to certain place. A liquor license vests a personal right in the licensee and confers the right to do that which without the license would be unlawful, such right being coextensive with the duration of the license and is restricted to a certain location, unless change thereof is granted upon application to, and after a hearing by, the licensing authority. *A. D. Jones & Co. v. Parsons*, 136 Colo. 434, 319 P.2d 480 (1957).

There is no vested right in a licensee to move the location of his license, and, upon application so to do, the court may, and should, consider the same as in case of application for a new license because the statute requires it be given like consideration. *MacArthur v. Martelli*, 127 Colo. 308, 255 P.2d 969 (1953).

The requirements for change of license location are the same as those for obtaining a license, and the duties and authority of the licensing official are the same. *MacArthur v. Martelli*, 127 Colo. 308, 255 P.2d 969 (1953).

A city council is required to consider two things under this section: (1) The requirement of the neighborhood; and (2) the desires of the inhabitants. *Page v. Blunt*, 126 Colo. 324, 248 P.2d 1074 (1952).

Before there can be any issuance of a liquor license, or a transfer thereof at the local level, the state authority must approve the action of the local authority. *Moschetti v. Liquor Licensing Auth.*, 176 Colo. 281, 490 P.2d 299 (1971).

Since the concurrent action of the two authorities is mandatory, if the local authority denies a license, appeal therefrom to the district court under § 24-4-106 would lie because the state alone cannot authorize the issuance, but, where there is approval at the local level, it is of no force and effect without also the state approval, for absent the latter administrative procedure, the entire administrative process is not complete. *Moschetti v. Liquor Licensing Auth.*, 176 Colo. 281, 490 P.2d 299 (1971).

This section permits removal to another location of a hotel and restaurant license upon a proper showing. *A. D. Jones & Co. v. Parsons*, 136 Colo. 434, 319 P.2d 480 (1957).

Contract to the contrary is not violative. While the section permits removal to another location of a hotel or restaurant license upon a proper showing, a contract by which the parties agree that the licensee will not exercise this privilege, but upon termination of the tenancy will surrender the license to the licensing authority, is not in violation of the law since it is not an agreement for the transfer of the license. *A. D. Jones & Co. v. Parsons*, 136 Colo. 434, 319 P.2d 480 (1957).

Refusal of application for permission to transfer location of liquor license from 3015 East Colfax Avenue to 3018 East Colfax Avenue, Denver, held not arbitrary. *MacArthur v. Martelli*, 127 Colo. 308, 255 P.2d 969 (1953).

IV. GAMBLING.

Application of "gambling" definitions in §§ 18-10-102, 18-10-103, 18-10-105, and 18-10-107 by hearing officer to determine a violation of subsection (5)(n) of this section was not in excess of his authority. *Brownlee v. Dept. of Rev.*, 686 P.2d 1372 (Colo. App. 1984).

Nonprofit corporation's fund-raising on hotel premises which involved casino-type gambling with play money violated this section because participants were risking a thing of value for gain contingent in whole or in part

upon chance and the gambling, although incidental to a social relationship, was participated in by persons other than natural persons and was conducted under circumstances in which persons participated in professional gambling as intended by the statute. *Charnes v. Central City Opera House*, 773 P.2d 546 (Colo. 1989).

To determine whether a game is incidental to a bona fide social relationship and thus excluded from the definition of gambling, the critical inquiry is whether the participants came together for any shared purpose other than gambling; where a basketball pool was entered into only by devoted patrons of a neighborhood bar and liquor authority inspectors, it was incidental to a bona fide social relationship. *Leichliter v. State Liquor Licensing Auth.*, 9 P.3d 1153 (Colo. 1999).

12-47-902. Testing for intoxication by law enforcement officers - when prohibited.

(1) No person who is patronizing a licensed premises as defined in sections 12-47-103 (14) and 12-46-103 (3) shall be required or solicited by any law enforcement officer to submit to any mechanical test for the purpose of determining the alcohol content of such person's blood or breath while such person is upon such licensed premises except to determine if there is a violation of section 42-4-1301, C.R.S., by a driver of a motor vehicle unless the law enforcement officer is acting pursuant to a court order obtained in the manner described in subsection (2) of this section. No such test may be performed upon any licensed premises to obtain evidence of alleged intoxication, except pursuant to a court order as provided in this section or in case of a medical emergency, regardless of whether such alleged intoxication is a violation of any provision of this article.

(2) An ex parte order to permit any law enforcement officer to solicit any person who is patronizing a licensed premises as defined in sections 12-47-103 (14) and 12-46-103 (3) to submit to any mechanical test for the purpose of determining the alcohol content of such person's blood or breath while such person is upon such licensed premises may be issued by any judge of competent jurisdiction in the state of Colorado, including a district, county, or municipal court judge, upon application of a district attorney or a law enforcement agency showing probable cause to believe that evidence will be obtained of the commission of the crime of providing any alcohol beverage to a visibly intoxicated person or minor in violation of section 12-47-901 (1) (a) or (5) (a) (I).

(3) Each application for an ex parte order as described in subsection (2) of this section shall be made in writing upon oath or affirmation to a judge of competent jurisdiction, including a district, county, or municipal court judge, and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) The identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(b) A complete statement of the facts and circumstances relied upon by the applicant to justify his or her belief that an order should be issued, which shall include, but not be limited to:

(I) A sufficient description of the licensed premises that is proposed to be the subject of the court order;

(II) Evidence that shows probable cause to believe that there have been frequent and continuing violations of section 12-47-901 (1) (a) or (5) (a) (I) regarding the crime of providing any alcohol beverage to a visibly intoxicated person or minor; and

(III) A complete statement as to whether or not other investigative procedures have been tried and failed, or why other investigative procedures reasonably appear to be impractical for economic or other reasons or unlikely to succeed if tried.

(4) Upon an application being made in accordance with subsection (3) of this section, the judge may enter an ex parte order, as requested or as modified, authorizing or approving testing as described in subsection (2) of this section in a particular licensed premises located within the territorial jurisdiction of the court in which the judge is sitting, and within the jurisdiction of the district attorney or law enforcement agency making the request, if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause to believe that there have been frequent and continuing violations of section 12-47-901 (1) (a) or (5) (a) (I) regarding the crime of providing an alcohol beverage to a visibly intoxicated person or minor; and

(b) Normal investigative procedures have been tried and failed, or reasonably appear impractical for economic or other reasons or unlikely to succeed if tried.

(5) Any order issued pursuant to subsection (4) of this section, the application for such order, and any information or evidence submitted to the court in support of such order, shall not be disclosed to any person other than the law enforcement officer or agency that applied for the order until the order has been executed at the licensed premises to which the order applies.

(6) Any evidence obtained through any violation of this section shall not be admissible in any court of this state or in any administrative proceeding in this state.

Source: L. 97: Entire article amended with relocations, p. 294, § 3, effective July 1.
L. 99: (1) and (2) amended, p. 619, §11, effective August 4.

Editor's note: This section is similar to former § 12-47-128.2 as it existed prior to 1997.

12-47-902.5. Alcohol-without-liquid devices - legislative declaration - unlawful acts. (1) (a) The general assembly hereby finds and declares that:

(I) Alcohol-without-liquid (AWOL) devices create alcohol vapor by pouring alcohol into a diffuser capsule connected to an oxygen pipe;

(II) AWOL devices enable individuals to inhale or snort the alcohol vapor created from certain alcohol beverages through a tube into the nose or mouth rather than drink the alcohol beverage in its liquid form through the mouth;

(III) Alcohol vapor ingested from an AWOL device bypasses the stomach and the filtering capabilities of the liver and is absorbed through blood vessels in the nose or lungs creating a faster and more intense "high" or intoxicating effect on the brain;

(IV) The popularity of AWOL devices is increasing in the nightclub and bar businesses throughout the nation; and

(V) AWOL devices are being marketed as a way to become intoxicated without a hangover and as a "dieter's dream" because there are no calories associated with inhaling or snorting alcohol vapor.

(b) The general assembly, therefore, determines that:

(I) AWOL devices will substantially increase the economic costs of alcohol abuse in Colorado;

(II) AWOL devices are not conducive to the health, safety, and welfare of the citizens of Colorado; and

(III) The possession, sale, purchase, and use of AWOL devices in this state should be prohibited.

(2) For purposes of this section, "AWOL device" means a device, machine, apparatus, or appliance that mixes an alcohol beverage with pure or diluted oxygen to produce an alcohol vapor that an individual can inhale or snort. "AWOL device" does not include an inhaler, nebulizer, atomizer, or other device that is designed and intended by the manufacturer to dispense a prescribed or over-the-counter medication.

(3) Except as otherwise provided in subsection (5) of this section, it is unlawful for a person to possess, purchase, sell, offer to sell, or use an AWOL device in this state. A person who violates this section shall be punished in accordance with the provisions of section 12-47-903 (2).

(4) In addition to the penalty imposed by this section, if a person that violates subsection (3) of this section is a licensee, the state or local licensing authority may suspend or revoke the license of the licensee in accordance with the provisions of section 12-47-601.

(5) (a) Subsection (3) of this section shall not apply to a hospital, as defined in section 25.5-1-503 (3), C.R.S., that operates primarily for the purpose of conducting scientific research, a state institution conducting bona fide research, a private college or university, as defined in section 23-2-102 (11), C.R.S., conducting bona fide research, or to a pharmaceutical company or biotechnology company conducting bona fide research and that complies with the provisions of this subsection (5).

(b) A hospital, state institution, private college or university, pharmaceutical company, or biotechnology company that possesses an AWOL device or that intends to acquire an AWOL device, shall, by September 1, 2005, or within thirty days prior to the acquisition, whichever is later, file with the Colorado department of public health and environment or its designee a notice of possession of AWOL device or a notice of acquisition of AWOL device, as appropriate.

Source: L. 2005: Entire section added, p. 387, § 1, effective July 1. L. 2012: (5)(a) amended, (HB 12-1155), ch. 255, p. 1299, § 21, effective August 8.

12-47-903. Violations - penalties. (1) (a) Any person violating any of the provisions of this article or article 46 or 48 of this title or any of the rules and regulations authorized and adopted pursuant to such articles is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than two hundred fifty dollars for each offense.

(b) The penalties provided in this section shall not be affected by the penalties provided in any other section of this article or article 46 or 48 of this title but shall be construed to be in addition to any other penalties.

(2) Any person violating any of the provisions of section 12-47-901 (1) (a), (1) (f), (1) (g), (1) (i), (1) (k), (1) (l), (5) (a) (I), or (5) (b) or section 12-47-902.5 commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2.5) A person violating the provisions of section 12-47-901 (1) (a.5) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(3) Any person violating any of the provisions of section 12-47-901 (1) (b) or (1) (c) commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. For the second conviction and for all subsequent convictions of violating the provisions of section 12-47-901 (1) (b) or (1) (c), the court shall impose at least the minimum fine and shall have no discretion to suspend any fine so imposed; except that the court may provide for the payment of such fine as provided in subsection (4) of this section.

(4) At the discretion of the court, the fines provided for violations of section 12-47-901 (1) (b) and (1) (c) may be ordered to be paid by public work only at a reasonable hourly rate to be established by the court who shall designate the time within which such public work is to be completed.

(5) Any person who knowingly violates the provisions of section 12-47-901 (1) (a.5), (1) (d), or (1) (k) or any person who knowingly induces, aids, or encourages a person under the age of eighteen years to violate the provisions of section 12-47-901 (1) (a.5), (1) (b), or (1) (c) may be proceeded against pursuant to section 18-6-701, C.R.S., for contributing to the delinquency of a minor.

Source: L. 97: Entire article amended with relocations, p. 295, § 3, effective July 1; (5) amended, p. 1540, § 5, effective July 1. L. 2002: (2) and (3) amended, p. 1482, § 93, effective October 1. L. 2005: (2) amended, p. 388, § 2, effective July 1; (2.5) added, p. 1244, § 4, effective July 1. L. 2007: (5) amended, p. 1686, § 1, effective July 1.

Editor's note: This section is similar to former § 12-47-130 as it existed prior to 1997.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (2) and (3), see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration contained in the 2005 act enacting subsection (2.5), see section 1 of chapter 282, Session Laws of Colorado 2005.

ANNOTATION

Law reviews. For article, "One Year Review of Agency, Partnerships, Corporations, and Municipal Corporations", see 41 Den. L. Ctr. J. 61 (1964).

Annotator's note. Since § 12-47-903 is similar to § 12-47-130 as it existed prior to the 1997 amendment of title 12, articles 46 and 47, which resulted in the relocation of provisions, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

General assembly intended subsection (5) to apply to violations of § 12-47-901 (1)(a.5). The time between the 2005 and 2007 amendment when paragraph (a.5) was not listed in subsection (5) did not manifest an intent to exclude application. *People v. Davis*, 218 P.3d 718 (Colo. App. 2008).

Authority granted to director to define criminal conduct is not an unconstitutional delegation of legislative authority. Although the general assembly may not delegate to an administrative agency the power to define criminal conduct, it may authorize the agency to adopt rules carrying criminal sanctions as long as the statutory scheme provides sufficient standards and safeguards to protect against the unreasonable exercise of discretionary power and offers adequate notice of the penalties applicable to a violator. *People v. Lowrie*, 761 P. 2d 778 (Colo. 1988).

12-47-904. Duties of inspectors and police officers. (1) The inspectors of the liquor enforcement division and their supervisors, while actually engaged in performing their duties and while acting under proper orders or regulations, shall have and exercise all the powers vested in peace officers of this state. In the exercise of their duties, such inspectors and their supervisors shall have the power to arrest. Such inspectors and their supervisors shall also have the authority to issue summons for violations of the provisions of this article and articles 46 and 48 of this title.

(2) It is the duty of all sheriffs and police officers to enforce the provisions of this article and articles 46 and 48 of this title and the rules and regulations made pursuant to said articles and to arrest and complain against any person violating any of the provisions of this article or rules and regulations pertaining thereto. It is the duty of the district attorney of the respective judicial districts of this state to prosecute all violations of said articles in the manner and form as is now provided by law for the prosecution of crimes and misdemeanors, and it is a violation of said articles for any such person, knowingly, to fail to perform any duties pursuant to this section.

Source: L. 97: Entire article amended with relocations, p. 296, § 3, effective July 1.

Editor's note: This section is similar to former § 12-47-131 as it existed prior to 1997.

Due to general assembly's specification. The general assembly has specifically directed that revocation of the license under this section cannot be effected in the absence of a conviction of an offense described as a misdemeanor by this section. *Bunzel v. City of Golden*, 151 Colo. 352, 378 P.2d 208 (1963).

Procedures for the revocation by a city of a license to sell 3.2 percent beer are controlled by this section. *Bunzel v. City of Golden*, 151 Colo. 352, 378 P.2d 208 (1963).

In the absence of a conviction of violation of this section a city is without power to revoke license to sell 3.2 beer. *Bunzel v. City of Golden*, 151 Colo. 352, 378 P.2d 208 (1963).

Applicability of liquor code. The provisions of this article do not apply to third persons who are not applicants of licensees and whose conduct does not violate specific provisions of this article but does violate specific provisions of the criminal code. *People v. Eckley*, 775 P.2d 566 (Colo. 1989).

Prosecutorial discretion for violations of the liquor code is limited to the specific punishment provisions of the code unless otherwise indicated. *People v. Bagby*, 734 P.2d 1059 (Colo. 1987).

Applied in *C.V. Enters., Inc. v. State, Dept. of Rev.*, 42 Colo. App. 337, 593 P.2d 984 (1979); *People v. Luciano*, 662 P.2d 480 (Colo. 1983).

ANNOTATION

Annotator’s note. Since § 12-47-904 is similar to § 12-46-116 as it existed prior to the 1997 amendment of title 12, article 46, which resulted in the relocation of provisions, relevant cases construing that provision have been included in the annotations to this section.

The authority of a liquor enforcement officer does not exceed that of his principal. Fouquet v. State Comp. Ins. Fund, 144 Colo. 240, 355 P.2d 943 (1960).

Authority only within specified territory. The assignment to a liquor enforcement officer of a specified territory in which to perform his duties carries a clear implication that he was to perform his duties within such territory and not elsewhere, and no presumption arises that he had authority beyond the boundaries of his allotted territory. Fouquet v. State Comp. Ins. Fund, 144 Colo. 240, 355 P.2d 943 (1960).

No authority to participate in private business. It is no part of the legal authority of the

liquor license division or of a liquor enforcement officer to promote, facilitate, or assist in the purchase and sale of any business and premises, whatever its nature. Fouquet v. State Comp. Ins. Fund, 144 Colo. 240, 355 P.2d 943 (1960).

Nor travel for such purpose. Even though the answering of questions and supplying of information are generally within a liquor enforcement officer’s implied authority, such authority, however, cannot be extended to embrace a trip to a distant city to assist in the promotion of a private transaction in which neither he nor his employer had an official interest. Fouquet v. State Comp. Ins. Fund, 144 Colo. 240, 355 P.2d 943 (1960).

Applied in Adams County Golf, Inc. v. Colo. Dept. of Rev., 199 Colo. 423, 610 P.2d 97 (1980).

12-47-905. Warrants - searches and seizures. (1) If any person makes an affidavit before the judge of any county or district court stating that he or she has reason to and does believe that alcohol beverages are being sold, bartered, exchanged, divided, or unlawfully given away, or kept for such purposes, or carried in violation of this article and article 46 of this title within the jurisdiction of such court, and describing in such affidavit the premises, wagon, automobile, truck, vehicle, contrivance, thing, or device to be searched, the judge of such court shall issue a warrant to any officer, which the complainant may designate, having power to serve original process commanding such officer to search the premises (other than a home), wagon, automobile, truck, vehicle, contrivance, thing, or device described in such affidavit.

(2) Such warrant shall be substantially as follows:

STATE OF COLORADO)
) ss.
County of.....)

The People of the State of Colorado to.....
Greeting:

Whereas, there has been filed with the undersigned an affidavit of which the following is a copy:

(Here copy of affidavit)

Therefore you are hereby commanded, in the name of the people of the State of Colorado, forthwith, together with the necessary and proper assistance to enter into

(Here describe place mentioned in the affidavit)

of the said situated in the county of aforesaid and there diligently search for the said alcohol beverages and that you bring the same or any part thereof found in such search, together with such vessels in which such beverages are found and the implements and furniture used in connection therewith, and the wagon, automobile, truck, vehicle, contrivance, thing, or device in which carried, forthwith before me, to be disposed of and dealt with according to law.

Given under my hand and seal this day of, Judge of the Court

(3) The officer charged with the execution of said warrant, when necessary to obtain entrance or when entrance has been refused, may break open any premises (other than a home), wagon, automobile, truck, vehicle, contrivance, thing, or device which by said warrant the officer is directed to search and may execute said warrant any hour of the day or night.

Source: L. 97: Entire article amended with relocations, p. 296, § 3, effective July 1.

Editor's note: This section is similar to former § 12-47-132 as it existed prior to 1997.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions.

There must be strict compliance with any law which provides for its own enforcement by means of search, seizure, and disposition of or forfeiture of property. *People ex rel. Protective Fin. Corp. v. Kinnison*, 94 Colo. 350, 30 P.2d 249 (1934).

Proceedings for issuance of a search warrant must be in strict conformity with the statute, and every constitutional and statutory requirement must be observed. *People ex rel. Protective Fin. Corp. v. Kinnison*, 94 Colo. 350, 30 P.2d 249 (1934).

In proceeding under a search warrant there must be a strict compliance with formalities

required by statute. *People ex rel. Protective Fin. Corp. v. Kinnison*, 94 Colo. 350, 30 P.2d 249 (1934).

If the search is illegal the seizure will also be illegal. *People ex rel. Protective Fin. Corp. v. Kinnison*, 94 Colo. 350, 30 P.2d 249 (1934).

Every officer making an unconstitutional search or advising or conniving at such conduct, is in violation of the law. *Massantonio v. People*, 77 Colo. 392, 236 P. 1019 (1925).

Consent vitiates illegality. A defendant in a prosecution under the prohibition act, who has consented to a search of his premises, cannot thereafter complain that he was deprived of his constitutional protection against such a search, and intoxicating liquor found in the search and what defendant said regarding it, are admissible in evidence. *Smuk v. People*, 72 Colo. 97, 209 P. 636 (1922).

12-47-906. Return on warrant - sale of liquor seized. (1) If any alcohol beverages are there found, said officer shall seize the same and the vessels in which they are contained and all implements and furniture used or kept in connection with such beverages in the illegal selling, bartering, exchanging, giving away, or carrying of same, and any wagon, automobile, truck, vehicle, contrivance, thing, or device used in conveying the same, and safely keep them and make immediate return on such warrant. Such property shall not be taken from the custody of any officer seizing or holding the same by writ of replevin or other process while the proceedings relating thereto are pending.

(2) Final judgment of conviction in such proceedings shall be a bar to any suit for the recovery of any such property so seized or the value of same or for damages alleged to arise by reason of such seizure and detention. The judgment entered shall find said alcohol beverages to be unlawful and shall direct its destruction or sale forthwith, in the manner provided by subsection (7) of this section. The wagon, automobile, truck, vehicle, contrivance, thing, or device, vessels, implements, and furniture shall likewise be ordered disposed of in the same manner as personal property is sold under execution, and the proceeds therefrom applied, first in the payment of the cost of the prosecution and of any fine imposed, and the balance, if any, paid into the general school fund of the county in which such conviction is had.

(3) The officer serving the warrant shall forthwith proceed in the manner required for the institution of a criminal action in the court issuing the warrant, charging such violation of law as the evidence in the case justifies. If such officer refuses or neglects to so proceed, then the person filing the affidavit for the search warrant, or any other person, may so proceed.

(4) If, during the trial of a person charged with a violation of this article, the evidence

presented discloses that fluids were poured out, or otherwise destroyed, manifestly for the purpose of preventing seizure, said fluids shall be held to be prima facie alcohol beverages and intended for unlawful use, sale, barter, exchange, or gift.

(5) If no person is in possession of the premises where illegal alcohol beverages are found, the officer seizing such beverages shall post in a conspicuous place on said premises a copy of the warrant, and if at the time fixed for any hearing concerning the beverages seized, or within thirty days thereafter, no person appears, the court in which the hearing was to be held shall order such beverages destroyed or sold in the manner provided in subsection (7) of this section.

(6) No warrant issued pursuant to this article shall authorize the search of any place where a person may lawfully keep alcohol beverages as provided in this article. No warrant shall be issued to search a home occupied as such, as provided in this section, unless it or some part of it is used in connection with or as a store, shop, hotel, boardinghouse, rooming house, or place of public resort.

(7) Any sale of alcohol beverages conducted upon order of court pursuant to this section shall be conducted in the following manner:

(a) The officer ordered by the court to conduct the sale shall give notice of the time and place of the sale by posting a notice in a prominent place in the county for a period of five consecutive days prior to the day of the sale. The notice shall describe as fully as possible the property to be sold and shall state the time and place of the sale.

(b) The sale shall be conducted as a public auction in some suitable public place on the specified day at some time between the hours of 9 a.m. and 5 p.m., and the time chosen for the sale shall be indicated in the notice.

Source: L. 97: Entire article amended with relocations, p. 297, § 3, effective July 1.

Editor's note: This section is similar to former § 12-47-133 as it existed prior to 1997.

ANNOTATION

Annotator's note. Since § 12-47-906 is similar to § 12-47-133 as it existed prior to the 1997 amendment of title 12, article 47, which resulted in the relocation of provisions, relevant cases construing that provision have been included in the annotations to this section.

Forfeitures are generally not favored in law, and may be enforced only when accom-

plished within the letter and spirit of law. *Walker v. City of Denver*, 720 P.2d 619 (Colo. App. 1986).

A criminal conviction is a condition precedent to forfeiture under this section. *Walker v. City of Denver*, 720 P.2d 619 (Colo. App. 1986).

12-47-907. Loss of property rights. There shall be no property rights of any kind in any alcohol beverages, vessels, appliances, fixtures, bars, furniture, implements, wagons, automobiles, trucks, vehicles, contrivances, or any other things or devices used in or kept for the purpose of violating any of the provisions of this article or article 46 of this title.

Source: L. 97: Entire article amended with relocations, p. 298, § 3, effective July 1.

Editor's note: This section is similar to former § 12-47-134 as it existed prior to 1997.

12-47-908. Colorado state fair or common consumption area - consumption on premises. Notwithstanding any other provision of this article, a person who purchases an alcohol beverage for consumption from a vendor licensed under this article that is either attached to a common consumption area or licensed for the fairgrounds of the Colorado state fair authority may leave the licensed premises with the beverage and possess and consume the beverage at any place within the common consumption area or fairgrounds if the person does not remove the beverage from the common consumption area or fairgrounds. This section does not authorize a person to bring into the common consumption area or fairgrounds an alcohol beverage purchased outside of the common consumption area or fairgrounds.

Source: L. 2010: Entire section added, (HB 10-1099), ch. 318, p. 1481, § 1, effective August 11. **L. 2011:** Entire section amended, (SB 11-273), ch. 233, p. 1006, § 4, effective August 10.

12-47-909. Common consumption areas. (1) A promotional association or attached licensed premises shall not:

(a) Employ a person to serve alcohol beverages or provide security within the common consumption area unless the server has completed the server and seller training program established by the director of the liquor enforcement division of the department of revenue;

(b) Sell or provide an alcohol beverage to a customer for consumption within the common consumption area but not within the licensed premises in a container that is larger than sixteen ounces;

(c) Sell or provide an alcohol beverage to a customer for consumption within the common consumption area but not within the licensed premises unless the container is disposable and contains the name of the vendor in at least twenty-four-point font;

(d) Permit customers to leave the licensed premises with an alcohol beverage unless the beverage container complies with paragraphs (b) and (c) of this subsection (1);

(e) Operate the common consumption area during hours the licensed premises cannot sell alcohol under this article or the limitations imposed by the local licensing authority;

(f) Operate the common consumption area in an area that exceeds the maximum authorized by this article or by the local licensing authority;

(g) Sell, serve, dispose of, exchange, or deliver, or permit the sale, serving, giving, or procuring of, an alcohol beverage to a visibly intoxicated person or to a known habitual drunkard;

(h) Sell, serve, dispose of, exchange, or deliver, or permit the sale, serving, or giving of an alcohol beverage to a person under twenty-one years of age; or

(i) Permit a visibly intoxicated person to loiter within the common consumption area.

(2) The promotional association shall promptly remove all alcohol beverages from the common consumption area at the end of the hours of operation.

(3) A person shall not consume alcohol within the common consumption area unless it was purchased from an attached, licensed premises.

(4) This section does not apply to a special event permit issued under article 48 of this title or the holder thereof unless the permit holder desires to use an existing common consumption area and agrees in writing to the requirements of this article and the local licensing authority concerning the common consumption area.

Source: L. 2011: Entire section added, (SB 11-273), ch. 233, p. 1006, § 5, effective August 10.

PART 10

RESPONSIBLE ALCOHOL BEVERAGE VENDOR ACT

12-47-1001. Short title. This part 10 shall be known and may be cited as the "Responsible Alcohol Beverage Vendor Act".

Source: L. 2004: Entire part added, p. 492, § 1, effective July 1.

12-47-1002. Responsible vendors - standards. (1) To be a responsible alcohol beverage vendor, a vendor shall comply with the server and seller training program established by the director of the liquor enforcement division of the department of revenue.

(2) The director of the liquor enforcement division shall set standards for compliance with the server and seller training program. When creating standards, the director shall consider input from local and state government, the alcohol beverage industry, and any other state or national seller and server programs.

Source: L. 2004: Entire part added, p. 492, § 1, effective July 1.

ARTICLE 47.1**Colorado Limited Gaming Act**

Law reviews: For article, "Limited Gaming is Now a Reality", 20 Colo. Law. 2239 (1991).

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- 12-47.1-803. Slot machines - shipping notices.
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- 12-47.1-809. Age of participants - violation as misdemeanor - applicability.
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PART 1

GENERAL PROVISIONS

12-47.1-101. Short title. This article shall be known and may be cited as the "Limited Gaming Act of 1991".

Source: L. 91: Entire article added, p. 1521, § 1, effective June 4.

ANNOTATION

The Limited Gaming Act provides clear standards and specific guidance to the commission by (1) Directing the agency to establish rules and regulations; (2) providing for an inquiry into the criminal history of an applicant to determine whether a threat to the public interest

or to controlled gaming exists; (3) squarely placing the burden of establishing qualification for licensing upon the applicant; and (4) providing for effective judicial review. *Moya v. Colo. Gaming Comm'n*, 870 P.2d 620 (Colo. App. 1994).

12-47.1-102. Legislative declaration. (1) The general assembly hereby finds, determines, and declares it to be the public policy of this state that:

(a) The success of limited gaming is dependent upon public confidence and trust that licensed limited gaming is conducted honestly and competitively; that the rights of the creditors of licensees are protected; and that gaming is free from criminal and corruptive elements;

(b) Public confidence and trust can be maintained only by strict regulation of all persons, locations, practices, associations, and activities related to the operation of licensed gaming establishments and the manufacture or distribution of gaming devices and equipment;

(c) All establishments where limited gaming is conducted and where gambling devices are operated and all manufacturers, sellers, and distributors of certain gambling devices and equipment must therefore be licensed, controlled, and assisted to protect the public health, safety, good order, and the general welfare of the inhabitants of the state to foster the stability and success of limited gaming and to preserve the economy and policies of free competition of the state of Colorado;

(d) No applicant for a license or other affirmative commission approval has any right to a license or to the granting of the approval sought. Any license issued or other commission approval granted pursuant to the provisions of this article is a revocable privilege, and no holder acquires any vested right therein or thereunder.

(2) It is the intent of the general assembly that, to achieve the goals set forth in subsection (1) of this section, the commission should place great weight upon the policies expressed in said subsection (1) in construing the provisions of this article.

Source: L. 91: Entire article added, p. 1521, § 1, effective June 4.

ANNOTATION

License conditions and revocation authorized by law and constitution. The gaming commission was within its statutory authority in conditioning a key employee license on payment of back child support and taxes and revoking such license for failure to comply with such conditions. The gaming commission did not abuse its discretion or violate due process in so revoking the license where the licensee was given a reasonable opportunity to comply with such conditions, failed to provide requested in-

come tax returns, and made false statements of material fact to the investigator regarding the filing of tax returns and where the gaming commission provided the licensee with substantial evidentiary leeway, allowed the licensee to cross-examine and impeach the investigator, and gave the licensee the opportunity to argue the proper standard for license revocation. *Feeney v. Colo. Ltd. Gaming Control Comm'n*, 890 P.2d 173 (Colo. App. 1994).

12-47.1-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Adjusted gross proceeds”, except with respect to games of poker, means the total amount of all wagers made by players on limited gaming less all payments to players; and payment to players shall include all payments of cash premiums, merchandise, tokens, redeemable game credits, or any other thing of value. With respect to games of poker, “adjusted gross proceeds” means any sums wagered in a poker hand which may be retained by the licensee as compensation which must be consistent with the minimum and maximum amounts established by the Colorado limited gaming control commission.

(2) “Applicant” means any person who has applied for a license or registration under this article or who has applied for permission to engage in any act or activity which is regulated by this article.

(3) “Bet” means an amount placed as a wager in a game of chance.

(4) “Blackjack” means a banking card game commonly known as “21” or “blackjack” played by a maximum of seven players in which each player bets against the dealer. The object is to draw cards whose value will equal or approach twenty-one without exceeding that amount and win amounts bet, payable by the dealer, if the player holds cards more valuable than the dealer’s cards.

(4.5) "Certified local government" means any local government certified by the state historic preservation officer pursuant to the provisions of 16 U.S.C. sec. 470a (c) (1).

(5) "Commission" means the Colorado limited gaming control commission.

(5.5) "Crane game" means an amusement machine that, upon insertion of a coin, bill, token, or similar object, allows the player to use one or more buttons, joysticks, or other controls to maneuver a crane or claw over a nonmonetary prize, toy, or novelty, none of which shall have a cost of more than twenty-five dollars, and then, using the crane or claw, to attempt to retrieve the prize, toy, or novelty for the player.

(5.7) "Craps" means a game played by one or more players against a casino using two dice, in which players bet upon the occurrence of specific combinations of numbers shown by the dice on each throw.

(6) "Department" means the Colorado department of revenue.

(7) "Director" means the director of the division of gaming.

(8) "Division" means the division of gaming.

(9) "Executive director" means the executive director of the department of revenue.

(10) "Gaming device" or "gaming equipment" means any equipment or mechanical, electromechanical, or electronic contrivance, component, or machine used remotely or directly in connection with gaming or any game. The term includes a system for processing information which can alter the normal criteria of random selection which affects the operation of any game, or which determines the outcome of a game. The term includes a slot machine, poker table, blackjack table, craps table, roulette table, dice, and the cards used to play poker and blackjack.

(11) "Gaming employee" means any person employed by an operator or retailer hosting gaming to work directly with the gaming portion of such operator's or retailer's business, which person shall be twenty-one years of age or older and hold a support license. Persons deemed to be gaming employees shall include, but shall not be limited to:

(a) Dealers;

(b) Change and counting room personnel;

(c) Cashiers;

(d) Floormen;

(e) Cage personnel;

(f) Slot machine repairmen or mechanics;

(g) Persons who accept or transport gaming revenues;

(h) Security personnel;

(i) Shift or pit bosses;

(j) Floor managers;

(k) Supervisors;

(l) Slot machine and slot booth personnel;

(m) Any person involved in the handling, counting, collecting, or exchanging of money, property, checks, credit, or any representative of value, including, without limitation:

(I) Any coin, token, chip, cash premium, merchandise, redeemable game credits, or any other thing of value; or

(II) The payoff from any game, gaming, or gaming device;

(n) Craps table personnel and roulette table personnel; and

(o) Such other persons as the commission shall by rule determine.

(12) "Gaming license" means any license issued by the commission pursuant to this article which authorizes any person to engage in gaming within the cities of Central, Black Hawk, or Cripple Creek.

(13) "Immediate family" means a person's spouse and any children actually living with the person.

(14) "Key employee" means any executive, employee, or agent of a gaming licensee having the power to exercise a significant influence over decisions concerning any part of the operation of a gaming licensee.

(15) "Licensed gaming establishment" means any premises licensed pursuant to this article for the conduct of gaming.

(16) "Licensed premises" means that portion of any premises licensed for the conduct of limited gaming. Nothing pursuant to this subsection (16) shall be construed to prohibit the affected local governing authority from otherwise determining the size of any building. In no event shall the licensed premises exceed thirty-five percent of the square footage of any building and no more than fifty percent of any one floor of such building.

(17) "Licensee" means any person licensed under this article.

(18) "Licensing authority" means the Colorado limited gaming control commission.

(19) "Limited card games and slot machines", "limited gaming", or "gaming" means slot machines, craps, roulette, and the card games of poker and blackjack, which are authorized by this article and defined and regulated by the commission, each game having a maximum single bet of one hundred dollars.

(20) "Operator" means any person who places slot machines upon such person's business premises or any person who, individually or jointly, pursuant to an agreement whereby consideration is paid for the right to place slot machines on another's business premises, engages in the business of placing and operating slot machines on retail premises within the cities of Central, Black Hawk, or Cripple Creek.

(21) "Person" means an individual, partnership, business trust, government or governmental subdivision or agency, estate, association, trust, for profit corporation, nonprofit corporation, organization, or any other legal entity or a manager, agent, servant, officer, or employee thereof.

(22) (a) "Poker" means a card game played by a player or players who are dealt cards by a dealer. The object of the game is:

(I) For each player to bet the superiority of such player's hand and win the other players' bets by either making a bet no other player is willing to match or proving to hold the most valuable cards after all the betting is over; or

(II) For each player, whether by reason of the skill of the player or application of the element of chance, or both, to hold a poker hand entitled to a monetary or premium return based upon a publicly available pay schedule.

(b) In a variation of poker in which there can be more than one winning hand and the dealer's participation is necessary or desirable to improve the game for players other than the dealer, the dealer may play, but under no circumstances may the dealer place a wager in any game in which he or she is dealing. A game in which the player holding the highest-scoring hand splits his or her winnings with the player holding the lowest-scoring hand does not qualify as a "variation of poker in which there can be more than one winning hand" for purposes of this paragraph (b).

(23) "Repeating gambling offender" shall have the same meaning as set forth in section 18-10-102 (9), C.R.S.

(24) "Retailer" means any licensee who maintains gaming at his place of business within the cities of Central, Black Hawk, or Cripple Creek for use and operation by the public.

(25) "Retail space" means the area where a retailer's business is principally conducted.

(25.5) "Roulette" means a game in which a ball is spun on a rotating wheel and drops into a numbered slot on the wheel, and bets are placed on which slot the ball will come to rest in.

(26) (a) "Slot machine" means any mechanical, electrical, video, electronic, or other device, contrivance, or machine which, after insertion of a coin, token, or similar object, or upon payment of any required consideration whatsoever by a player, is available to be played or operated, and which, whether by reason of the skill of the player or application of the element of chance, or both, may deliver or entitle the player operating the machine to receive cash premiums, merchandise, tokens, or redeemable game credits, or any other thing of value other than unredeemable free games, whether the payoff is made automatically from the machines or in any other manner.

(b) "Slot machine" does not include:

(I) Vintage slot machine models which were introduced on the market prior to 1984 and are not used for gambling purposes or in connection with limited gaming; or

(II) Crane games.

(27) “Slot machine distributor” means any person who imports into this state, or first receives in this state, slot machines, or who sells, leases, for a fixed or flat fee, or distributes slot machines in this state; except that “slot machine distributor” does not include operators licensed in this state.

(28) “Slot machine manufacturer” means any person who designs, assembles, fabricates, produces, constructs, or otherwise prepares a complete or component part of a slot machine, other than tables or cabinetry; except that “slot machine manufacturer” does not include licensed operators performing incidental repairs on their own slot machines or slot machines leased or distributed by them. A licensed slot machine manufacturer may sell slot machines, or components of slot machines, of its own manufacture to licensed slot machine distributors or operators. A licensed manufacturer may also import those slot machine parts or components necessary for its manufacturing operations.

(29) “Suitability” or “suitable” means, in relation to a person, the ability to be licensed by the commission and, in relation to acts or practices, lawful acts or practices.

(30) “Unsuitability or unsuitable” means, in relation to a person, the inability to be licensed by the commission because of prior acts, associations, or financial conditions, and, in relation to acts or practices, those which violate or would violate the statutes or rules or are or would be contrary to the declared legislative purposes of this article.

(31) “Within the cities of Central, Black Hawk, or Cripple Creek” means within the commercial district of any of those cities as specified in section 12-47.1-105.

Source: **L. 91:** Entire article added, p. 1522, § 1, effective June 4. **L. 94:** (26) amended, p. 20, § 3, effective March 2. **L. 95:** (5.5) added and (26) amended, p. 45, § 2, effective March 17. **L. 96:** (22) amended, p. 1110, § 1, effective October 1. **L. 97:** (11) amended, p. 1008, § 8, effective August 6. **L. 2008:** (11) amended, p. 550, § 1, effective July 1. **L. 2009:** (5.7), (11)(o), and (25.5) added and (10), (11)(g), (11)(m), (11)(n), and (19) amended, (HB 09-1272), ch. 153, p. 657, §§ 2, 3, effective April 21; (4.5) added, (SB 09-101), ch. 433, p. 2399, § 1, effective August 1.

Cross references: For the legislative declaration contained in the 2009 act adding subsections (5.7), (11)(o), and (25.5) and amending subsections (10), (11)(g), (11)(m), (11)(n), and (19), see section 1 of chapter 153, Session Laws of Colorado 2009.

ANNOTATION

License conditions and revocation authorized by law and constitution. The gaming commission was within its statutory authority in conditioning a key employee license on payment of back child support and taxes and revoking such license for failure to comply with such conditions. The gaming commission did not abuse its discretion or violate due process in so revoking the license where the licensee was given a reasonable opportunity to comply with such conditions, failed to provide requested income tax returns, and made false statements of material fact to the investigator regarding the filing of tax returns and where the gaming commission provided the licensee with substantial evidentiary leeway, allowed the licensee to cross-examine and impeach the investigator, and gave the licensee the opportunity to argue the proper standard for license revocation. *Feeney v. Colo. Ltd. Gaming Control Comm’n*, 890 P.2d 173 (Colo. App. 1994).

Commission did not err in concluding that 21 Superbucks does not constitute a legally permissible slot machine. Subsection (26) de-

finer “slot machine” to mean a mechanical device which, upon the insertion of a coin, may entitle a player to cash. 21 Superbucks relies, however, not only on a coin or token, but also on the deal of a traditional blackjack hand. Furthermore, there is no indication that the numerous express controls placed on slot machines under the detailed regulations in Colorado gaming control commission rule 12 are a part of the operation of 21 Superbucks. *Purcell v. Colo. Div. of Gaming*, 924 P.2d 1203 (Colo. App. 1996).

Limited gaming control commission acted properly and within its authority in promulgating regulation defining otherwise undefined term “payment to players”. *Tivolino Teller House, Inc. v. Fagan*, 926 P.2d 1208 (Colo. 1996).

Casino’s promotional slot club payouts are not deductible as “payments to players” for computing taxable adjusted gross proceeds where a player receives a bonus point for every dollar he or she spends on a machine that may then be redeemed in 200 point increments and

player receives one dollar for every 200 points redeemed. *Tivolino Teller House, Inc. v. Fagan*, 926 P.2d 1208 (Colo. 1996).

12-47.1-104. Limited gaming - authorization - regulation. Limited gaming is hereby authorized and may be operated and maintained subject to the provisions of this article. All limited gaming authorized by this article shall be regulated by the Colorado limited gaming control commission.

Source: L. 91: Entire article added, p. 1526, § 1, effective June 4.

12-47.1-105. Limited gaming - cities - commercial districts. Limited gaming shall take place only in the following existing Colorado cities: The city of Central, county of Gilpin; the city of Black Hawk, county of Gilpin; and the city of Cripple Creek, county of Teller. Limited gaming shall be further confined to the commercial districts of said cities as said districts are respectively defined in the city ordinances adopted by the city of Central on October 7, 1981; the city of Black Hawk on May 4, 1978; and the city of Cripple Creek on December 3, 1973.

Source: L. 91: Entire article added, p. 1526, § 1, effective June 4.

12-47.1-106. Exceptions. (1) Nothing in this article shall be construed in any way to affect or interfere with the regulation of bingo and raffles by the office of the secretary of state.

(2) Nothing contained in this article shall be construed to modify, amend, or otherwise affect the validity of any provisions contained in article 10 of title 18, C.R.S.

Source: L. 91: Entire article added, p. 1526, § 1, effective June 4.

PART 2

DIVISION OF GAMING

12-47.1-201. Division of gaming - creation. There is hereby created, within the department of revenue, the division of gaming, the head of which shall be the director of the division of gaming. The director shall be appointed by, and shall be subject to removal by, the executive director of the department of revenue. The division of gaming, the Colorado limited gaming control commission created in section 12-47.1-301, and the director of the division of gaming shall exercise their respective powers and perform their respective duties and functions as specified in this article under the department of revenue as if the same were transferred to the department by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.; except that the commission shall have full and exclusive authority to promulgate rules and regulations related to limited gaming without any approval by, or delegation of authority from, the department.

Source: L. 91: Entire article added, p. 1526, § 1, effective June 4.

12-47.1-202. Function of division. The function of the division is to license, implement, regulate, and supervise the conduct of limited gaming in this state as authorized by section 9 of article XVIII of the state constitution.

Source: L. 91: Entire article added, p. 1527, § 1, effective June 4.

12-47.1-203. Director - qualification - powers and duties. (1) The director shall:
(a) Be qualified by training and experience to direct the work of the division;

(b) Be of good character and shall not have been convicted of any felony or gambling-related offense, notwithstanding the provisions of section 24-5-101, C.R.S.;

(c) Not be engaged in any other profession or occupation that could present a conflict of interest to the director's duties as director of the division; and

(d) Direct and supervise the administrative and technical activities of the division.

(2) In addition to the duties imposed upon the director elsewhere in this part 2, the director shall:

(a) Supervise and administer the operation of the division and limited gaming in accordance with the provisions of this article and the rules of the commission;

(b) Attend meetings of the commission or appoint a designee to attend in the director's place;

(c) (I) Employ and direct such personnel as may be necessary to carry out the purposes of this article, but no person shall be employed who has been convicted of a felony or gambling-related offense, notwithstanding the provisions of section 24-5-101, C.R.S.

(II) The director, with the approval of the commission, may enter into agreements with any department, agency, or unit of state government to secure services which the director deems necessary and to provide for the payment for such services and may employ and compensate such consultants and technical assistants as may be required and as otherwise permitted by law.

(d) Confer with the commission as necessary or desirable, but not less than once each month, with regard to the operation of the division;

(e) Make available for inspection by the commission or any member of the commission, upon request, all books, records, files, and other information and documents in the director's office;

(f) Advise the commission and recommend to the commission such rules and other procedures as the director deems necessary and advisable to improve the operation of the division and the conduct of limited gaming;

(g) With the concurrence of the commission or pursuant to commission requirements and procedures, enter into contracts for materials, equipment, and supplies to be used in the operation of the division;

(h) Make a continuous study and investigation of the operation and the administration of similar laws which may be in effect in other states or countries; of any literature on gaming which from time to time may be published or available; and of any federal laws which may affect the operation of the division, the conduction of limited gaming, or the reaction of Colorado citizens to limited gaming with a view to recommending or effecting changes that would serve the purposes of this article;

(i) (I) Furnish to the commission a monthly report which contains a full and complete statement of the division's revenue and expenses for each month.

(II) All reports required by this paragraph (i) shall be public, and copies of all such reports shall be sent to the governor, the speaker of the house of representatives, the president of the senate, the minority leaders of both houses, and the executive director of the department of revenue.

(j) Annually prepare and submit to the commission, for its approval, a proposed budget for the next succeeding fiscal year, which budget shall set forth a complete financial plan for all proposed expenditures and anticipated revenues of the division;

(k) Take such action as may be determined by the commission to be necessary to protect the security and integrity of limited gaming; and

(l) Perform any other lawful acts which the commission may consider necessary or desirable in order to carry out the purposes and provisions of this article.

(m) (Deleted by amendment, L. 2008, p. 551, § 2, effective July 1, 2008.)

Source: L. 91: Entire article added, p. 1527, § 1, effective June 4. L. 96: Entire section amended, p. 348, § 1, effective April 17. L. 97: (2)(i)(I) amended, p. 372, § 1, effective August 6. L. 2008: (2)(j), (2)(k), (2)(l), and (2)(m) amended, p. 551, § 2, effective July 1.

12-47.1-204. Investigator - peace officers. (1) All investigators of the division of gaming, and their supervisors, including the director and the executive director, shall have all the powers of any peace officer to:

(a) Make arrests, with or without warrant, for any violation of the provisions of this article, article 20 of title 18, C.R.S., or the rules and regulations promulgated pursuant to this article, any other laws or regulations pertaining to the conducting of limited gaming in this state, or any criminal law of this state, if, during an officer's exercise of powers or performance of duties under this section, probable cause is established that a violation of any said law or rule or regulation has occurred;

(b) Inspect, examine, investigate, hold, or impound any premises where limited gaming is conducted, any devices or equipment designed for or used in limited gaming, and any books and records in any way connected with any limited gaming activity;

(c) Require any person licensed pursuant to this article, upon demand, to permit an inspection of such person's licensed premises, gaming equipment and devices, or books or records; and to permit the testing and the seizure for testing or examination purposes of all such devices, equipment, and books and records;

(d) Serve all warrants, notices, summonses, or other processes relating to the enforcement of laws regulating limited gaming;

(e) Serve distraint warrants issued by the department of revenue pertaining to limited gaming;

(f) Conduct investigations into the character, record, and reputation of all applicants for limited gaming licenses, all licensees, and such other persons as the commission may determine pertaining to limited gaming;

(g) Investigate violations of all the laws pertaining to limited gaming and limited gaming activities;

(h) Assist or aid any sheriff or other peace officer in the performance of his duties upon such sheriff's or peace officer's request or the request of other local officials having jurisdiction.

(2) Criminal violations of this article discovered during an authorized investigation or discovered by the commission shall be referred to the appropriate district attorney.

(3) The investigators of the division, including the director of the division, shall be considered peace officers, as described in sections 16-2.5-101 and 16-2.5-123, C.R.S. The executive director of the department of revenue shall be considered a peace officer as described in sections 16-2.5-101 and 16-2.5-121, C.R.S.

(4) Nothing in this section shall be construed to prohibit local sheriffs, police departments, and other local law enforcement agencies from enforcing the provisions of this article, and the rules and regulations promulgated pursuant to this article, or from performing their other duties to the full extent permitted by law. All such sheriffs, police officers, district attorneys, and other local law enforcement agencies shall have all the powers set forth in subsection (1) of this section.

Source: L. 91: Entire article added, p. 1529, § 1, effective June 4. **L. 93:** (3) amended, p. 896, § 1, effective May 10. **L. 95:** (1)(a) amended, p. 1109, § 57, effective May 31. **L. 2003:** (3) amended, p. 1626, § 53, effective August 6. **L. 2008:** (3) amended, p. 551, § 3, effective July 1.

12-47.1-205. Division of gaming - access to records. The division of gaming, for purposes of this article, shall have full authority to procure, at the expense of the division, any records furnished to or maintained by any law enforcement agency in the United States, including state and local law enforcement agencies in Colorado and other states for the purposes of carrying out its responsibilities pursuant to this article. Upon request from the Colorado bureau of investigation, the division shall provide copies of any and all information obtained pursuant to this article.

Source: L. 91: Entire article added, p. 1530, § 1, effective June 4.

12-47.1-206. Repeal of division - review of functions. Unless continued by the general assembly, this part 2 is repealed, effective July 1, 2013, and those powers, duties, and functions of the director specified in this part 2 are abolished. The provisions of section

24-34-104 (5) to (12), C.R.S., concerning a wind-up period, an analysis and evaluation, public hearings, and claims by or against an agency shall apply to the powers, duties, and functions of the director of said division.

Source: **L. 91:** Entire article added, p. 1530, § 1, effective June 4. **L. 96:** Entire section amended, p. 350, § 2, effective April 17; entire section amended, p. 1476, § 40, effective June 1. **L. 2003:** Entire section amended, p. 2097, § 1, effective May 22.

PART 3

COLORADO LIMITED GAMING CONTROL COMMISSION

12-47.1-301. Colorado limited gaming control commission - creation. (1) There is hereby created, within the division of gaming, the Colorado limited gaming control commission. The commission shall consist of five members, all of whom shall be citizens of the United States and residents of this state who have been residents of the state for the past five years. The members shall be appointed by the governor, with the consent and approval of the senate. No member shall have been convicted of a felony or gambling-related offense, notwithstanding the provisions of section 24-5-101, C.R.S. No more than three of the five members shall be members of the same political party and no more than one member shall be from any one congressional district. At the first meeting of each fiscal year, a chairman and vice-chairman of the commission shall be chosen from the membership by a majority of the members. Membership and operation of the commission shall additionally meet the following requirements:

(a) One member of the commission shall have had at least five years' law enforcement experience as a peace officer certified pursuant to section 24-31-305, C.R.S.; one member shall be an attorney admitted to the practice of law in Colorado for not less than five years and who has experience in regulatory law; one member shall be a certified public accountant or public accountant who has been practicing in Colorado for at least five years and who has a comprehensive knowledge of the principles and practices of corporate finance; one member shall have been engaged in business in a management-level capacity for at least five years; and one member shall be a registered elector of the state who is not employed in any profession or industry otherwise described in this paragraph (a).

(b) Initial members shall be appointed to the commission by the governor as follows: One member to serve until July 1, 1992, one member to serve until July 1, 1993, one member to serve until July 1, 1994, and two members to serve until July 1, 1995. All subsequent appointments shall be for terms of four years. No member of the commission shall be eligible to serve more than two consecutive terms.

(c) Any vacancy on the commission shall be filled for the unexpired term in the same manner as the original appointment. The member appointed to fill such vacancy shall be from the same category described in paragraph (a) of this subsection (1) as the member vacating the position.

(d) Any member of the commission may be removed by the governor at any time.

(e) The term of any member of the commission who misses more than two consecutive regular commission meetings without good cause shall be terminated and such member's successor shall be appointed in the manner provided for appointments under this section.

(f) Commission members shall receive as compensation for their services one hundred dollars for each day spent in the conduct of commission business and shall be reimbursed for necessary travel and other reasonable expenses incurred in the performance of their official duties. The maximum annual compensation for each member of the commission, including reimbursement for necessary travel and other reasonable expenses incurred in the performance of their official duties, shall not exceed ten thousand dollars per year.

(g) Prior to confirmation by the senate, each member shall file with the secretary of state a financial disclosure statement in the form required and prescribed by the executive director. Such statement shall be renewed as of each January 1 during the member's term of office.

(h) The commission shall hold at least one meeting each month and such additional meetings as may be prescribed by rules of the commission. In addition, special meetings may be called by the chairman, any two commission members, or the director, if written notification of such meeting is delivered to each member at least seventy-two hours prior to such meeting. Notwithstanding the provisions of section 24-6-402, C.R.S., in emergency situations in which a majority of the commission certifies that exigencies of time require that the commission meet without delay, the requirements of public notice and of seventy-two hours' actual advance written notice to members may be dispensed with, and commission members as well as the public shall receive such notice as is reasonable under the circumstances.

(i) A majority of the commission shall constitute a quorum, but the concurrence of a majority of the members appointed to the commission shall be required for any final determination by the commission.

(j) The commission shall keep a complete and accurate record of all its meetings.

Source: **L. 91:** Entire article added, p. 1531, § 1, effective June 4. **L. 93:** (1)(a) amended, p. 1773, § 29, effective June 6. **L. 2002:** (1)(a) amended, p. 1015, § 15, effective June 1.

12-47.1-302. Commission - powers and duties. (1) In addition to any other powers and duties set forth in this part 3, and notwithstanding the designation of the Colorado limited gaming control commission under section 12-47.1-201 as a **type 2** transfer, the commission shall nonetheless have the following powers and duties:

(a) To promulgate such rules and regulations governing the licensing, conducting, and operating of limited gaming as it deems necessary to carry out the purposes of this article. The director shall prepare and submit to the commission written recommendations concerning proposed rules and regulations for this purpose.

(b) To conduct hearings upon complaints charging violations of this article or rules and regulations promulgated pursuant to this article, and to conduct such other hearings as may be required by rules of the commission;

(c) To enter into agreements with the Colorado bureau of investigation and state and local law enforcement agencies for the conduct of investigation, identification, or registration, or any combination thereof, of licensed operators and employees in licensed premises or in premises containing licensed premises in accordance with the provisions of this article, which conduct shall include, but not be limited to, performing background investigations and criminal records checks on an applicant applying for licensure pursuant to the provisions of this article and investigating violations of any provision of this article or of any rule or regulation promulgated by the commission pursuant to paragraph (a) of this subsection (1) discovered as a result of such investigatory process or discovered by the department of revenue or the commission in the course of conducting its business. Nothing in this section shall prevent or impair the Colorado bureau of investigation or state or local law enforcement agencies from engaging in the activities set forth in this paragraph (c) on their own initiative.

(d) To conduct a continuous study and investigation of limited gaming throughout the state for the purpose of ascertaining any defects in this article or in the rules and regulations promulgated pursuant to this article in order to discover any abuses in the administration and operation of the division or any violation of this article or any rule or regulation promulgated pursuant to this article;

(e) To formulate and recommend changes to this article or any rule or regulation promulgated pursuant to this article for the purpose of preventing abuses and violations of this article or any of the rules or regulations promulgated pursuant to this article; to guard against the use of this article and such rules and regulations as a cloak for the conducting of illegal activities; and to ensure that this article and such rules and regulations shall be in such form and be so administered as to serve the true purpose and intent of this article;

(f) To report immediately to the governor, the attorney general, the speaker of the house of representatives, the president of the senate, the minority leaders of both houses, and such other state officers as the commission deems appropriate concerning any laws which it

determines require immediate amendment to prevent abuses and violations of this article or any rule or regulation promulgated pursuant to this article or to remedy undesirable conditions in connection with the administration or the operation of the division or limited gaming;

(g) To require such special reports from the director as it considers necessary;

(h) To issue temporary or permanent licenses to those involved in the ownership, participation, or conduct of limited gaming;

(i) Upon complaint, or upon its own motion, to levy fines and to suspend or revoke, licenses which the commission has issued;

(j) To establish and collect fees and taxes upon persons, licenses, and gaming devices used in, or participating in, limited gaming;

(k) To obtain all information from licensees and other persons and agencies which the commission deems necessary or desirable in the conduct of its business;

(l) To issue subpoenas for the appearance or production of persons, records, and things in connection with applications before the commission or in connection with disciplinary or contested cases considered by the commission;

(m) To apply for injunctive or declaratory relief to enforce the provisions of this article and any rules and regulations promulgated pursuant to this article;

(n) To inspect and examine without notice all premises wherein limited gaming is conducted or devices or equipment used in limited gaming are located, manufactured, sold, or distributed, and to summarily seize, remove, and impound, without notice or hearing from such premises any equipment, devices, supplies, books, or records for the purpose of examination or inspection;

(o) To enter into contracts with any governmental entity to carry out its duties without compliance with the provisions of the "Procurement Code", articles 101 to 112 of title 24, C.R.S. Such contracts or formal agreements, or both, are to be based on preestablished commission criteria specifying minimum levels of cooperation and conditions for payment.

(p) To exercise such other incidental powers as may be necessary to ensure the safe and orderly regulation of limited gaming and the secure collection of all revenues, taxes, and license fees;

(q) To establish internal control procedures for licensees, including accounting procedures, reporting procedures, and personnel policies;

(r) To establish and collect fees for performing background checks on all applicants for licenses and on all persons with whom the commission or division may agree with or contract with for the providing of goods or services, as the commission deems appropriate;

(s) To establish and collect fees for performing, or having performed, tests on equipment and devices to be used in limited gaming;

(t) To establish a field office in Black Hawk, Central City, or Cripple Creek, as deemed necessary by the commission;

(u) To demand, at any time when business is being conducted, access to and inspection, examination, photocopying, and auditing of all papers, books, and records of applicants and licensees, on their premises or elsewhere as practicable and in the presence of the licensee or his agent, pertaining to the gross income produced by any licensed gaming establishment and to require verification of income, and all other matters affecting the enforcement of the policies of the commission or any provision of this article; and to impound or remove all papers, books, and records of applicants and licensees, without hearing, for inspection or examination; and

(v) To prescribe voluntary alternative methods for the making, filing, signing, subscribing, verifying, transmitting, receiving, or storing of returns or other documents.

(2) Rules and regulations promulgated pursuant to subsection (1) of this section shall include, but shall not be limited to, the following:

(a) The types of limited gaming activities to be conducted and the rules for those activities;

(b) The requirements, qualifications, and grounds for the issuance, revocation, suspension, and summary suspension of all types of permanent and temporary licenses required for the conduct of limited gaming;

(c) Qualifications of persons to hold limited gaming licenses;

- (d) Restrictions upon the times, places, and structures where limited gaming shall be authorized;
- (e) The ongoing operation of limited gaming activities;
- (f) The scope and conditions for investigations and inspections into the conduct of limited gaming, the background of licensees and applicants for licenses, the premises where limited gaming is authorized, all premises where gaming devices are located, the books and records of licensees, and the sources and maintenance of limited gaming devices and equipment;
- (g) Activities which constitute fraud, cheating, or illegal or criminal activities;
- (h) The percentage of the adjusted gross proceeds to be paid by each licensee to the commission, in addition to license fees and taxes;
- (i) The seizure without notice or hearing of gaming equipment, supplies, or books and records for the purpose of examination and inspection;
- (j) The disclosure of the complete financial interests of applicants for licenses or of licensees;
- (k) The issuance or denial of support licenses by the director;
- (l) The granting of certain licenses with special conditions or for limited periods, or both;
- (m) The establishment of procedures for determining suitability or unsuitability of persons, acts, or practices;
- (n) The payment of costs incurred in the operation and administration of the division, and the costs resulting from any contract entered into for consulting or operational services;
- (o) The payment of costs incurred by the Colorado bureau of investigation and any other agencies for investigations or background checks, which shall be paid by applicants for licenses or by licensees;
- (p) The levying of fines for violations of this article or any rule or regulation promulgated pursuant to this article;
- (q) The amount of license fees for all types of licenses issued by the commission and the division;
- (r) The conditions and circumstances which constitute suitability of persons, locations, and equipment for gaming;
- (s) The types and specifications of all equipment and devices used in or with limited gaming; and
- (t) All other provisions necessary to accomplish the purposes of this article.

Source: L. 91: Entire article added, p. 1533, § 1, effective June 4. L. 93: (1)(t) and (1)(u) amended and (1)(v) added, p. 429, § 3, effective April 19; (1)(o) amended, p. 896, § 2, effective May 10.

ANNOTATION

Section 9 of article XVIII of the Colorado Constitution prohibits the general assembly from enacting limitations on revenues collected by the Colorado limited gaming commission in order to comply with section 20 of article X of the Colorado Constitution, and insofar as revenues generated by limited gaming

might tend in a given year to violate the spending limits imposed by that section, the general assembly may comply by decreasing revenues collected elsewhere, or if that is impossible after the fact, by refunding the surplus to taxpayers. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

PART 4

CONFLICT OF INTEREST

12-47.1-401. Conflict of interest. (1) Members of the commission and employees of the division are declared to be in positions of public trust. In order to ensure the confidence of the people of the state in the integrity of the division, its employees, and the commission, the following restrictions shall apply:

(a) No member of the commission, an ancestor or descendant of a member, including a natural child, child by adoption, or stepchild, or a brother or sister of the whole or half blood of a member, or an uncle, aunt, nephew, or niece of the whole blood of a member, shall have any interest of any kind in a license issued pursuant to this article or own or have any interest in property in any county where limited gaming is permitted. The provisions of this paragraph (a) shall apply to spouses of commission members in like fashion as to members.

(b) No member of the commission or employee of the division, including the director, and no member of the immediate family of a member or employee of the division, shall have any interest, direct or indirect, in any licensee, licensed premises, establishment, or business involved in or with limited gaming. Further, no such person shall own, in whole or in part, property in the cities of Central, Black Hawk, or Cripple Creek; except that employees of the division assigned to work regularly in Gilpin or Teller county may live with their families in those counties, and may own private property therein for residential purposes, with commission approval.

(c) No member of the commission or employee of the division, including the director, and no member of the immediate family of a member of the commission or employee of the division, shall receive any gift, gratuity, employment, or other thing of value from any person, corporation, association, or firm that contracts with or that offers services, supplies, materials, or equipment used by the division in the normal course of its operations, or which is licensed by the division or the commission; except that such persons may accept on an infrequent basis in the normal course of business such nonpecuniary items of insignificant value as shall be allowed by the director and as shall be specified by the commission by rule and regulation.

(d) No member of the commission or employee of the division, including the director, and no member of their immediate families, shall participate in limited gaming.

(e) No member of the commission or employee of the division, including the director, shall have been convicted of a felony or any gambling-related offense, notwithstanding the provisions of section 24-5-101, C.R.S.

(1.5) Notwithstanding the provisions of subsection (1) of this section, the commission may, by rule, determine that an ownership interest of no more than five percent held by or through an institutional investor fund does not constitute an interest under paragraphs (a) and (b) of subsection (1) of this section.

(2) For purposes of investigating violations of this article, the provisions of paragraphs (c) and (d) of subsection (1) of this section shall not apply to an employee of the division acting in his official capacity while on duty.

Source: L. 91: Entire article added, p. 1537, § 1, effective June 4. L. 96: (1.5) added, p. 1111, § 3, effective October 1.

PART 5

LICENSING

12-47.1-501. Licenses - types. (1) The commission may issue five types of licenses as follows:

(a) **Slot machine manufacturer or distributor.** A slot machine manufacturer or distributor license is required for all persons who import, manufacture, or distribute slot machines in this state, or who otherwise act as a slot machine manufacturer or distributor. Each license issued pursuant to this paragraph (a) shall expire two years from the date of its issuance but may be renewed upon the filing and approval of an application for renewal. The fee for the initial license and all renewals thereof shall be determined by the commission pursuant to rule.

(b) **Operator license.** (1) An operator license is required for all persons who permit slot machines on their premises or who engage in the business of placing and operating slot machines on the premises of a retailer. Each license issued pursuant to this paragraph (b) shall expire two years from the date of its issuance but may be renewed upon the filing and

approval of an application for renewal. The fee for the initial license and all renewals thereof shall be determined by the commission pursuant to rule. A licensed operator shall obtain slot machines only from, and shall return or sell slot machines only to, a licensed manufacturer or distributor.

(II) This paragraph (b) shall not apply to persons holding retail gaming licenses issued pursuant to paragraph (c) of this subsection (1).

(c) **Retail gaming license.** A retail gaming license is required for all persons permitting or conducting limited gaming on their premises. A retail gaming license may only be granted to a retailer. Each person licensed as a retailer shall have and maintain sole and exclusive legal possession of the entire premises for which the retail license is issued. Each license issued pursuant to this paragraph (c) shall expire two years from the date of its issuance but may be renewed upon the filing and approval of an application for renewal. The fee for the initial license and all renewals thereof shall be determined by the commission pursuant to rule. A licensed retailer shall obtain slot machines only from, and shall return or sell slot machines only to, a licensed manufacturer or distributor. Slot machine transfers between licensed retailers directly and completely owned by the same person are allowed, if proper notification is given to the division.

(d) **Support license.** A support license is required for all persons employed in the field of limited gaming and by all gaming employees. No person required to hold a support license shall be an employee of, or assist, any licensee until such person obtains a valid support license. Persons licensed as key employees need not obtain support licenses. The commission may deny a support license to any person discharged for cause from employment by any licensed gaming establishment in this or any other country. Each license issued pursuant to this paragraph (d) shall expire two years from the date of its issuance but may be renewed upon the filing and approval of an application for renewal. The fee for the initial license and all renewals thereof shall be determined by the commission pursuant to rule.

(e) **Key employee license.** Every retail gaming licensee shall have a person in charge of all limited gaming activities available at all times when limited gaming is being conducted. Such person in charge shall hold a key employee license. Each license issued pursuant to this paragraph (e) shall expire two years from the date of its issuance but may be renewed upon the filing and approval of an application for renewal. The fee for the initial license and all renewals thereof shall be determined by the commission pursuant to rule.

Source: L. 91: Entire article added, p. 1538, § 1, effective June 4. **L. 96:** (1)(b), (1)(d), and (1)(e) amended, p. 350, § 3, effective April 17. **L. 2008:** (1)(a), (1)(b)(I), and (1)(c) amended, p. 533, § 1, effective August 5.

12-47.1-502. Registration of employees. (Repealed)

Source: L. 91: Entire article added, p. 1539, § 1, effective June 4. **L. 96:** Entire section repealed, p. 351, § 1, effective April 17.

12-47.1-503. Key employee - determination of status. If, in the determination of the commission, an employee of a licensee for limited gaming is a key employee and as such is subject to licensure, the commission shall serve notice of such determination upon the licensee who employed such key employee. In determining whether or not an employee is a key employee, the commission is not restricted by the title of the job performed by such employee but may consider the functions and responsibilities of such employee in making its decision. The licensee shall, within thirty days following receipt of the notice of the commission's determination, present the application for licensing of such employee to the commission or provide documentary evidence that such employee is no longer employed by the licensee. Failure of the licensee to respond as required by this section is grounds for disciplinary action. A person subject to application for licensing as a key employee may make written request to the commission to review its determination of such person's status within the gaming organization. If the commission determines that the person is not a key employee, such person shall be allowed to withdraw his application and continue in his

employment. The request by an employee for review of his employment status does not stay the obligation of the licensee to present such employee's application to the commission within the thirty-day period prescribed by this section.

Source: L. 91: Entire article added, p. 1540, § 1, effective June 4.

12-47.1-504. Licenses - revocable - nontransferable. Every license issued pursuant to this article is revocable and nontransferable. No licensee acquires any vested interest or property right in a license. The gaming licenses issued pursuant to this article are only for the particular location initially authorized. The revocable privilege for any license issued or other approval granted is conditioned upon the proper and continuing qualification of the licensee or registrant and upon the discharge of the affirmative responsibility of each such licensee or registrant to provide to the regulatory, investigatory, and law enforcement authorities any assistance and information necessary to assure that the policies and requirements of this article are achieved.

Source: L. 91: Entire article added, p. 1540, § 1, effective June 4.

ANNOTATION

License conditions and revocation authorized by law and constitution. The gaming commission was within its statutory authority in conditioning a key employee license on payment of back child support and taxes and revoking such license for failure to comply with such conditions. The gaming commission did not abuse its discretion or violate due process in so revoking the license where the licensee was given a reasonable opportunity to comply with such conditions, failed to provide requested in-

come tax returns, and made false statements of material fact to the investigator regarding the filing of tax returns and where the gaming commission provided the licensee with substantial evidentiary leeway, allowed the licensee to cross-examine and impeach the investigator, and gave the licensee the opportunity to argue the proper standard for license revocation. *Feeney v. Colo. Ltd. Gaming Control Comm'n*, 890 P.2d 173 (Colo. App. 1994).

12-47.1-505. Operator, slot machine manufacturer or distributor, key employee, support licensee, or retailer - qualifications for licensure. Prior to a person's licensure as an operator, slot machine manufacturer or distributor, key employee, support licensee, or retailer, such person shall, in addition to meeting any other requirements imposed by this article, the commission, or any rule or regulation promulgated pursuant to this article, show that he is of good moral character. Such person has the burden of proving his qualifications to the satisfaction of the commission. Such person shall submit to and pay for any background investigations as may be ordered by the commission. All such payments shall be deposited into the limited gaming fund.

Source: L. 91: Entire article added, p. 1540, § 1, effective June 4.

ANNOTATION

Commission has statutory authority to consider any criminal history of an applicant that could be inimical to the purposes of the Limited Gaming Act, including an examination of a criminal record of seven arrests, conviction

of three misdemeanors, and deferred sentences on two other misdemeanors. *Moya v. Colo. Gaming Comm'n*, 870 P.2d 620 (Colo. App. 1994).

12-47.1-506. Considerations for licensure. In considering whether a person is of good moral character for purposes of issuing any license pursuant to this article, or for any other purposes, the commission may, in addition to all other information, consider whether that person has been denied a gaming license by this or any other jurisdiction, city, state, or country, or whether the person has ever had a gaming license in this or any other

jurisdiction, city, state, or country suspended or revoked. The commission may also consider whether a person has ever withdrawn an application for any type of gaming license anywhere and the reasons for such withdrawal.

Source: L. 91: Entire article added, p. 1541, § 1, effective June 4.

12-47.1-507. Temporary or conditional licenses. The commission may issue temporary or conditional licenses with respect to all licenses authorized under this article.

Source: L. 91: Entire article added, p. 1541, § 1, effective June 4. **L. 2008:** Entire section amended, p. 552, § 4, effective July 1.

12-47.1-508. Delegation of authority to issue certain licenses. The commission may delegate to the division the authority to issue permanent and temporary support and key employee licenses, but the commission shall review and approve the issuance of all other licenses issued pursuant to this article.

Source: L. 91: Entire article added, p. 1541, § 1, effective June 4.

12-47.1-509. Licensed premises - retail floor plan - definitions. (1) For purposes of this section, "retail floor plan" means a physical layout of the inside of the building in which limited gaming will take place, which shall show the location of the licensed premises within the building.

(2) The retail floor plan shall be submitted to the commission with an applicant's application for a retail gaming license. Approval of the retail floor plan is subject to commission rules and those rules pertaining to the public health, safety, good order, and general welfare of the cities of Central, Black Hawk, and Cripple Creek. All gaming devices shall be located within the licensed premises of a business.

(3) A licensed retailer may change the physical location of the licensed premises with the approval of the commission, the director, or the director's designee; however, in no event shall the licensed premises as modified violate any provision of this article or consist of more than two noncontiguous areas on one floor. Failure of the commission, the director, or the director's designee to deny an application to relocate the licensed premises in a building, within thirty days of such application, shall be deemed an approval thereof.

Source: L. 91: Entire article added, p. 1541, § 1, effective June 4. **L. 2008:** Entire section amended, p. 552, § 5, effective July 1.

12-47.1-510. License - disqualification - criteria. (1) The commission shall deny a license to any applicant who is disqualified for licensure on the basis of any of the following criteria:

(a) Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this article;

(b) Failure of the applicant to provide information, documentation, and assurances required by this article or requested by the commission, failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria;

(c) Conviction of the applicant, or any of its officers or directors, or any of its general partners, or any stockholders, limited partners, or other persons having a financial or equity interest of five percent or greater in the applicant, of any of the following:

(I) Service of a sentence upon conviction of a felony in a correctional facility, city or county jail, or community correctional facility or under the supervision of the state board of parole or any probation department within ten years prior to the date of the application, notwithstanding the provisions of section 24-5-101, C.R.S.;

(II) Service of a sentence upon conviction of any misdemeanor gambling-related offense or misdemeanor theft by deception in a correctional facility, city or county jail, or

community correctional facility or under the supervision of the state board of parole or any probation department within ten years prior to the date of the application, notwithstanding section 24-5-101, C.R.S.;

(III) Service of a sentence upon conviction of any misdemeanor involving fraud or misrepresentation in a correctional facility, city or county jail, or community correctional facility or under the supervision of the state board of parole or any probation department within ten years prior to the date of the application, notwithstanding the provisions of section 24-5-101, C.R.S.;

(IV) Service of a sentence upon conviction of any gambling-related felony or felony involving theft by deception in a correctional facility, city or county jail, or community correctional facility or under the supervision of the state board of parole or any probation department, notwithstanding the provisions of section 24-5-101, C.R.S.;

(V) Service of a sentence upon conviction of any felony involving fraud or misrepresentation in a correctional facility, city or county jail, or community correctional facility or under the supervision of the state board of parole or any probation department, notwithstanding the provisions of section 24-5-101, C.R.S.;

(d) Current prosecution or pending charges in any jurisdiction against the applicant, or against any person listed in paragraph (c) of this subsection (1), for any of the offenses enumerated in paragraph (c) of this subsection (1); except that, at the request of the applicant or the person charged, the commission shall defer decision upon such application during the pendency of such charge;

(e) The identification of the applicant or any person listed in paragraph (c) of this subsection (1) as a career offender or a member of a career offender cartel or an associate of a career offender or a career offender cartel in such a manner which creates a reasonable belief that the association is of such a nature as to be inimical to the policy of this article and to gaming operations. For purposes of this section, "career offender" means any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this state. For purposes of this section, "career offender cartel" means any group of persons who operate together as career offenders.

(f) Refusal to cooperate by the applicant or any person who is required to be qualified under this article with any legislative investigatory body or other official investigatory body of any state or of the United States when such body is engaged in the investigation of crimes relating to gaming, official corruption, or organized crime activity;

(g) The applicant, or any of its officers or directors, or any of its general partners, or any stockholders, limited partners, or other persons having a financial or equity interest of five percent or greater in the applicant is or has been a professional gambler as that term is defined in article 10 of title 18, C.R.S.

Source: L. 91: Entire article added, p. 1542, § 1, effective June 4. L. 93: (1)(c) amended, p. 897, § 3, effective May 10. L. 2008: (1)(c)(II) amended, p. 552, § 6, effective July 1.

ANNOTATION

Constitutional. Gambling is a privilege, not a right, so federal due process rights are not affected. Assuming that an applicant has a sufficient property or liberty interest in the license so that a due process claim can be asserted, the restrictions to licensing in this section are reasonably related to the proper goal of assuring both honest gaming and the public perception that the gaming is honest. In addition, this reasonable relationship to a legitimate state interest is sufficient to result in the statute withstanding a claim that it is unconstitutional on its face as a

violation of equal protection. *DeMarco v. Gaming Control Comm'n*, 855 P.2d 23 (Colo. App. 1993).

Commission has statutory authority to consider any criminal history of an applicant that could be inimical to the purposes of the Limited Gaming Act, including an examination of a criminal record of seven arrests, conviction of three misdemeanors, and deferred sentences on two other misdemeanors. *Moya v. Colo. Gaming Comm'n*, 870 P.2d 620 (Colo. App. 1994).

12-47.1-511. Applicants and licensees - providing information. (1) All applicants for licenses issued by the commission, and all persons holding such licenses, including all persons interested, directly or indirectly, in the gaming business or license held by an applicant or licensee, shall upon request by the commission or division provide handwriting exemplars, and each such person shall allow himself or herself to be photographed in accordance with procedures established by the commission.

(2) Upon issuance of a formal request or subpoena by the commission to answer or produce information, evidence, or testimony, each applicant and licensee shall comply with the request or subpoena. Where an applicant or licensee, or any employee or person interested, directly or indirectly, in either refuses or fails to comply with a commission request or subpoena, then that person's license or application may be suspended, revoked, or denied, based solely upon such failure or refusal.

(3) With the submission of an application for a license or an application for a finding of suitability pursuant to this article, each applicant shall submit a set of fingerprints to the commission. The commission shall forward such fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. Nothing in this subsection (3) shall preclude the commission from making further inquiries into the background of the applicant.

Source: L. 91: Entire article added, p. 1543, § 1, effective June 4. L. 2002: (1) amended and (3) added, p. 972, § 5, effective June 1.

ANNOTATION

License conditions and revocation authorized by law and constitution. The gaming commission was within its statutory authority in conditioning a key employee license on payment of back child support and taxes and revoking such license for failure to comply with such conditions. The gaming commission did not abuse its discretion or violate due process in so revoking the license where the licensee was given a reasonable opportunity to comply with such conditions, failed to provide requested in-

come tax returns, and made false statements of material fact to the investigator regarding the filing of tax returns and where the gaming commission provided the licensee with substantial evidentiary leeway, allowed the licensee to cross-examine and impeach the investigator, and gave the licensee the opportunity to argue the proper standard for license revocation. *Feeney v. Colo. Ltd. Gaming Control Comm'n*, 890 P.2d 173 (Colo. App. 1994).

12-47.1-512. Application - fee - waiver of confidentiality. (1) The commission may establish investigation and application fees for the purpose of paying for the administrative costs of the commission and for paying for any background investigations of applicants and others. These fees may vary depending on the type of application, the complexity of the investigation, or the costs of the commission in reviewing the matters involved.

(2) The application form created by the commission shall include a waiver of any right of confidentiality and a provision which allows the information contained in the application to be accessible to law enforcement agents of this or any other state, the government of the United States, any foreign country, or any Indian tribe. The waiver of confidentiality shall extend to any financial or personnel record, wherever maintained.

Source: L. 91: Entire article added, p. 1543, § 1, effective June 4.

12-47.1-513. Supplier of licensee - licensure requirements. (1) Except as otherwise provided in subsection (2) of this section, any person supplying goods, equipment, devices, or services to any licensee in return for payment of a percentage, or calculated upon a percentage, of limited gaming activity or income must obtain an operator license or must be listed on the retailer's license where such limited gaming will take place.

(2) A licensed slot machine manufacturer or distributor need not obtain an operator's license or be listed on a retailer's license for purposes of establishing and administering a

fund associated with a multiple-property, linked, progressive slot machine system as defined by the commission, so long as all of the following conditions are met:

(a) The manufacturer or distributor shall deposit in the fund and shall account, subject to supervision by the commission, for those moneys derived from wagering in machines linked to the system which are due to the manufacturer or distributor pursuant to its agreement with the retail licensee.

(b) The manufacturer or distributor shall maintain a separate account for the fund associated with each progressive system.

(c) The manufacturer or distributor shall retain as compensation only a flat, predetermined fee per machine. Operating costs of the system, including payment of prizes, may be disbursed from the fund.

(d) Machines linked to the system shall be placed only in premises controlled by a licensed operator or retailer.

Source: L. 91: Entire article added, p. 1544, § 1, effective June 4. L. 93: Entire section amended, p. 2093, § 1, effective June 9.

12-47.1-514. Application - authorization for background investigations. By signing and filing an application for a license, which is hereby made subject to the perjury laws of this state, the applicant authorizes the commission to obtain information from any source, public or private, in this or any other country, regarding the background or conduct of the applicant and, if the applicant is a partnership or corporation, any of its shareholders, officers, directors, partners, agents, or employees.

Source: L. 91: Entire article added, p. 1544, § 1, effective June 4.

12-47.1-515. License - grounds for approval or denial. The commission may approve or deny any application for a license, in addition to all other conditions and requirements set forth in this article and the rules and regulations promulgated pursuant thereto, on the basis of whether it deems the applicant a suitable person to hold the license applied for and whether it considers the proposed location, retail floor plan, or any other conditions suitable. Refusal of an applicant to provide all information requested by the commission or to allow investigation into the applicant's background is grounds for denial of a license. Information requested from the applicant by the commission shall include the applicant's date of birth in addition to other information necessary to identify and investigate fully the record and relevant history of the applicant.

Source: L. 91: Entire article added, p. 1544, § 1, effective June 4.

ANNOTATION

Commission has statutory authority to consider any criminal history of an applicant that could be inimical to the purposes of the Gaming Act, including an examination of a criminal record of seven arrests, conviction of three misdemeanors, and deferred sentences on two other misdemeanors. *Moya v. Colo. Gaming Comm'n*, 870 P.2d 620 (Colo. App. 1994).

Commission acted within its discretion and properly determined the applicant's unsuitability due to evidence presented of the applicant's propensity to steal based on applicant's several theft convictions. *Moya v. Colo. Gaming Comm'n*, 870 P.2d 620 (Colo. App. 1994).

Commission's order adequately specified both the statutory authority and the facts it relied on when making its decision to deny applicant a license, as the order stated that applicant had failed to meet the burden to prove applicant's qualification to hold a license and that applicant was not a suitable person to hold a license and as the Commission determined that applicant's criminal history established a pattern of disregard for lawful conduct. *Moya v. Colo. Gaming Comm'n*, 870 P.2d 620 (Colo. App. 1994).

12-47.1-516. Licensed premises - safety conditions - fire and electrical.

(1) (a) The building in which limited gaming will be conducted and the areas where limited gaming will occur shall meet safety standards and conditions for the protection of life and property as determined by the local fire official and the local building official. In making such determinations, the codes adopted by the director of the division of fire prevention and control within the department of public safety pursuant to section 24-33.5-1203.5, C.R.S., constitute the minimum safety standards for limited gaming structures; except that, in connection with structures licensed for limited gaming and operating as such on or before July 1, 2011, any newly adopted building codes shall not be applied retroactively to structures that were newly constructed or remodeled to accommodate licensed limited gaming.

(b) The local building official and the local historical preservation commission shall work together to ensure that neither historical preservation of existing buildings nor the safety of life are compromised.

(2) A certificate of compliance shall be issued to an applicant for a premises license by the local fire and building officials, and approved by the division of fire prevention and control. A copy of the local inspection report shall be filed with the state division of fire prevention and control. Once the division has deemed that the minimum requirements for fire prevention and control have been met, the division shall approve the certificate of compliance within five working days from receipt of the inspection report. If not acted upon within five days, the certificate of compliance shall be considered approved. Such certificate shall be current and valid and shall cover the entire building where limited gaming is conducted.

(3) (Deleted by amendment, L. 2011, (SB 11-251), ch. 240, p. 1043, § 3, effective June 30, 2011.)

(4) In advance of any structural or significant change to the building or areas where limited gaming is conducted, the plans for such a change shall be submitted by the licensee holding a premises license to the local fire official and the local building official for their review. No changes may be made to the building or areas where limited gaming is conducted until the plans are approved by the local fire official and the local building official.

(5) The state division of fire prevention and control and the state historical society shall provide technical assistance to the local building officials, the local fire officials, the local historical preservation commissions, and the commission upon request.

(6) The commission shall act as an appeals board for any owner, fire official, building official, or the division of fire prevention and control who feels aggrieved by fire and life safety requirements or the lack of fire and life safety standards in buildings in which limited gaming will be conducted. If the commission fails to act upon an appeal within fourteen days after its receipt by the commission, the certificate of compliance shall be considered approved.

Source: L. 91: Entire article added, p. 1544, § 1, effective June 4. L. 2011: (1)(a) and (3) amended, (SB 11-251), ch. 240, p. 1043, § 3, effective June 30. L. 2012: (1)(a), (2), (5), and (6) amended, (HB 12-1283), ch. 240, p. 1130, § 35, effective July 1.

Cross references: For the legislative declaration in the 2012 act amending subsections (1)(a), (2), (5), and (6), see section 1 of chapter 240, Session Laws of Colorado 2012.

12-47.1-517. Buildings - accessible to persons with disabilities. (1) All premises where limited gaming is conducted shall be accessible to and functional for persons with physical disabilities.

(2) An exception to the requirement of subsection (1) of this section may be granted in cases where the local historical preservation commission determines that compliance would result in degradation of the historical significance of the building where limited gaming is conducted.

Source: L. 91: Entire article added, p. 1546, § 1, effective June 4. L. 93: (1) amended, p. 1632, § 12, effective July 1.

12-47.1-518. Waiver from liability - state of Colorado - disclosures or publications. All applicants, registrants, and licensees shall waive liability as to the state of Colorado and its instrumentalities and agents for any damages resulting from any disclosure or publication in any manner, other than a willfully unlawful disclosure or publication, of any material or information acquired during inquiries, investigations, or hearings.

Source: L. 91: Entire article added, p. 1546, § 1, effective June 4.

12-47.1-519. Renewal of licenses. (1) Subject to the power of the commission to deny, revoke, or suspend licenses, any license in force shall be renewed by the commission for the next succeeding license period upon proper application for renewal and payment of license fees and taxes as required by law and the regulations of the commission. The license period for a renewed license shall be the same period as the initial license period pursuant to section 12-47.1-501. In addition, the commission shall reopen licensing hearings at any time at the request of the director, the Colorado bureau of investigation, or any law enforcement authority. The commission shall act upon any such application prior to the date of expiration of the current license.

(2) An application for renewal of a license may be filed with the commission up to one hundred twenty days prior to the expiration of the current license, and all license fees and taxes as required by law shall be paid to the commission on or before the date of expiration of the current license. The commission shall set the manner, time, and place at which an application is made.

(3) Upon renewal of any license, the commission shall issue an appropriate renewal certificate or validating device or sticker which shall be attached to each license.

(4) Renewal of a license may be denied by the commission for any violation of this article or article 20 of title 18, C.R.S., or the rules and regulations promulgated pursuant thereto, for any reason which would or could have prevented its original issuance, or for any good cause shown.

Source: L. 91: Entire article added, p. 1546, § 1, effective June 4. L. 95: (4) amended, p. 1109, § 58, effective May 31. L. 96: (2) amended, p. 351, § 5, effective April 17. L. 2003: (1) amended, p. 2098, § 4, effective May 22.

12-47.1-520. Denial of application. (1) Any person, or anyone who has an ownership interest of five percent or more in the person:

(a) Whose application has been denied by the commission may not reapply for licensure until at least one year has elapsed from the date of denial;

(b) Who has been denied a license for a second time may not reapply until at least three years have passed since the date of the second denial.

Source: L. 91: Entire article added, p. 1547, § 1, effective June 4.

12-47.1-521. Appeal of final action of commission. Any person aggrieved by a final action of the commission may appeal the final action to the court of appeals pursuant to section 24-4-106, C.R.S.

Source: L. 91: Entire article added, p. 1547, § 1, effective June 4.

ANNOTATION

This section barred the district court from considering a complaint regarding a final action of an agency. Agency provided for enter-

taining and disposing of petitions for declaratory orders. When, as here, a claimant is provided with relief, the extraordinary provisions of

C.R.C.P. 57 and 106 are not available. Purcell v. Colo. Div. of Gaming, 919 P.2d 905 (Colo. App. 1996).

12-47.1-522. Executive and closed meetings. (1) The commission may hold executive or closed meetings for any of the following purposes:

- (a) Considering applications for licensing when discussing background investigations or personal information;
- (b) Meeting with gaming officials of other jurisdictions, the attorney general, the district attorney for either Teller or Gilpin county, or law enforcement officials in connection with possible criminal violations;
- (c) Consulting with the executive director, director, employees, or agents of the commission concerning possible criminal violations or any security issues;
- (d) Deliberations after hearing evidence in an informal consultation or in a contested case.

Source: L. 91: Entire article added, p. 1547, § 1, effective June 4.

12-47.1-523. Communications - privileged and confidential. Communications among the commission, executive director, and the director relating to licensing, disciplining of licensees, or violations by licensees are privileged and confidential if made lawfully and in the course of or in furtherance of the business of the commission, except pursuant to court order after an in-camera review. The executive director, director, the commission, or any member of the commission may claim this privilege.

Source: L. 91: Entire article added, p. 1547, § 1, effective June 4.

12-47.1-524. Summary suspension. Every license granted pursuant to this article may be summarily suspended by the commission, pending a hearing before the commission, upon such terms and conditions as the commission shall by rule and regulation mandate.

Source: L. 91: Entire article added, p. 1548, § 1, effective June 4.

12-47.1-525. Suspension or revocation of license - grounds - penalties. (1) (a) Any license granted pursuant to this article may be revoked for any cause that would have prevented its issuance, including those causes set forth in sections 12-47.1-510 and 12-47.1-801.

(b) Any license granted pursuant to this article may be suspended or revoked for any violation by the licensee or any officer, director, agent, member, or employee of a licensee of this article, any rule promulgated by the commission, any provision of part 6 of article 35 of title 24, C.R.S., or any rule promulgated by the executive director of the department of revenue pursuant to section 24-35-607 (3), C.R.S., or for conviction of a crime, after notice to the licensee and a hearing upon proof by a preponderance of the evidence as determined by the commission. In addition to revocation or suspension, or in lieu of revocation or suspension, the commission may impose a reprimand or a monetary penalty not to exceed the following amounts:

- (I) If the licensee is a slot machine manufacturer or distributor, the amount of one hundred thousand dollars;
- (II) If the licensee is an operator, the amount of twenty-five thousand dollars;
- (III) If the licensee is a retailer, the amount of twenty-five thousand dollars;
- (IV) If the licensee is a key employee, the amount of five thousand dollars;
- (V) If the licensee holds a support license, the sum of two thousand five hundred dollars.

(2) Any monetary penalty received by the commission pursuant to this section shall be deposited in the limited gaming fund established in section 12-47.1-701.

(3) The civil penalties set forth in this section shall not be a bar to any criminal prosecution or to any civil or administrative prosecution.

Source: L. 91: Entire article added, p. 1548, § 1, effective June 4. L. 2003: (1)(c) amended, p. 2098, § 5, effective May 22. L. 2007: IP(1) amended, p. 1664, § 21, effective January 1, 2008. L. 2008: (1) amended, p. 552, § 7, effective July 1.

ANNOTATION

License conditions and revocation authorized by law and constitution. The gaming commission was within its statutory authority in conditioning a key employee license on payment of back child support and taxes and revoking such license for failure to comply with such conditions. The gaming commission did not abuse its discretion or violate due process in so revoking the license where the licensee was given a reasonable opportunity to comply with such conditions, failed to provide requested in-

come tax returns, and made false statements of material fact to the investigator regarding the filing of tax returns and where the gaming commission provided the licensee with substantial evidentiary leeway, allowed the licensee to cross-examine and impeach the investigator, and gave the licensee the opportunity to argue the proper standard for license revocation. *Feeney v. Colo. Ltd. Gaming Control Comm'n*, 890 P.2d 173 (Colo. App. 1994).

12-47.1-526. Commission hearings - testimony. In any hearing held by the commission pursuant to this article, the commission may apply to the district attorney having jurisdiction to prosecute the underlying criminal matter for orders pursuant to section 13-90-118, C.R.S., to compel testimony.

Source: L. 91: Entire article added, p. 1548, § 1, effective June 4.

12-47.1-527. Records - confidentiality - exceptions. (1) Information and records of the commission enumerated by this section are confidential and may not be disclosed except pursuant to a court order. No person may by subpoena, discovery, or statutory authority obtain such information or records. Information and records considered confidential include:

- (a) Tax returns of individual licensees;
- (b) Credit reports and security reports and procedures of applicants for licenses and other persons seeking or doing business with the commission;
- (c) Audit work papers, worksheets, and auditing procedures used by the commission, its agents, or employees; and
- (d) Investigative reports concerning violations of law or concerning the backgrounds of licensees, applicants, or other persons prepared by division investigators or investigators from other agencies working with the commission and any work papers related to such reports; except that the commission may in its sole discretion disclose so much of said reports or work papers as it deems necessary and prudent.

(2) This section does not apply to requests for such information or records from the governor, attorney general, state auditor, any of the respective district attorneys of this state, or any federal or state law enforcement agency, or for the use of such information or records by the executive director, director, or commission for official purposes, or by employees of the division of gaming or the department of revenue in the performance of their authorized and official duties.

(3) This section may not be construed to make confidential the aggregate tax collections during any reporting period, the names and businesses of licensees, or figures showing the aggregate amount of money bet during any reporting period.

(4) (a) Any person who discloses confidential records or information in violation of the provisions of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. Any criminal prosecution pursuant to the provisions of this section must be brought within five years from the date the violation occurred.

(b) If the person who violates this section is an officer or employee of the state, in addition to any other penalties or sanctions, such person shall be subject to dismissal if the procedures in section 24-50-125, C.R.S., are followed.

(c) If the person violating such provisions is a present employee or officer of the state who obtained the confidential records or information during such employment, then in any civil action, the subject of which includes the release of such confidential records or information, such person shall be liable for treble damages to any injured party.

(d) If the person violating such provisions is a former employee or officer of the state who obtained the confidential records or information during such employment, and if such person executed a written statement with the state agreeing to be held to the confidentiality standards expressed in this subsection (4), then in any civil action, the subject of which includes the release of such records or information after leaving state employment, the former employee or officer shall be liable for treble damages to any injured party.

Source: **L. 91:** Entire article added, p. 1549, § 1, effective June 4. **L. 93:** (4) added, p. 491, § 1, effective July 1. **L. 2002:** (4)(a) amended, p. 1482, § 94, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (4)(a), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-47.1-528. Executive director and director have access to files and records. The executive director and the director shall have access both physically and electronically to all files and records kept, or required to be maintained, and may contribute to those records.

Source: **L. 91:** Entire article added, p. 1549, § 1, effective June 4.

12-47.1-529. Licensees - duty to maintain records. Each licensee shall keep a complete set of books of account, correspondence, and all other records necessary to show fully the gaming transactions of the licensee, all of which shall be open at all times during business hours for the inspection and examination of the division or its duly authorized representatives. The division may require any licensee to furnish such information as the division considers necessary for the proper administration of this article and may require an audit to be made of such books of account and records on such occasions as the division considers necessary by an auditor, selected by the commission or the director, who shall likewise have access to all such books and records of the licensee, and the licensee may be required to pay the expense thereof.

Source: **L. 91:** Entire article added, p. 1550, § 1, effective June 4.

12-47.1-530. Businesses operating in compliance with section 18-10-105 (1.5), C.R.S. Nothing in this article shall be construed to affect a manufacturer who, prior to June 4, 1991, was operating a business in compliance with section 18-10-105 (1.5), C.R.S.

Source: **L. 91:** Entire article added, p. 1550, § 1, effective June 4.

12-47.1-531. Payments of winnings - intercept. (1) Before making a payment of cash gaming winnings for which the licensee is required to file form W-2G, or a substantially equivalent form, with the United States internal revenue service, a licensee shall comply with the requirements of part 6 of article 35 of title 24, C.R.S.

(2) Repealed.

Source: **L. 2007:** Entire section added, p. 1665, § 22, effective January 1, 2008. **L. 2009:** (2) repealed, (HB 09-1137), ch. 308, p. 1657, § 1, effective September 1.

PART 6

GAMING TAX

12-47.1-601. Gaming tax. (1) There is hereby imposed a gaming tax on the adjusted gross proceeds of gaming allowed by this article. The tax shall be set by rule promulgated by the commission. In no event shall the tax exceed forty percent of the adjusted gross proceeds. In setting the tax rate the commission shall consider the need to provide moneys to the cities of Central, Black Hawk, and Cripple Creek for historic restoration and preservation; the impact on the communities and any state agency including, but not limited to, infrastructure, law enforcement, environment, public health and safety, education requirements, human services, and other components due to limited gaming; the impact on licensees and the profitability of their operations; the profitability of the other "for-profit" forms of gambling in this state; the profitability of similar forms of gambling in other states; and the expenses of the commission and the division for their administration and operation. The commission shall also consider the following:

(a) The amount shall never exceed the percentage provided in paragraph (a) of subsection (5) of section 9 of article XVIII of the state constitution;

(b) The amount shall be established in conformity with the spirit and interest of this article so as to encourage business growth and investment in the gaming industry and to permit licensed operations, under normal business conditions and operation procedures, to realize a fair and just profit;

(c) The amount shall take into account unreimbursed local financial burdens associated with limited gaming-related operations;

(d) The amount shall take into account profit levels after expenses of other "for profit" gaming in Colorado and similar forms of gaming in other states;

(e) The amount shall take into account capital costs required to comply with local, state, or federal requirements; financial reserves required by the commission for payments to winners; and investments necessitated by regulatory requirements of the commission;

(f) The amount shall permit the licensed operator a reasonable profit after expenses, including:

(I) Capital costs associated with the licensed premises;

(II) Capital costs associated with limited gaming equipment;

(III) Capital costs required to comply with local or state requirements;

(IV) Extraordinary operating costs, including the provision of housing or transportation, or both, for employees;

(V) Initial costs associated with commencement of limited gaming;

(VI) Financial reserves required by the commission for payment to winners;

(VII) Investments necessitated by regulatory requirements of the commission; and

(g) If local voters in one or more cities revise any limits on gaming as provided in section 9 (7) (a) of article XVIII of the state constitution:

(I) Any commission action that increases the percentage of gaming taxes from the percentages imposed as of July 1, 2008, shall be effective only if approved by voters at a statewide election held under section 20 (4) (a) of article X of the state constitution; and

(II) Gaming tax revenues attributable to such locally approved revisions shall be collected and spent as a voter-approved revenue change without regard to any limitation contained in section 20 of article X of the state constitution or any other law.

(1.5) When adopting or amending any rule affecting the applicable tax rate or any other attribute or policy relating to application of the gaming tax authorized by subsection (1) of this section, the commission shall consider the impact on recipients of limited gaming tax proceeds, including those from extended limited gaming.

(2) (a) The department of revenue shall collect the amount of gaming tax on adjusted gross proceeds determined pursuant to subsection (1) of this section from the licensed retailer and shall have all of the powers, rights, and duties provided in articles 20, 21, and 26 of title 39, C.R.S., to carry out such collection. The commission shall authorize reimbursement to the department of revenue of the costs associated with collection of

gaming tax on adjusted gross proceeds from licensed operators pursuant to subsection (1) of this section, upon documentation of such costs satisfactory to the commission.

(b) All moneys collected pursuant to this section shall be deposited in the limited gaming fund created by subsection (5) (a) of section 9 of article XVIII of the state constitution.

Source: **L. 91:** Entire article added, p. 1550, § 1, effective June 4. **L. 2009:** IP(1), (1)(e), (1)(f)(VI), and (1)(f)(VII) amended and (1)(g) added, (HB 09-1272), ch. 153, p. 658, § 4, effective April 21. **L. 2012:** (1.5) added, (SB 12-115), ch. 35, p. 131, § 1, effective August 8.

Cross references: For the legislative declaration contained in the 2009 act amending the introductory portion to subsection (1) and subsections (1)(e), (1)(f)(VI), and (1)(f)(VII) and adding subsection (1)(g), see section 1 of chapter 153, Session Laws of Colorado 2009.

12-47.1-602. Return and remittance. Not later than fifteen days following the end of each retail month, each licensed retailer shall make a return and remittance to the director on forms prescribed and furnished by the director. The director may grant an extension of not more than five days for filing a return and remittance; except that the director shall not grant more than two extensions during any one-year period. Unless an extension is granted, a penalty or interest under section 12-47.1-604 shall be paid if a return or remittance is not made on time.

Source: **L. 91:** Entire article added, p. 1552, § 1, effective June 4. **L. 2008:** Entire section amended, p. 553, § 8, effective July 1.

12-47.1-603. Violations of taxation provisions - penalties. (1) Any person who:

(a) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed by this article commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.;

(b) Fails to pay tax due under this article within thirty days after the date the tax becomes due commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.;

(c) Fails to file a return required by this article within thirty days after the date the return is due commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.;

(d) Violates either paragraph (b) or (c) of this subsection (1) two or more times in any twelve-month period commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.;

(e) Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under or in connection with any matter arising under any title administered by the commission or a return, affidavit, claim, or other document which is fraudulent or is false as to any material fact, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) For purposes of this section, "person" includes corporate officers having control or supervision of, or responsibility for, completing tax returns or making payments pursuant to this article.

Source: **L. 91:** Entire article added, p. 1552, § 1, effective June 4. **L. 2002:** (1) amended, p. 1482, § 95, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-47.1-604. Returns and reports - failure to file - penalties. (1) (a) Any person who fails to file a return or report required by this article, which return or report includes taxable transactions, on or before the date the return or report is due as prescribed in section 12-47.1-602 is subject to the payment of an additional amount assessed as a penalty equal to fifteen percent of the tax or ten dollars, whichever is greater; except that, for good cause shown, the executive director may reduce or eliminate such penalty.

(b) Any person subject to taxation under this article who fails to pay the tax within the time prescribed is subject to an interest charge of two percent per month or portion thereof for the period of time during which the payment is late or five dollars, whichever is greater.

(c) (I) Penalty and interest are considered the same as a tax for the purposes of collection and enforcement, including liens, distraint warrants, and criminal violations.

(II) Any payment received for taxes, penalties, or interest is applied first to the tax, beginning with the oldest delinquency, then to interest and then to penalty.

(d) The executive director may, upon application of the taxpayer, establish a maximum interest rate of twenty-four percent upon delinquent taxes if the executive director determines that the delinquent payment was caused by a mistake of law and was not caused by an intent to evade the tax.

(2) The procedures for collection of any taxes and penalties due under this article and the authority of the department of revenue to collect such taxes and penalties shall be the same as those provided for the collection of sales taxes pursuant to articles 20, 21, and 26 of title 39, C.R.S.

Source: L. 91: Entire article added, p. 1553, § 1, effective June 4. L. 96: (1) amended, p. 351, § 6, effective April 17.

12-47.1-605. Local jurisdiction. Nothing in this article shall impair or otherwise affect the power of the municipalities where limited gaming is authorized to impose a fee upon gaming devices used in limited gaming.

Source: L. 91: Entire article added, p. 1553, § 1, effective June 4.

PART 7

LIMITED GAMING FUND

12-47.1-701. Limited gaming fund - created. (1) There is hereby created in the office of the state treasurer the limited gaming fund. The fund shall be maintained and operated as follows:

(a) All revenues of the division shall be paid into the limited gaming fund. All expenses of the division and the commission, including the expenses of investigation and prosecution relating to limited gaming, shall be paid from the fund.

(b) (I) All moneys paid into the limited gaming fund shall be available immediately, without further appropriation, for the purposes of the fund. From the moneys in the limited gaming fund, the state treasurer is hereby authorized to pay all ongoing expenses of the commission, the department, the division, and any other state agency from whom assistance related to the administration of this article is requested by the commission, director, or executive director. Such payment shall be made upon proper presentation of a voucher prepared by the commission in accordance with other statutes governing payments of liabilities incurred on behalf of the state. Such payment shall not be conditioned on any appropriation by the general assembly. Receipt of such payment shall constitute spending authority by the division of gaming in the department of revenue.

(II) No claim for the payment of any expense of the commission, department, division, or other state agency shall be made unless it is against the limited gaming fund. No other moneys of the state shall be used or obligated to pay the expenses of the division or commission.

(III) The division shall be operated so that it shall be self-sustaining.

(c) The state treasurer shall invest the moneys in the limited gaming fund so long as said moneys are readily available to pay the expenses of the division. Investments shall be those otherwise permitted by state law, and interest or any other return on the investments shall be paid into the limited gaming fund.

(d) Pursuant to section 9 (5) (b) (II) of article XVIII of the state constitution, except for amounts required to be transferred to the extended limited gaming fund pursuant to section 12-47.1-701.5, and except for an amount equal to all expenses of the administration of this article for the preceding two-month period, at the end of each state fiscal year, the state treasurer shall distribute the balance remaining in the limited gaming fund as follows:

(I) Fifty percent shall be referred to in this section as the “state share” and shall be transferred to the state general fund or such other fund as the general assembly shall provide in subsection (2) of this section;

(II) Twenty-eight percent shall be transferred to the state historical fund created in section 9 (5) (b) (II) of article XVIII of the state constitution and distributed as specified in section 9 (5) (b) (III) of article XVIII of the state constitution and section 12-47.1-1201;

(III) Twelve percent shall be distributed to the governing bodies of Gilpin county and Teller county in proportion to the gaming revenues generated in each county; and

(IV) The remaining ten percent shall be distributed to the governing bodies of the cities of Central, Black Hawk, and Cripple Creek in proportion to the gaming revenues generated in each respective city.

(2) (a) Except as provided in paragraph (b) of this subsection (2), at the end of the 2010-11 state fiscal year and at the end of each state fiscal year thereafter, the state treasurer shall distribute the state share as follows:

(I) The first nineteen million two hundred thousand dollars of the state share shall be transferred to the state general fund;

(II) Any amount of the state share that is greater than nineteen million two hundred thousand dollars but less than or equal to forty-eight million five hundred thousand dollars shall be transferred as follows:

(A) Fifty percent to the Colorado travel and tourism promotion fund created in section 24-49.7-106, C.R.S.;

(B) Eighteen percent to the bioscience discovery evaluation cash fund for the implementation of the bioscience discovery evaluation grant program, created in section 24-48.5-108, C.R.S.;

(C) Fifteen percent to the local government limited gaming impact fund created in section 12-47.1-1601;

(D) Seven percent to the innovative higher education research fund created in section 23-19.7-104, C.R.S.;

(E) Five percent to the new jobs incentives cash fund created in section 24-46-105.7, C.R.S.;

(F) Four percent to the creative industries cash fund, created in section 24-48.5-301, C.R.S., for purposes of the council on creative industries, including the administration of the council; and

(G) One percent to the Colorado office of film, television, and media operational account cash fund, created in section 24-48.5-116, C.R.S., for the operation of the Colorado office of film, television, and media, for the performance-based incentive for film production in Colorado as specified in section 24-48.5-116, C.R.S., and for the Colorado office of film, television, and media loan guarantee program as specified in section 24-48.5-115, C.R.S.

(III) Any amount of the state share that is greater than forty-eight million five hundred thousand dollars shall be transferred to the state general fund.

(b) If a transfer specified in subparagraph (II) of paragraph (a) of this subsection (2) provides moneys for a purpose or program that is repealed or otherwise discontinued as of the date of the transfer, then the transfer shall not be made to that particular fund but shall instead be transferred to the state general fund.

Source: **L. 91:** Entire article added, p. 1553, § 1, effective June 4. **L. 94:** (1)(c) and (4) amended, p. 1216, § 1, effective May 22; (4) amended, p. 2582, § 2, effective June 3.

L. 95: (4) amended, p. 228, § 1, effective April 17. **L. 97:** (1)(c)(I) and (4)(b) amended, p. 1377, § 4, effective July 1. **L. 2001:** (4)(a) amended, p. 1269, § 14, effective June 5. **L. 2003:** (4)(a) and (4)(c) amended, p. 1499, § 1, effective May 1. **L. 2006:** (4)(a) amended, p. 1664, § 4, effective June 5; (4)(a) amended, p. 1673, § 2, effective June 5. **L. 2007:** (4)(a)(III) amended, p. 1128, § 2, effective May 23; IP(1)(c) amended and (5) added, p. 1363, § 3, effective May 29; (4)(a)(IV)(A) and (4)(a)(IV)(B) amended and (4)(a)(IV)(A.5) added, p. 389, § 1, effective August 3; (4)(a)(IV)(A), (4)(a)(IV)(A.5), and (4)(a)(IV)(B) amended and (4)(a)(V) added, pp. 1208, 1210, §§ 1, 2, effective August 3; (4)(a)(IV)(A) amended, p. 2022, § 20, effective August 3. **L. 2008:** IP(1)(c), IP(4)(a), (4)(a)(III), and (5)(b) amended, p. 605, § 2, effective April 24; (4)(a)(V)(A) amended and (4)(a)(V)(E) added, p. 1944, § 1, effective June 2. **L. 2009:** (4)(a)(IV)(A), (4)(a)(V)(A), and (4)(a)(V)(E) amended and (4)(a)(VI) added, (SB 09-217), ch. 90, p. 349, § 1, effective April 2; (1)(b) and IP(1)(c) amended, (HB 09-1272), ch. 153, p. 659, § 5, effective April 21; (4)(a)(VI) and (5)(a) amended and (4.5) added, (SB 09-052), ch. 376, pp. 2046, 2047, §§ 1, 2, effective June 1; (4)(a)(IV)(A.5), (4)(a)(IV)(B), (4)(a)(V)(B), (4)(a)(V)(C), and (5)(c) amended, (SB 09-228), ch. 410, p. 2254, § 2, effective July 1; (4)(a)(V)(A), (4)(a)(V)(B), and (4)(a)(V)(C) amended, (HB 09-1010), ch. 419, p. 2331, § 2, effective July 1. **L. 2010:** (4)(a)(IV)(A), (4)(a)(V)(A), (4.5), (5)(b), and (5)(c) amended and (4)(d) and (4)(e) added, (HB 10-1339), ch. 136, p. 453, § 1, effective April 15; (4)(a)(IV)(A), (4)(a)(IV)(A.5), (4)(a)(IV)(B), (4)(a)(V)(A), and (4)(a)(V)(C) amended, (SB 10-158), ch. 231, p. 1011, § 2, effective July 1. **L. 2011:** Entire section R&RE, (SB 11-159), ch. 54, p. 140, § 1, effective March 25. **L. 2012:** (2)(a)(II)(G) amended, (HB 12-1286), ch. 186, p. 710, § 3, effective July 1.

Editor's note: (1) Amendments to subsection (4) by Senate Bill 94-60 and Senate Bill 94-79 were harmonized. Amendments to subsection (4)(a) by House Bill 06-1201 and House Bill 06-1360 were harmonized. Amendments to subsection (4)(a)(IV)(A) by House Bill 07-1206, House Bill 07-1009, and House Bill 07-1367 were harmonized. Amendments to subsection (4)(a)(IV)(B) by House Bill 07-1206 and House Bill 07-1009 were harmonized. Amendments to subsection (4)(a)(V)(A) by Senate Bill 09-217 and House Bill 09-1010 were harmonized. Amendments to subsections (4)(a)(V)(B) and (4)(a)(V)(C) by Senate Bill 09-228 and House Bill 09-1010 were harmonized. Amendments to subsections (4)(a)(IV)(A) and (4)(a)(V)(A) by Senate Bill 10-158 and House Bill 10-1339 were harmonized.

(2) Subsection (4)(b)(II) provided for the repeal of subsection (4)(b), effective September 1, 2002. (See L. 1997, p. 1377.)

(3) Subsection (4)(a)(IV) was originally numbered as (4)(a)(III) in House Bill 06-1201 but was renumbered on revision for ease of location.

Cross references: (1) For the legislative declaration contained in the 2007 act amending the introductory portion to subsection (1)(c) and enacting subsection (5), see section 1 of chapter 321, Session Laws of Colorado 2007. For the legislative declaration contained in the 2009 act amending subsection (1)(b) and the introductory portion to subsection (1)(c), see section 1 of chapter 153, Session Laws of Colorado 2009. For the legislative declaration in the 2012 act amending subsection (2)(a)(II)(G), see section 1 of chapter 186, Session Laws of Colorado 2012.

(2) For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2012, see sections 1 and 6 of chapter 321, Session Laws of Colorado 2007. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

12-47.1-701.5. Revenues attributable to local revisions to gaming limits - extended limited gaming fund - identification - separate administration - distribution - definitions. (1) (a) Immediately after the limited gaming tax revenues attributable to extended limited gaming are determined, the state treasurer shall transfer such revenues, together with any associated interest, to the extended limited gaming fund, also referred to in this section as the "fund", which is hereby created in the state treasury.

(b) The commission shall annually determine the amount of gaming tax revenues generated in each city from extended limited gaming and shall report such amounts to the state treasurer.

(2) Interest earned on moneys in the fund shall remain in the fund, and moneys remaining in the fund at the end of any fiscal year shall not revert to the general fund or to any other fund. Interest earnings shall be distributed annually in accordance with paragraph (c) of subsection (3) of this section.

(3) From the fund, the state treasurer shall pay:

(a) First, that portion of the ongoing expenses of the commission and other state agencies that are related to the administration of extended limited gaming, as determined in accordance with rules of the commission. When making annual lump-sum distributions from the fund as described in subsection (5) of this section, the state treasurer may withhold an amount reasonably anticipated to be sufficient to pay such expenses until the next annual distribution.

(b) Second, annual adjustments, in connection with distributions to limited gaming fund recipients listed in section 9 (5) (b) (II) of article XVIII of the state constitution, to reflect the lesser of six percent, or the actual percentage, of annual growth in extended limited gaming tax revenues. As used in this paragraph (b), "annual adjustment" means an annual payment to limited gaming fund recipients listed in section 9 (5) (b) (II) of article XVIII of the state constitution, calculated as follows:

(I) For revenues collected in fiscal year 2009-10, the payment shall equal six percent of the first year's limited gaming revenues attributable to extended limited gaming.

(II) For each fiscal year after 2009-10, the annual payment shall be increased or decreased as follows and shall constitute the annual adjustment:

(A) For any year in which the annual growth of limited gaming revenues attributable to extended limited gaming exceeds or equals six percent, add an amount equal to six percent of said revenues;

(B) For any year in which the annual growth in limited gaming revenues attributable to extended limited gaming is between zero and six percent, add an amount equal to the actual percentage growth of said revenues;

(C) For any year in which limited gaming tax revenues experience a decline, subtract an amount equal to the actual percentage decline of said revenues.

(III) Nothing in this paragraph (b) shall be construed to permit compounding or accumulation of the annual adjustment.

(c) Of the remaining gaming tax revenues, distributions in the following proportions:

(I) Seventy-eight percent to the state's public community colleges, junior colleges, and local district colleges to supplement existing state funding for student financial aid programs and classroom instruction programs, including workforce preparation to enhance the growth of the state economy, to prepare Colorado residents for meaningful employment, and to provide Colorado businesses with well-trained employees. Such revenue shall be distributed to colleges that were operating on and after January 1, 2008, in proportion to their respective full-time equivalent student enrollments in the previous fiscal year. For purposes of such distribution, the state treasurer shall use the most recent available figures on full-time equivalent student enrollment calculated by the Colorado commission on higher education in accordance with paragraph (c) of subsection (4) of this section.

(II) Ten percent to the governing bodies of the cities of Central, Black Hawk, and Cripple Creek to address local gaming impacts. Such revenue shall be distributed based on the proportion of extended limited gaming tax revenues that are paid by licensees operating in each city.

(III) Twelve percent to the governing bodies of Gilpin and Teller counties to address local gaming impacts. Such revenue shall be distributed based on the proportion of extended limited gaming tax revenues that are paid by licensees operating in each county.

(4) **Definitions.** As used in this section:

(a) "Colleges that were operating on and after January 1, 2008" means: Aims community college, Arapahoe community college, Colorado mountain college, Colorado North-western community college, the community college of Aurora, the community college of Denver, Front Range community college, Lamar community college, Morgan community college, Northeastern junior college, Otero junior college, Pikes Peak community college, Pueblo community college, Red Rocks community college, Trinidad state junior college, the two-year role and mission of Colorado Mesa university, currently referred to as Western

Colorado community college division of Colorado Mesa university, the two-year academic role and mission of Adams state university, and the state board for community colleges and occupational education, for so long as each such college or board continues operating.

(b) "Extended limited gaming" means the extension of hours, games, or bet limits by a local vote in accordance with section 9 (7) (a) of article XVIII of the state constitution.

(c) (I) "Full-time equivalent student enrollment" means the number of in-state, full-time equivalent students enrolled at a college, as determined in accordance with article 7 of title 23, C.R.S., and the eligibility parameters contained in the "Policy for Reporting Full-Time Equivalent Student Enrollment" published as of January 1, 2008, by the Colorado commission on higher education, pursuant to its authority under section 23-1-105, C.R.S. The Colorado commission on higher education shall determine the full-time equivalent student enrollment for each college no later than August 15 of each year. For purposes of calculating a college's in-state, full-time equivalent student enrollment for any fiscal year, the number of students enrolled in certificate, AA, AS, AGS, or AAS degree courses and programs, as well as the nondegree-seeking students who are included as part of the community college role and mission for purposes of application to the department of higher education and enrollments in developmental courses by any students, regardless of degree intent, reported by the college to the department of higher education in its final student FTE report for that fiscal year shall be presumed correct; except that the following students shall be excluded:

(A) Students who are admitted to a college on a competitive basis and are not enrolled in certificate, AA, AS, AGS, or AAS developmental or vocational courses;

(B) Students who are admitted pursuant to the Colorado commission on higher education's undergraduate admissions standard index for a college or within the Colorado commission on higher education's admissions window for a college and are not enrolled in certificate, AA, AS, AGS, or AAS developmental or vocational courses; and

(C) Students who are enrolled in classes that are not supported by state general fund moneys.

(II) With respect to the two-year mission at Adams state university, full-time equivalent student enrollment shall be limited to enrollment in the associate's degree programs that existed as of November 4, 2008.

(d) "Limited gaming tax revenues attributable to extended limited gaming" means all limited gaming tax revenue in excess of the amount collected during fiscal year 2008-09, adjusted as follows:

(I) For revenues collected in fiscal year 2009-2010, reduced by a three percent growth factor on the 2008-2009 base of limited gaming tax revenues, which amount shall be added to the base and shall constitute the adjusted base; and

(II) Thereafter:

(A) Reduced by a three percent per fiscal year growth factor on the previous year's adjusted base, which growth factor shall be added to the previous fiscal year's adjusted base and shall constitute the new adjusted base; or

(B) If growth in limited gaming tax revenues is between zero and three percent in any fiscal year, the growth factor on the previous fiscal year's adjusted base shall be the actual percentage growth in limited gaming tax revenues, which shall be added to the previous fiscal year's adjusted base; or

(C) If limited gaming tax revenues decline from year to year, the previous fiscal year's adjusted base shall be reduced by the actual percentage decline in limited gaming tax revenue.

(e) "Other state moneys appropriated or otherwise allocated for similar programs or purposes" means all moneys distributed from the general fund of the state by the general assembly for higher education or for the support of any institution of higher education, including without limitation the colleges listed in paragraph (a) of this subsection (4). If the total amount of spending described in this paragraph (e) is reduced from one state fiscal year to the next, the percentage of such reduction for the colleges listed in paragraph (a) of this subsection (4) shall not exceed the percentage of reduction in total general fund operating funding, including college opportunity fund stipends and fee-for-service funds, for all institutions of higher education during the same state fiscal year.

(f) “Previous fiscal year” means, with respect to a college receiving moneys under this section, the fiscal year immediately preceding the fiscal year in which moneys are made available to the college pursuant to this section.

(5) **Method of distribution - distribution to colleges - relationship to funding from other sources.** (a) On or before September 1 of each year, the state treasurer shall distribute all moneys from the fund to the recipients identified in paragraph (c) of subsection (3) of this section in the form of lump-sum payments. Distribution to colleges listed in paragraph (a) of subsection (4) of this section shall be to the state board for community colleges and occupational education for those colleges listed in section 23-60-205, C.R.S., and to the respective governing boards of the colleges that are not so listed.

(b) Moneys distributed under this section to colleges listed in paragraph (a) of subsection (4) of this section, and any interest or income earned on a college’s deposit of such moneys, shall supplement and shall not supplant any other state moneys appropriated or otherwise allocated for similar programs or purposes. As used in this subsection (5), “state moneys” means general fund operating funding, including college opportunity fund stipends and fee-for-service funds, adjusted for inflation to the same degree as the inflation adjustment received by other institutions of higher education.

(c) Any higher education funding formula that allocates state-appropriated moneys shall not use moneys distributed under this section to supplant state moneys otherwise allocated by such formula.

(d) Moneys distributed from the fund are hereby continuously appropriated to the governing boards of the colleges listed in paragraph (a) of subsection (4) of this section. Such moneys shall be included for informational purposes in the annual general appropriation bill or in supplemental appropriation bills for the purpose of complying with any applicable constitutional and statutory limits on state fiscal year spending.

(6) **Bonding authority.** In addition to any other powers conferred by law, the governing body of each college listed in paragraph (a) of subsection (4) of this section may issue bonds refundable from revenues received pursuant to this section.

Source: **L. 2009:** Entire section added, (HB 09-1272), ch. 153, p. 659, § 6, effective April 21. **L. 2011:** (4)(a) amended, (SB 11-265), ch. 292, p. 1364, § 12, effective August 10. **L. 2012:** (4)(a) and (4)(c)(II) amended, (HB 12-1080), ch. 189, p. 756, § 7, effective May 19.

Cross references: For the legislative declaration contained in the 2009 act adding this section, see section 1 of chapter 153, Session Laws of Colorado 2009.

12-47.1-702. Audits and annual reports. (1) The limited gaming fund shall be audited at least annually by or under the direction of the state auditor, who shall submit a report of the audit to the legislative audit committee. The expenses of the audit shall be paid from the limited gaming fund.

(2) Repealed.

Source: **L. 91:** Entire article added, p. 1555, § 1, effective June 4. **L. 97:** (2) repealed, p. 1481, § 33, effective June 3.

12-47.1-703. Enforcement. It is the duty of all sheriffs and police officers in this state to enforce the provisions of this article, or article 20 of title 18, C.R.S., and the rules and regulations promulgated by the commission, either on their own motion or upon complaint of any person, including any authorized agent of the commission. Such sheriffs and police officers may exercise any authority of inspection and examination specified in this article. The district attorneys of the respective judicial districts of this state shall prosecute all violations of this article in the same manner as provided for other crimes and misdemeanors.

Source: **L. 91:** Entire article added, p. 1555, § 1, effective June 4. **L. 96:** Entire section amended, p. 1469, § 10, effective June 1.

12-47.1-704. Attorney general - duties. (1) The attorney general shall provide legal services for the division and the commission at the request of the executive director, director, or the commission. The attorney general shall make reasonable efforts to ensure that there is continuity in the legal services provided and that the attorneys providing legal services to the division and the commission have expertise in such field.

(2) The commission, the executive director, or the director may request the attorney general to make civil investigations and enforce civil violations of rules and regulations of the commission, on behalf of and in the name of the division, and to bring and defend civil suits and proceedings for any of the purposes necessary and proper for carrying out the functions of the division.

(3) Expenses of the attorney general incurred in the performance of the responsibilities under this section shall be paid from the limited gaming fund.

Source: L. 91: Entire article added, p. 1555, § 1, effective June 4.

PART 8

UNLAWFUL ACTS

12-47.1-801. Limited gaming equipment manufacturers or distributors, operators, retailers, key employees, support licensees, persons contracting with the commission or division - criteria. (1) This section applies to the following persons:

- (a) All persons licensed pursuant to this article;
 - (b) With respect to privately held corporations licensed pursuant to this article, the officers, directors, and stockholders of such corporations;
 - (c) With respect to publicly traded corporations licensed pursuant to this article, all officers, directors, and stockholders holding either five percent or greater interest or a controlling interest;
 - (d) With respect to partnerships licensed pursuant to this article, all general partners and all limited partners;
 - (e) With respect to any other organization licensed pursuant to this article, all those persons connected with the organization having a relationship to it similar to that of an officer, director, or stockholder of a corporation;
 - (f) All persons contracting with or supplying any goods or service to the commission or the division;
 - (g) All persons supplying financing or loaning money to any licensee, when such financing or loan is connected with the establishment or operation of limited gaming;
 - (h) All persons having a contract, lease, or other ongoing financial or business arrangement with any licensee, where such contract, lease, or arrangement relates to limited gaming operations, equipment, devices, or premises.
- (2) Each of the persons described in subsection (1) of this section shall be:
- (a) A person of good moral character, honesty, and integrity notwithstanding section 24-5-101, C.R.S.;
 - (b) A person whose prior activities, criminal record, reputation, habits, and associations do not pose a threat to the public interests of this state or to the control of gaming or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying-on of the business or financial arrangements incidental to the conduct of gaming;
 - (c) A person who has not served a sentence upon conviction of any felony, misdemeanor gambling-related offense, misdemeanor theft by deception, or misdemeanor involving fraud or misrepresentation in a correctional facility, city or county jail, or community correctional facility or under the supervision of the state board of parole or any probation department within ten years prior to the date of applying for a license pursuant to this article, notwithstanding section 24-5-101, C.R.S.;
 - (d) A person who has not served a sentence upon conviction of any gambling-related felony, felony involving theft by deception, or felony involving fraud or misrepresentation in a correctional facility, city or county jail, or community correctional facility or under the

supervision of the state board of parole or any probation department, notwithstanding section 24-5-101, C.R.S.;

(e) A person who has not been found to have seriously or repeatedly violated this article or any rule promulgated pursuant to this article; and has not knowingly made a false statement of material facts to the commission, its legal counsel, or any employee of the division.

Source: **L. 91:** Entire article added, p. 1556, § 1, effective June 4. **L. 2008:** (2) amended, p. 553, § 9, effective July 1.

ANNOTATION

License conditions and revocation authorized by law and constitution. The gaming commission was within its statutory authority in conditioning a key employee license on payment of back child support and taxes and revoking such license for failure to comply with such conditions. The gaming commission did not abuse its discretion or violate due process in so revoking the license where the licensee was given a reasonable opportunity to comply with such conditions, failed to provide requested in-

come tax returns, and made false statements of material fact to the investigator regarding the filing of tax returns and where the gaming commission provided the licensee with substantial evidentiary leeway, allowed the licensee to cross-examine and impeach the investigator, and gave the licensee the opportunity to argue the proper standard for license revocation. *Feeney v. Colo. Ltd. Gaming Control Comm'n*, 890 P.2d 173 (Colo. App. 1994).

12-47.1-802. False statement on application - violations of rules or provisions of article as felony. Any person who knowingly makes a false statement in any application for a license or in any statement attached to the application, or who provides any false or misleading information to the commission or the division, or who fails to keep books and records to substantiate the receipts, expenses, or uses resulting from limited gaming conducted under this article as prescribed in rules promulgated by the commission, or who falsifies any books or records that relate to any transaction connected with the holding, operating, and conducting of any limited gaming activity, or who knowingly violates any of the provisions of this article or any rule adopted by the commission or any terms of any license granted under this article, commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: **L. 91:** Entire article added, p. 1557, § 1, effective June 4. **L. 2002:** Entire section amended, p. 1483, § 96, effective October 1. **L. 2009:** Entire section amended, (HB 09-1272), ch. 153, p. 664, § 7, effective April 21.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002. For the legislative declaration contained in the 2009 act amending this section, see section 1 of chapter 153, Session Laws of Colorado 2009.

ANNOTATION

This section is neither unconstitutionally overbroad nor unconstitutionally vague. *People v. Luke*, 948 P.2d 87 (Colo. App. 1997).

This section does not require that a "false or misleading" statement be material. *People v. Luke*, 948 P.2d 87 (Colo. App. 1997).

Where the defendant's capacity as chief executive officer for applicant was such that

he could speak for the applicant, it is not necessary that the defendant have an individual key employee application pending or that the applicant be a licensee at the time the false statement is made or the misleading information is provided. *People v. Luke*, 948 P.2d 87 (Colo. App. 1997).

12-47.1-803. Slot machines - shipping notices. (1) (a) (I) Any slot machine manufacturer or distributor shipping or importing a slot machine into the state of Colorado shall provide to the commission at the time of shipment a copy of the shipping invoice which

shall include, at a minimum, the destination, the serial number of each machine, and a description of each machine.

(II) Any person within the state of Colorado receiving a slot machine shall, upon receipt of the machine, provide to the commission upon a form available from the commission information showing at a minimum the location of each machine, its serial number, and description. Such report shall be provided regardless of whether the machine is received from a manufacturer or any other person.

(III) Any machine licensed pursuant to this section shall be licensed for a specific location, and movement of the machine from that location shall be reported to the commission in accordance with rules adopted by the commission.

(b) Any person violating any provision of this section commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(c) Any slot machine that is not in compliance with this article is declared contraband and may be summarily seized and destroyed after notice and hearing.

(d) The commission shall promulgate rules setting the time and manner for reporting the movement of any slot machine.

(2) Slot machines which because of age and condition bear no manufacturer serial number shall be assigned a serial number by a remanufacturer of slot machines. Such new serial number shall be duly recorded as required by federal regulations.

(3) The director may approve a change to the registration of a slot machine under circumstances constituting an emergency. If the director approves such an emergency change, the registration of the slot machine shall not be suspended pending the filing of a supplemental application.

Source: **L. 91:** Entire article added, p. 1557, § 1, effective June 4. **L. 96:** (1) amended, p. 352, § 7, effective April 17. **L. 2002:** (1)(b) amended, p. 1483, § 97, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1)(b), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-47.1-804. Persons prohibited from interest in limited gaming. (1) None of the following persons shall have any interest, direct or indirect, in any license involved in or with limited gaming:

(a) Officers, reserve police officers, agents, or employees of any law enforcement agency of the state of Colorado with the authority to investigate or prosecute crime in Teller or Gilpin counties or of any local law enforcement agency or detention or correctional facility within Teller or Gilpin counties;

(b) District, county, or municipal court judges whose jurisdiction includes all or any portion of Teller or Gilpin counties;

(c) Elected municipal officials or county commissioners of the counties of Teller and Gilpin and of the cities of Central, Black Hawk, and Cripple Creek;

(d) Central, Black Hawk, or Cripple Creek city manager or planning commission member.

(2) No licensee may employ any person in any capacity while that person is in the employment of the commission or is in the employment of, or has a reserve police officer position with, a law enforcement agency of the state of Colorado with the authority to investigate or prosecute crime in Teller or Gilpin counties, any local law enforcement agency or detention or correctional facility within Teller or Gilpin counties, or any other county that may later be an authorized gaming location under section 12-47.1-105.

Source: **L. 91:** Entire article added, p. 1558, § 1, effective June 4. **L. 96:** Entire section amended, p. 1111, § 4, effective October 1.

ANNOTATION

Subsection (1) did not impose unconstitutional restrictions on ballot access, the right to hold public office, and the right to vote where the state's substantial interest in avoiding corruption and the appearance of corruption in both the gaming industry and local government outweighed the limited burden that subsection (1) placed on ballot access, the right to hold

public office, or on the right to vote. *Lorenz v. State*, 928 P.2d 1274 (Colo. 1996).

Prospective political candidates lacked standing to challenge subsection (1) on vagueness grounds where candidates owned a personal interest in gaming licenses or owned corporations that held gaming licenses. *Lorenz v. State*, 928 P.2d 1274 (Colo. 1996).

12-47.1-805. Responsibilities of operator. Every licensed operator and retailer having slot machines on his premises shall provide audit and security measures relating to slot machines, as prescribed by this article and by rules of the commission. Every licensed operator and retailer having slot machines on his premises shall ensure that the slot machines in his establishment comply with the specifications set forth in this article and the rules and regulations promulgated pursuant to this article.

Source: L. 91: Entire article added, p. 1559, § 1, effective June 4.

12-47.1-806. Gaming equipment - security and audit specifications. All slot machines and all other equipment and devices used in limited gaming allowed by this article shall have the features, security provisions, and audit specifications established in rules or regulations adopted by the commission.

Source: L. 91: Entire article added, p. 1559, § 1, effective June 4.

12-47.1-807. Gaming equipment - not subject to exclusive agreements. It is the public policy of this state that gaming equipment authorized and approved by the commission may not be subject to any exclusive agreement entered into prior to October 1, 1991.

Source: L. 91: Entire article added, p. 1559, § 1, effective June 4.

12-47.1-808. Restriction upon persons having financial interest in retail licenses. No person may have an ownership interest in more than three retail licenses. The interest of a licensed operator leasing or routing slot machines in return for a percentage of the income from limited gaming shall not by itself be considered an interest in a retail license under this section.

Source: L. 91: Entire article added, p. 1559, § 1, effective June 4.

12-47.1-809. Age of participants - violation as misdemeanor - applicability.

(1) (a) It is unlawful for any person under twenty-one years of age to:

(I) Linger in the gaming area of a casino;

(II) Sit on a chair or be present at a gaming table, slot machine, or other area in which gaming is conducted; or

(III) Participate, play, be allowed to play, place wagers, or collect winnings, whether personally or through an agent, in or from any limited gaming game or slot machines.

(b) Subparagraphs (I) and (II) of paragraph (a) of this subsection (1) shall not apply to a person employed by the casino in which the person is present.

(c) Nothing in paragraph (a) of this subsection (1) shall prevent any person under twenty-one years of age from passing through a casino to nongaming areas.

(2) It is unlawful for any person to engage in limited gaming with, or to share proceeds from limited gaming with, any person under twenty-one years of age.

(3) (a) It is unlawful for any licensee to permit any person who is less than twenty-one years of age to:

- (I) Linger in the gaming area of a casino;
 - (II) Sit on a chair or be present at a gaming table, slot machine, or other area in which gaming is conducted; or
 - (III) Participate, play, place wagers, or collect winnings, whether personally or through an agent, in or from any limited gaming game or slot machine.
- (b) Subparagraphs (I) and (II) of paragraph (a) of this subsection (3) shall not apply to a person employed by the casino in which the person is present.
- (c) Nothing in paragraph (a) of this subsection (3) shall prevent any person under twenty-one years of age from passing through a casino to nongaming areas.
- (4) Any person violating any of the provisions of this section commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.
- (5) Any person violating any of the provisions of this section with a person under eighteen years of age may also be proceeded against pursuant to section 18-6-701, C.R.S., for contributing to the delinquency of a minor.

Source: L. 91: Entire article added, p. 1559, § 1, effective June 4. L. 96: Entire section amended, p. 1112, § 5, effective October 1. L. 2002: (4) amended, p. 1483, § 98, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (4), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-47.1-810. Employee twenty-one years or older required on premises. A retail licensee shall have one employee who is at least twenty-one years of age on the premises during the hours limited gaming is conducted and within full view and control of any limited gaming activity conducted on the premises pursuant to the license obtained.

Source: L. 91: Entire article added, p. 1560, § 1, effective June 4. L. 2009: Entire section amended, (HB 09-1272), ch. 153, p. 664, § 8, effective April 21.

Cross references: For the legislative declaration contained in the 2009 act amending this section, see section 1 of chapter 153, Session Laws of Colorado 2009.

12-47.1-811. Persons conducting limited gaming. No person under the age of twenty-one years shall be employed as a gaming employee, conduct, or assist in conducting, any limited gaming activity, and no such person shall manage or handle any of the proceeds from limited gaming.

Source: L. 91: Entire article added, p. 1560, § 1, effective June 4.

12-47.1-812. Employee of licensed person - good moral character. No person licensed under this article shall employ or be assisted by any person who is not of good moral character.

Source: L. 91: Entire article added, p. 1560, § 1, effective June 4.

12-47.1-813. Minimum payback - limit to a slot machine. The minimum theoretical payback value on a slot machine shall be at least eighty but not more than one hundred percent of the value of any credit played. However, this section shall not be construed to prohibit tournament slot machines with theoretical payback values greater than one hundred percent where such machines do not accept nor pay out coins or tokens.

Source: L. 91: Entire article added, p. 1560, § 1, effective June 4.

12-47.1-814. Key employee - support license. (1) A licensee shall not employ any person to work in the field of limited gaming, or to handle any of the proceeds of limited

gaming, unless such person holds a valid key employee or support license issued by the commission.

(2) It is unlawful for any person holding a key employee or support license to participate in limited gaming in the gaming establishment where such licensee is employed or in any other gaming establishment owned by the licensee's employer; except that such licensee may participate in limited gaming if such participation is performed as part of such licensee's employment responsibilities.

Source: L. 91: Entire article added, p. 1560, § 1, effective June 4. L. 2008: (2) amended, p. 554, § 10, effective July 1.

12-47.1-815. Extension of credit prohibited. No person licensed under this article may extend credit to another person for participation in limited gaming.

Source: L. 91: Entire article added, p. 1560, § 1, effective June 4. L. 2009: Entire section amended, (HB 09-1272), ch. 153, p. 664, § 9, effective April 21.

Cross references: For the legislative declaration contained in the 2009 act amending this section, see section 1 of chapter 153, Session Laws of Colorado 2009.

12-47.1-816. Maximum amount of bets. The amount of a bet made pursuant to this article shall not be more than one hundred dollars on the initial bet or subsequent bet, subject to rules promulgated by the commission.

Source: L. 91: Entire article added, p. 1561, § 1, effective June 4. L. 2009: Entire section amended, (HB 09-1272), ch. 153, p. 664, § 10, effective April 21.

Cross references: For the legislative declaration contained in the 2009 act amending this section, see section 1 of chapter 153, Session Laws of Colorado 2009.

12-47.1-817. Failure to pay winners. (1) It is unlawful for any licensee to willfully refuse to pay the winner of any limited gaming game, except as authorized by section 24-35-605 (2) (b) (II), C.R.S.

(2) Any person violating any provision of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 91: Entire article added, p. 1561, § 1, effective June 4. L. 2002: (2) amended, p. 1484, § 99, effective October 1. L. 2007: (1) amended, p. 1665, § 23, effective January 1, 2008.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-47.1-818. Approval of rules for certain games. (1) Specific rules for blackjack, poker, craps, and roulette shall be approved by the commission and clearly posted within plain view of such games.

(2) No licensee shall offer poker, blackjack, craps, or roulette, or any variation game thereof, without prior approval of the game by the commission.

(3) No licensee shall employ skills.

Source: L. 91: Entire article added, p. 1561, § 1, effective June 4. L. 96: Entire section amended, p. 1111, § 2, effective October 1. L. 2008: (2) amended, p. 554, § 11, effective July 1. L. 2009: Entire section amended, (HB 09-1272), ch. 153, p. 664, § 11, effective April 21.

Cross references: For the legislative declaration contained in the 2009 act amending this section, see section 1 of chapter 153, Session Laws of Colorado 2009.

12-47.1-819. Exchange - redemption of chips - unlawful acts. It is unlawful for any person to exchange or redeem chips for anything whatsoever, except currency, negotiable personal checks, negotiable counter checks, or other chips. A licensee shall, upon the request of any person, redeem that licensee's gaming chips surrendered by that person in any amount over twenty-five dollars with a check drawn upon the licensee's account at any banking institution in this state and made payable to that person.

Source: L. 91: Entire article added, p. 1561, § 1, effective June 4.

12-47.1-820. Persons in supervisory positions - unlawful acts. It is unlawful for any dealer, floorman, or any other employee who serves in a supervisory position, to solicit or accept any tip or gratuity from any player or patron at the premises where he is employed. A dealer may, however, accept tips or gratuities from a patron at the table at which such dealer is conducting play, subject to the provisions of this section. All such tips or gratuities shall be immediately deposited in a lockbox reserved for that purpose, accounted for, and placed in a pool for distribution based upon criteria established in advance by the licensed retailer.

Source: L. 91: Entire article added, p. 1561, § 1, effective June 4.

ANNOTATION

Casino's amendment of tip distribution policy without prior notice to the division of gaming to include distribution to certain non-supervisory employees upheld under both stat-

ute and regulation promulgated thereunder. Webster v. Konczak Corp., 976 P.2d 317 (Colo. App. 1998).

12-47.1-821. Limited gaming - limited hours. (Repealed)

Source: L. 91: Entire article added, p. 1561, § 1, effective June 4. **L. 2009:** Entire section repealed, (HB 09-1272), ch. 153, p. 665, § 12, effective April 21.

Cross references: For the legislative declaration contained in the 2009 act repealing this section, see section 1 of chapter 153, Session Laws of Colorado 2009.

12-47.1-822. Cheating. (1) It is unlawful for any person, whether he is an owner or employee of, or a player in, an establishment, to cheat at any limited gaming activity.

(2) For purposes of this article, "cheating" means to alter the selection of criteria which determine:

- (a) The result of a game; or
- (b) The amount or frequency of payment in a game.

(3) Any person issued a license pursuant to this article violating any provision of this section commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S., and any other person violating any provision of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. If the person is a repeating gambling offender the person commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 91: Entire article added, p. 1561, § 1, effective June 4. **L. 2002:** (3) amended, p. 1484, § 100, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (3), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-47.1-823. Fraudulent acts. (1) It is unlawful for any person:

(a) To alter or misrepresent the outcome of a game or other event on which wagers have been made after the outcome is made sure but before it is revealed to the players;

(b) To place, increase, or decrease a bet or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or any event that affects the outcome of the game or which is the subject of the bet or to aid anyone in acquiring such knowledge for the purpose of placing, increasing, or decreasing a bet or determining the course of play contingent upon that event or outcome;

(c) To claim, collect, or take, or attempt to claim, collect, or take, money or anything of value in or from a limited gaming activity with intent to defraud and without having made a wager contingent thereon, or to claim, collect, or take an amount greater than the amount won;

(d) Knowingly to entice or induce another to go to any place where limited gaming is being conducted or operated in violation of the provisions of this article, with the intent that the other person play or participate in that limited gaming activity;

(e) To place or increase a bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet, including past-posting and pressing bets;

(f) To reduce the amount wagered or to cancel a bet after acquiring knowledge of the outcome of the game or other event which is the subject of the bet, including pinching bets;

(g) To manipulate, with the intent to cheat, any component of a gaming device in a manner contrary to the designed and normal operational purpose for the component, including, but not limited to, varying the pull of the handle of a slot machine, with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game;

(h) To, by any trick or slight of hand performance, or by fraud or fraudulent scheme, cards, or device, for himself or another, win or attempt to win money or property or a representative of either or reduce a losing wager or attempt to reduce a losing wager in connection with limited gaming;

(i) To conduct any limited gaming operation without a valid license;

(j) To conduct any limited gaming operation on an unlicensed premises;

(k) To permit any limited gaming game or slot machine to be conducted, operated, dealt, or carried on in any limited gaming premises by a person other than a person licensed for such premises pursuant to this article;

(l) To place any limited gaming games or slot machines into play or display such games or slot machines without the authorization of the commission;

(m) To employ or continue to employ any person in a limited gaming operation who is not duly licensed or registered in a position whose duties require a license or registration pursuant to this article; or

(n) To, without first obtaining the requisite license or registration pursuant to this article, be employed, work, or otherwise act in a position whose duties would require licensing or registration pursuant to this article.

(2) Any person issued a license pursuant to this article violating any provision of this section commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S., and any other person violating any provision of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. If the person is a repeating gambling offender, the person commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 91: Entire article added, p. 1562, § 1, effective June 4. L. 2002: (2) amended, p. 1484, § 101, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-47.1-824. Use of device for calculating probabilities. (1) It is unlawful for any person at a licensed gaming establishment to use, or possess with the intent to use, any device to assist:

- (a) In projecting the outcome of the game;
- (b) In keeping track of the cards played;
- (c) In analyzing the probability of the occurrence of an event relating to the game; or
- (d) In analyzing the strategy for playing or betting to be used in the game, except as permitted by the commission.

(2) Any person issued a license pursuant to this article violating any provision of this section commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S., and any other person violating any provision of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. If the person is a repeating gambling offender, the person commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 91: Entire article added, p. 1563, § 1, effective June 4. L. 2002: (2) amended, p. 1484, § 102, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-47.1-825. Use of counterfeit or unapproved chips or tokens or unlawful coins or devices - possession of certain unlawful devices, equipment, products, or materials.

(1) It is unlawful for any licensee, employee, or other person to use counterfeit chips in any limited gaming activity.

(2) It is unlawful for any person, in playing or using any limited gaming activity designed to be played with, to receive, or to be operated by chips or tokens approved by the commission or by lawful coin of the United States of America:

(a) Knowingly to use anything other than chips or tokens approved by the commission or lawful coin, legal tender of the United States of America, or to use coin not of the same denomination as the coin intended to be used in that limited gaming activity; or

(b) To use any device or means to violate the provisions of this article.

(3) It is unlawful for any person to possess any device, equipment, or material which he knows has been manufactured, distributed, sold, tampered with, or serviced in violation of the provisions of this article.

(4) It is unlawful for any person, not a duly authorized employee of a licensee acting in furtherance of his or her employment within an establishment, to have on his or her person or in his or her possession any device intended to be used to violate the provisions of this article.

(5) It is unlawful for any person, not a duly authorized employee of a licensee acting in furtherance of his or her employment within an establishment, to have on his or her person or in his or her possession while on the premises of any licensed gaming establishment any key or device known to have been designed for the purpose of and suitable for opening, entering, or affecting the operation of any limited gaming activity, drop box, or electronic or mechanical device connected thereto, or for removing money or other contents therefrom.

(6) Possession of more than one of the devices, equipment, products, or materials described in this section shall give rise to a rebuttable presumption that the possessor intended to use them for cheating.

(7) It is unlawful for any person to use or possess while on the premises any cheating or thieving device, including but not limited to, tools, drills, wires, coins, or tokens attached to strings or wires or electronic or magnetic devices, to facilitate the alignment of any winning combination or to facilitate removing from any slot machine any money or contents thereof, unless the person is a duly authorized gaming employee acting in the furtherance of his or her employment.

(8) Any person violating any provision of this section commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.; except that, if the person is a repeating gambling offender, the person commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 91: Entire article added, p. 1564, § 1, effective June 4. L. 2001: (8) amended, p. 605, § 1, effective July 1. L. 2002: (8) amended, p. 1484, § 103, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (8), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

In adopting the Limited Gaming Act of 1991, including the specific offenses included in this section, the general assembly intended that offenses defined in this section be prosecuted under the specific provisions of the act or under article 20 of title 18, C.R.S., rather than under the general offenses specified in

other portions of title 18. Therefore, the district attorney had no discretion to charge the defendant with the broader offenses of burglary and possession of burglary tools for actions that violated the specific provisions of this section. *People v. Warner*, 930 P.2d 564 (Colo. 1996).

12-47.1-826. Cheating game and devices. (1) It is unlawful for any person playing any licensed game in licensed gaming premises to:

(a) Knowingly conduct, carry on, operate, or deal or allow to be conducted, carried on, operated, or dealt any cheating or thieving game or device; or

(b) Knowingly deal, conduct, carry on, operate, or expose for play any game or games played with cards or any mechanical device, or any combination of games or devices, which have in any manner been marked or tampered with or placed in a condition or operated in a manner the result of which tends to deceive the public or tends to alter the normal random selection of characteristics or the normal chance of the game which could determine or alter the result of the game.

(2) Any person violating any provision of this section commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.; except that, if the person is a repeating gambling offender, the person commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 91: Entire article added, p. 1565, § 1, effective June 4. L. 2001: (2) amended, p. 605, § 2, effective July 1. L. 2002: (2) amended, p. 1484, § 104, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-47.1-827. Unlawful manufacture, sale, distribution, marking, altering, or modification of equipment and devices associated with limited gaming - unlawful instruction. (1) It is unlawful to manufacture, sell, or distribute any cards, chips, dice, game, or device which is intended to be used to violate any provision of this article.

(2) It is unlawful to mark, alter, or otherwise modify any associated equipment or limited gaming device in a manner that:

(a) Affects the result of a wager by determining win or loss; or

(b) Alters the normal criteria of random selection, which affects the operation of a game or which determines the outcome of a game.

(3) It is unlawful for any person to instruct another in cheating or in the use of any device for that purpose, with the knowledge or intent that the information or use so conveyed may be employed to violate any provision of this article.

(4) Any person issued a license pursuant to this article violating any provision of this section commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S., and any other person violating any provision of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. If the person is a repeating gambling offender, the person commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 91: Entire article added, p. 1566, § 1, effective June 4. L. 2002: (4) amended, p. 1485, § 105, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (4), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-47.1-828. Unlawful entry by excluded and ejected persons. (1) It is unlawful for any person whose name is on the list promulgated by the commission pursuant to section 12-47.1-1001 or 12-47.1-1002 to enter the licensed premises of a limited gaming licensee.

(2) It is unlawful for any person whose name is on the list promulgated by the commission pursuant to section 12-47.1-1001 or 12-47.1-1002 to have any personal pecuniary interest, direct or indirect, in any limited gaming licensee, licensed premises, establishment, or business involved in or with limited gaming or in the shares in any corporation, association, or firm licensed pursuant to this article.

(3) Any person violating the provisions of this section commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 91: Entire article added, p. 1566, § 1, effective June 4. L. 2002: (3) amended, p. 1485, § 106, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (3), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-47.1-829. Detention and questioning of person suspected of violating article - limitations on liability - posting of notice. (1) Any licensee or an officer, employee, or agent thereof may question any person in the licensee's establishment suspected of violating any of the provisions of this article. A licensee or any officer, employee, or agent thereof is not criminally or civilly liable:

(a) On account of any such questioning; or

(b) For reporting to the division, commission, or law enforcement authorities the person suspected of the violation.

(2) Any licensee or any officer, employee, or agent thereof who has probable cause to believe that there has been a violation of this article in the licensee's establishment by any person may take that person into custody and detain him in the establishment in a reasonable manner and for a reasonable length of time. Such a taking into custody and detention does not render the licensee or the officer, employee, or agent thereof criminally or civilly liable unless it is established by clear and convincing evidence that the taking into custody or detention is unreasonable under all the circumstances.

(3) A licensee or any officer, employee, or agent thereof is not entitled to the immunity from liability provided for in subsection (2) of this section unless there is displayed in a conspicuous place in the licensee's establishment a notice in bold-face type clearly legible and in substantially this form:

Any gaming licensee, or any officer, employee, or agent thereof who has probable cause to believe that any person has violated any provision prohibiting cheating in limited gaming may detain that person in the establishment.

Source: L. 91: Entire article added, p. 1567, § 1, effective June 4.

12-47.1-830. Failure to display operator and premises licenses. (1) It is unlawful for any person to fail to permanently display in a conspicuous manner:

(a) Operator and premises licenses granted by the commission;

(b) A notice in bold face type which is clearly legible and in substantially the following form:

IT IS UNLAWFUL FOR ANY PERSON UNDER THE AGE OF TWENTY-ONE TO ENGAGE IN LIMITED GAMING.

(2) Any person violating this section commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 91: Entire article added, p. 1567, § 1, effective June 4. L. 2002: (2) amended, p. 1485, § 107, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-47.1-831. Authority, duties, and powers - department of revenue and department of public safety. (1) The gaming commission, the department of revenue, and the division shall regulate the gaming industry and enforce the gaming laws. Nothing in this section shall be construed to prohibit or limit the authority of local sheriffs or police officers to enforce all the provisions of this article or the rules and regulations promulgated pursuant to this article.

(2) The Colorado bureau of investigation shall have authority for the following:

(a) Conduct criminal investigations and law enforcement oversight relating to violations of the "Colorado Organized Crime Control Act" article 17 of title 18, C.R.S., as these violations are reported by law enforcement officials, the gaming commission, the governor, or as discovered by the Colorado bureau of investigation.

(b) In cooperation with local law enforcement officials and the commission, the Colorado bureau of investigation shall develop and collect information with regard to organized crime in an effort to identify criminal elements or enterprises which might infiltrate and influence limited gaming and report such information to appropriate law enforcement organizations and the limited gaming commission.

(c) Prepare reports concerning any activities in, or movements into, this state of organized crime for use by the commission or the governor in their efforts to prevent and thwart criminal elements or enterprises from infiltrating or influencing limited gaming as defined in this article.

(d) Inspect or examine, during normal business hours, premises, equipment, books, records, or other written material maintained at gaming establishments as required by this article, in the course of performing the activities of the Colorado bureau of investigation as set forth in this section.

(3) The commission shall, in cooperation with the Colorado bureau of investigation, conduct background investigations of gaming license applicants, licensees, owners or tenants of property or premises upon which gaming is permitted or conducted, and key employees of such gaming establishments as defined in this article or by commission rule or regulation.

(4) Criminal violations of this article discovered during an authorized investigation or discovered by the limited gaming commission shall be referred to the appropriate district attorney.

(5) The director of the Colorado bureau of investigation shall employ such personnel as may be necessary to carry out the duties and responsibilities set forth in this article. The commission shall authorize payment to the Colorado bureau of investigation for the cost involved. Costs for activities relating to limited gaming shall be paid from the limited gaming fund pursuant to preestablished contracts or formal agreements, or both, including contracts or formal agreements on specific activities the department of public safety will complete for the commission and conditions for payment, the manner in which the commission and the department of public safety will review budgets and project resource needs in the future, and the level of cooperation established between the division, the Colorado bureau of investigation for conducting background investigations, and the Colorado state patrol for contracted services.

Source: L. 91: Entire article added, p. 1568, § 1, effective June 4. L. 93: IP(2) and (5) amended, p. 897, § 4, effective May 10.

12-47.1-832. Violations of article as misdemeanors. Any person violating any of the provisions of this article, or any of the rules and regulations promulgated pursuant thereto, commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., except as may otherwise be specifically provided in this article.

Source: L. 91: Entire article added, p. 1569, § 1, effective June 4. L. 2002: Entire section amended, p. 1485, § 108, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-47.1-833. Agreements, contracts, leases - void and unenforceable. All agreements, contracts, leases, or arrangements in violation of this article, or the rules and regulations promulgated pursuant to this article, are void and unenforceable.

Source: L. 91: Entire article added, p. 1569, § 1, effective June 4.

12-47.1-834. Buildings - accessible to persons with disabilities. (1) All premises where limited gaming is conducted shall be accessible to and functional for persons with physical disabilities.

(2) An exception to the requirement of subsection (1) of this section may be granted in cases where the local historical preservation commission determines that compliance would result in degradation of the historical significance of the building where limited gaming is conducted.

Source: L. 91: Entire article added, p. 1569, § 1, effective June 4. L. 93: (1) amended, p. 1632, § 13, effective July 1.

12-47.1-835. Financial interest restrictions. (1) No manufacturer or distributor of slot machines or associated equipment shall knowingly, without notification being provided to the division within ten days:

- (a) Have any interest, directly or indirectly, in any operator;
- (b) Allow any of its officers, or any other person with a substantial interest in such business, to have any interest in an operator;
- (c) Employ any person in any capacity or allow any person to represent the business in any way if such person is also employed by an operator;
- (d) Repealed.
- (e) Allow any operator or any person having a substantial interest therein, to have any interest, directly or indirectly, in such business.

(2) The word "interest" as used in this section does not preclude transactions in the ordinary course of business.

Source: L. 91: Entire article added, p. 1569, § 1, effective June 4. L. 99: Entire section amended, p. 527, § 1, effective April 30. L. 2002: (1)(d) repealed, p. 1015, § 16, effective June 1.

Editor's note: The provisions in this section were renumbered in 1999 for ease of location.

12-47.1-836. Distributorships located in the state of Colorado. (Repealed)

Source: L. 91: Entire article added, p. 1570, § 1, effective June 4. L. 2003: Entire section repealed, p. 2098, § 6, effective May 22.

12-47.1-837. Revocation or expiration of license - requirement of notification. A licensee whose license has been revoked or has expired shall notify such licensee's employer within twenty-four hours after such revocation or expiration.

Source: L. 91: Entire article added, p. 1570, § 1, effective June 4. L. 2003: Entire section amended, p. 2098, § 7, effective May 22.

12-47.1-838. Personal pecuniary gain or conflict of interest. (1) It is unlawful for any person to issue, suspend, revoke, or renew any license pursuant to this article for any personal pecuniary gain or any thing of value, as defined in section 18-1-901 (3) (r), C.R.S., or for any person to violate any of the provisions of section 12-47.1-401.

(2) Any person violating any of the provisions of this section commits a class 3 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 91: Entire article added, p. 1570, § 1, effective June 4. L. 2002: (2) amended, p. 1485, § 109, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-47.1-839. False or misleading information - unlawful. (1) It is unlawful for any person to provide any false or misleading information under the provisions of this article.

(2) Any person violating any of the provisions of this section commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 91: Entire article added, p. 1570, § 1, effective June 4. L. 2002: (2) amended, p. 1485, § 110, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

PART 9

CHARITABLE GAMING

12-47.1-901. Events sponsored by charitable organizations. (1) Any person licensed as a retailer, or as both a retailer and operator, may choose to allow a charitable organization to sponsor limited gaming at that retailer's licensed premises, if the following conditions are met:

(a) The organization is a charitable organization, which for purposes of this section means any organization, not for pecuniary profit, which is operated for the relief of poverty, distress, or other condition of public concern within this state and which has been so engaged for five years prior to making application to sponsor limited gaming under this article;

(b) The licensed operator or retailer and the charitable organization agree in writing upon all the terms and conditions of the sponsorship, and a copy of the written agreement is filed with the commission at least fourteen days prior to the day of the sponsored event;

(c) All sponsored events shall take place on licensed retail premises, and all requirements of this article shall apply to such events, unless specifically modified by this part 9; and

(d) Criminal violations of this article discovered during an authorized investigation or discovered by the commission shall be referred to the appropriate district attorney.

Source: L. 91: Entire article added, p. 1570, § 1, effective June 4.

12-47.1-902. Terms of sponsorship. (1) All limited gaming events sponsored by charitable organizations pursuant to this part 9 shall, in addition to all the other requirements of this article, meet the following conditions:

(a) The agreement between the licensed operator or retailer and the charitable organization shall provide for the payment by the charitable organization to the retailer or operator

of a flat fee or no fee; in return, the charitable organization shall receive one hundred percent of the adjusted gross proceeds, less the amount of taxes due on those proceeds as determined by the commission from gaming for each day of the sponsored event, or during all the hours of a sponsored event if less than a full day. The licensed operator or retailer shall report and pay taxes on the full amount of the adjusted gross proceeds from gaming sponsored by any charitable organization.

(b) A one-day sponsored event shall, for purposes of this part 9, begin at 8 a.m. on one day and end at 2 a.m. on the following day. For purposes of this section, no event shall be considered as less than a one-day event; except that a retailer may devote less than one full day to a charitable event.

(c) No retailer shall permit a single charitable organization to sponsor more than three days of limited gaming at that retailer's licensed premises during any calendar year; and no retailer shall permit more than thirty total days of sponsored events on its premises during any calendar year;

(d) No charitable organization shall sponsor more than three days of limited gaming during any calendar year;

(e) The charitable organization shall file notice of its intent to sponsor limited gaming at least fourteen days in advance with the commission, upon forms provided by the commission.

Source: L. 91: Entire article added, p. 1571, § 1, effective June 4.

12-47.1-903. Notice of sponsorship. No person licensed as a retailer, operator, key employee, or support person, and no member, agent, employee, officer, or director of a charitable organization, shall represent to any person that a limited gaming activity is being sponsored by that or another charitable organization unless the sponsoring charitable organization has filed a notice of intent with the commission pursuant to section 12-47.1-902 (1) (e).

Source: L. 91: Entire article added, p. 1572, § 1, effective June 4.

PART 10

EXCLUDED PERSONS

12-47.1-1001. Persons excluded or ejected - factors considered - legislative declaration. (1) The general assembly hereby declares that the exclusion or ejection of certain persons from licensed gaming establishments is necessary to carry out the policies of this article and to maintain effectively the strict regulation of licensed gaming.

(2) The commission may by rule or regulation provide for the establishment of a list of persons who are to be excluded or ejected from any licensed gaming establishment, including any person whose presence in the establishment is determined to pose a threat to the interest of the state of Colorado or to licensed gaming, or both. In making the determination for exclusion, the commission may consider any of the following:

(a) Prior conviction of a felony, a misdemeanor involving moral turpitude, or a violation of the gaming laws of any state, the United States, or any of its possessions or territories, including Indian tribes;

(b) A violation, attempt to violate, or conspiracy to violate the provisions of this article relating to the failure to disclose an interest in a gaming establishment for which the person must obtain a license or make disclosures to the commission, or intentional evasion of fees or taxes;

(c) A reputation that would adversely affect public confidence and trust that the gaming industry is free from criminal or corruptive influences;

(d) Prior exclusion or ejection under the gaming regulations of any other state, the United States, any of its possessions or territories, or an Indian tribe which regulates gaming;

(e) Career or professional offenders or associates of career or professional offenders, and such others as defined by regulation of the commission.

(3) If the name and description of any person is placed on the exclusion list, the commission shall serve notice of that action upon the person by at least one of the following means:

(a) By personal service;

(b) By certified mail to the last-known address of the person; or

(c) By publication in one or more official newspapers in Teller and Gilpin Counties, Colorado. A person placed upon the exclusion list may contest that action by filing a written protest with the commission, and the protest shall be heard by the commission as a contested case.

(4) The commission may impose sanctions upon any licensee in accordance with the provisions of this article if such licensee fails to exclude or eject from the licensed premises any person placed by the commission on the list of persons to be excluded or ejected from licensed gaming establishments, which sanctions may include, but not be limited to, suspension, revocation, limitation, modification, denial, or restriction of any license.

Source: L. 91: Entire article added, p. 1572, § 1, effective June 4.

12-47.1-1002. Emergency listing of persons to be excluded or ejected. (1) The commission, by rule and regulation, and notwithstanding the provisions of section 12-47.1-1001, may list persons to be excluded or ejected from any licensed gaming establishment, effective October 1, 1991, if the commission finds that listing such persons on an emergency basis is necessary to avoid danger to the public safety and if the public confidence and trust would be maintained only if such persons were listed on such an emergency basis.

(2) Notwithstanding the provisions of section 24-4-103 (6), C.R.S., the listing of persons to be excluded or ejected pursuant to this section expires one year after the adoption of the list, unless the provisions of section 12-47.1-1001 are followed for permanent listing.

(3) With respect to the finding of danger to public safety, the commission shall consider whether the persons have been listed on the list of persons excluded or ejected under the laws and regulations of the states of Nevada, New Jersey, South Dakota, and any other states, the United States, its territories or possessions, or any Indian tribe regulating gaming.

(4) Any rule adopted pursuant to this section shall be followed within thirty days after such emergency listing by the procedures set forth in section 12-47.1-1001. A listing pursuant to this section must be vacated upon the conclusion of the rule-making proceeding initiated under section 12-47.1-1001 if a determination is made by the commission that a person should not have been placed on the list of persons to be excluded or ejected.

Source: L. 91: Entire article added, p. 1573, § 1, effective June 4.

PART 11

GAMING DEVICES

12-47.1-1101. Exemption from federal law. Pursuant to section 2 of an act of congress of the United States entitled "An Act to prohibit transportation of gambling devices in interstate and foreign commerce", approved January 2, 1951, designated 15 U.S.C. secs. 1171 to 1177, inclusive, and in effect January 1, 1989, the state of Colorado acting by and through its elected and qualified members of its general assembly, does hereby, and in accordance with and in compliance with the provisions of section 2 of the act of congress, declare and proclaim that it is exempt from the provisions of section 2 of that act of congress of the United States, as regards gaming devices operated and used within the cities of Central, Black Hawk, and Cripple Creek, Colorado.

Source: L. 91: Entire article added, p. 1574, § 1, effective June 4.

12-47.1-1102. Shipments of devices and machines deemed legal. All shipments of gaming devices, including slot machines, into this state, the registering, recording, and labeling of which has been duly made by the manufacturer or dealer thereof in accordance with sections 3 and 4 of an act of congress of the United States entitled "An Act to prohibit transportation of gambling devices in interstate and foreign commerce", approved January 2, 1951, designated as 15 U.S.C. secs. 1171 to 1177, inclusive, and in effect on January 1, 1989, shall be deemed legal shipments thereof, for use only within the cities of Central, Black Hawk, and Cripple Creek, Colorado.

Source: L. 91: Entire article added, p. 1574, § 1, effective June 4.

12-47.1-1103. Possession of slot machines. Notwithstanding any other laws of this state to the contrary, the possession of slot machines in this state by licensed manufacturers, distributors, and operators is legal if all the requirements, conditions, and provisions of this article and the rules and regulations promulgated pursuant to this article are met and complied with. However, nothing in this section shall be deemed to authorize or permit any use of slot machines for any purpose, except as specifically authorized and provided for in this article and the rules and regulations promulgated pursuant to this article.

Source: L. 91: Entire article added, p. 1575, § 1, effective June 4.

PART 12

STATE HISTORICAL SOCIETY

Cross references: For additional information regarding the state historical society, see part 2 of article 80 of title 24.

12-47.1-1201. State historical fund - administration - legislative declaration - state museum cash fund - capitol dome restoration fund. (1) The state treasurer shall make annual distributions, from the state historical fund created by subsection (5) (b) (II) of section 9 of article XVIII of the state constitution, in accordance with the provisions of subsection (5) (b) (III) of said section 9. As specified in said subsection (5) (b) (III), twenty percent of the moneys in the state historical fund shall be used for the preservation and restoration of the cities of Central, Black Hawk, and Cripple Creek. The remaining eighty percent of the fund shall be administered by the state historical society. Expenditures from the fund shall be subject to the provisions of section 12-47.1-1202. The society shall make grants from the eighty percent portion of said fund administered by the society for the following historic preservation purposes:

(a) The identification, evaluation, documentation, study, and marking of buildings, structures, objects, sites, or areas important in the history, architecture, archaeology, or culture of this state, and the official designation of such properties;

(b) The excavation, stabilization, preservation, restoration, rehabilitation, reconstruction, or acquisition of such designated properties;

(c) Education and training for governmental entities, organizations, and private citizens on how to plan for and accommodate the preservation of historic and archaeological structures, buildings, objects, sites, and districts;

(d) Preparation, production, distribution, and presentation of educational, informational, and technical documents, guidance, and aids on historic preservation practices, standards, guidelines, techniques, economic incentives, protective mechanisms, and historic preservation planning.

(2) (a) The society shall make grants primarily to governmental entities and to non-profit organizations; except that the society may make grants to persons in the private sector so long as the person requesting the grant makes application through a governmental entity. The selection of recipients and the amount granted to a recipient shall be determined by the society, which determination shall be based on the information provided in the applications submitted to the society.

(b) As used in this subsection (2), "governmental entity" means the state and any state agency or institution, county, city and county, incorporated city or town, school district, special improvement district, authority, and every other kind of district, instrumentality, or political subdivision of the state organized pursuant to law. "Governmental entity" shall include any county, city and county, or incorporated city or town, governed by a home rule charter.

(3) The society may expend a portion of the state historical fund administered by the society to cover such reasonable costs as may be incurred in the selection, monitoring, and administration of grants for historic preservation purposes. The society may employ such personnel in accordance with section 13 of article XII of the state constitution as may be necessary to fulfill its duties in accordance with this section.

(4) The society shall promulgate rules for the purpose of administering the state historical fund, which rules may include criteria for consideration in awarding grants from such fund and standards for preservation which are acceptable to the society and which shall be employed by grant recipients.

(5) (a) (I) The general assembly hereby finds and declares that:

(A) The state historical society, which was founded in 1879, has a unique role as the state educational institution charged with collecting, preserving, and interpreting the history of Colorado and the west. The state formally recognized the state historical society as a state agency by statute in 1915, and the general assembly has continuously made appropriations for the society since that time.

(B) The state historical fund created by subsection (5) (b) (II) of section 9 of article XVIII of the state constitution has grown significantly since its inception in 1991. In accordance with subsection (5) (b) (III) of section 9 of article XVIII of the state constitution, the general assembly hereby determines that it is appropriate to provide funding for the state historical society through the state historical fund.

(C) The use of a portion of the state historical fund for the support needs of the state historical society is consistent with the preservation purposes of the fund and of the society.

(D) Grants from the state historical fund by the society pursuant to subsection (1) of this section serve the state and its people well in promoting preservation purposes and economic development throughout the state.

(II) Accordingly, it is the intent of the general assembly that the majority of the gaming revenues deposited in and available for distribution from the eighty percent portion of the state historical fund administered by the society shall continue to be used for such grants.

(b) Subject to annual appropriation, the society may make expenditures for reasonable costs incurred by the society in connection with fulfilling the society's mission as a state educational institution to collect, preserve, and interpret the history of Colorado and the west and carrying out other activities and programs authorized by statute or rule. Such reasonable costs may include capital construction and controlled maintenance expenditures relating to properties owned, managed, or used by the society.

(c) (I) All moneys received by the society shall be transmitted to the state treasurer, who shall credit the same to the state historical fund or other funds authorized by law. Such moneys include, but are not limited to, grants, admission fees, user charges, concessionaire fees, rentals, commissions, store sales, service fees, program fees, membership fees, publications income, exhibit fees, special event fees, donations, and gifts.

(II) Except as otherwise specified in subparagraph (III) of this paragraph (c), all interest and income derived from the deposit and investment of moneys in the state historical fund or other funds authorized by law shall remain in such fund or funds and shall not be transferred or revert to the general fund or any other fund at the end of any fiscal year; except that, for the fiscal year commencing July 1, 2008, and for each fiscal year thereafter through the fiscal year commencing July 1, 2045, the society may direct the state treasurer to transfer any unexpended and unencumbered moneys in the state historical fund from the portion not reserved for the statewide grant program for preservation pursuant to subparagraph (B) of subparagraph (II) of paragraph (d) of this subsection (5) at the end of the fiscal year to the state museum cash fund created pursuant to section 24-80-214, C.R.S. The state treasurer shall be the custodian of such funds pursuant to section 24-80-209, C.R.S.

(III) (A) For the fiscal year commencing July 1, 2010, the state treasurer shall transfer four million dollars from the state historical fund, from the portion reserved for the statewide grant program for preservation pursuant to sub-subparagraph (A) of subparagraph (II) of paragraph (d) of this subsection (5), at the beginning of the fiscal year to the capitol dome restoration fund, also referred to in this subparagraph (III) as the "fund", which is hereby created in the state treasury. Moneys in the fund are subject to appropriation by the general assembly for repairs and safety improvements to the state capitol dome and supporting structures and for no other purpose, and any unexpended and unencumbered moneys remaining in the fund as of June 30, 2011, shall not revert to the state historical fund or any other fund. The four million dollar transfer specified in this sub-subparagraph (A) shall be reduced, dollar for dollar, by moneys deposited into the capitol dome restoration trust fund as specified in section 2-3-1304.3 (6) (b), C.R.S., if any. This dollar-for-dollar reduction shall not reduce the authorized fees and expenses of any fundraising firm selected by the capital development committee for cause-related marketing for capitol dome repairs.

(B) For the fiscal years commencing July 1, 2011, and July 1, 2012, the state treasurer shall transfer up to four million dollars from the state historical fund, from the portion reserved for the statewide grant program for preservation pursuant to sub-subparagraph (A) of subparagraph (II) of paragraph (d) of this subsection (5), at the beginning of the fiscal year to the capitol dome restoration fund; except that the said four-million-dollar maximum amount shall be reduced, dollar for dollar, by the combined total of moneys deposited into the capitol dome restoration trust fund as specified in section 2-3-1304.3 (6) (b), C.R.S., if any, and grants for repairs and safety improvements to the state capitol dome and supporting structures made by the state historical society under the grants process set forth in subsection (1) of this section. This dollar-for-dollar reduction shall not reduce any authorized fees and expenses of any fundraising firm selected by the capital development committee for cause-related marketing for capitol dome repairs.

(C) For the fiscal year commencing July 1, 2013, the state treasurer shall transfer up to five million dollars from the state historical fund, from the portion reserved for the statewide grant program for preservation pursuant to sub-subparagraph (A) of subparagraph (II) of paragraph (d) of this subsection (5), at the beginning of the fiscal year to the capitol dome restoration fund; except that the said five-million-dollar maximum amount shall be reduced, dollar for dollar, by the combined total of moneys deposited into the capitol dome restoration trust fund as specified in section 2-3-1304.3 (6) (b), C.R.S., if any, and grants for repairs and safety improvements to the state capitol dome and supporting structures made by the state historical society under the grants process set forth in subsection (1) of this section. This dollar-for-dollar reduction shall not reduce the authorized fees and expenses of any fund-raising firm selected by the capital development committee for cause-related marketing for capitol dome repairs.

(D) In the event of an emergency contingency expenditure deemed necessary by the state architect and approved by the office of state planning and budgeting and the capital development committee, supplemental appropriations out of the capitol dome restoration trust fund created in section 2-3-1304.3 (6) (b), C.R.S., and the capitol dome restoration fund created in sub-subparagraph (A) of this subparagraph (III) may be made from any unexpended and unencumbered moneys remaining in the specified funds at any time.

(E) Prior to the end of the 2014-15 state fiscal year and after a complete accounting is available of the total in-kind and monetary donations received through the fundraising program established in section 2-3-1304.3, C.R.S., an end-of-project accounting shall occur based on the final total cost of the dome restoration construction project to ensure, through the annual general appropriations act, supplemental appropriations acts, or transfers between funds, as necessary, that all of the transfers from the state historical fund specified in sub-subparagraphs (A), (B), and (C) of this subparagraph (III) are reduced, dollar for dollar, by the combined total of moneys deposited into the capitol dome restoration trust fund as specified in section 2-3-1304.3 (6) (b), C.R.S., grants for repairs and safety improvements to the state capitol dome and supporting structures made by the state historical society under the grants process set forth in subsection (1) of this section, any money received for the recycling of salvaged building materials from the state capitol dome during the construction period, and any in-kind gifts and donations, such as materials or labor, that resulted in the

reduction of the total cost of the construction. The total value of any in-kind gifts and donations for purposes of the dollar-for-dollar reduction specified in this sub-subparagraph (E) shall be calculated by the department of personnel and approved by the capital development committee as specified in section 2-3-1304.3 (6) (a) (II), C.R.S.

(F) Until completion of the capitol dome restoration project as reported by the state architect pursuant to section 2-3-1304.5, C.R.S., the Colorado historical society shall submit an annual report to the capital development committee on or before December 15 of each year concerning all grants awarded from the state historical fund.

(d) (I) The general assembly finds and declares that:

(A) To better preserve, study, and restore historical sites and objects throughout the state, it is in the best interest of the state to construct a new Colorado state museum and offices for the state historical society; and

(B) Construction of a new Colorado state museum and offices for the state historical society will provide improved historic preservation, education, planning, and interpretation of Colorado's heritage, including the identification, evaluation, study, and marking of buildings, structures, objects, sites, or areas important in the history, architecture, archeology, or culture of the state; the official designation of such properties as appropriate for preservation; and other activities described in paragraphs (c) and (d) of subsection (1) of this section.

(II) The general assembly reaffirms its intent that:

(A) The majority of the eighty percent portion of the state historical fund administered by the society shall continue to be used for the statewide grants for historic preservation purposes as described in subsection (1) of this section and may also be used to pay the administrative cost of the society in administering the grant program; and

(B) Costs associated with the new Colorado state museum shall be from the portion of the state historical fund not reserved for the statewide grant program for preservation, or from other moneys as designated by the general assembly.

(III) On or before October 1, 2008, the state treasurer shall transfer from the state historical fund to the state museum cash fund created pursuant to section 24-80-214, C.R.S., the sum of three million dollars. On or before October 1, 2009, the state treasurer shall transfer from the state historical fund to the state museum cash fund the sum of two million dollars. On or before October 1, 2010, the state treasurer shall transfer from the state historical fund to the state museum cash fund the sum of two million dollars.

(IV) For the fiscal year beginning on July 1, 2011, and for each fiscal year thereafter through the fiscal year beginning on July 1, 2045, so long as there are payments due on an agreement entered into pursuant to the provisions of section 3 of Senate Bill 08-206, as enacted at the second regular session of the sixty-sixth general assembly, the general assembly shall appropriate to the state historical society from the state historical fund an amount equal to the annual aggregate rentals or other payments due from state funds; except that the amount shall not exceed four million nine hundred ninety-eight thousand dollars in any given fiscal year.

Source: **L. 91:** Entire article added, p. 1575, § 1, effective June 4. **L. 99:** Entire section amended, p. 1121, § 1, effective June 2. **L. 2003:** (1)(b), (1)(c), and (2) amended and (5) added, p. 440, § 1, effective March 5. **L. 2008:** (5)(d) added, p. 2113, § 5, effective June 4. **L. 2009:** (5)(c)(II) and (5)(d)(III) amended, (HB 09-1333), ch. 319, p. 1708, § 1, effective August 5. **L. 2010:** (5)(c)(II) amended and (5)(c)(III) added, (SB 10-192), ch. 254, p. 1130, § 1, effective August 11. **L. 2011:** (5)(c)(III) amended, (HB 11-1310), ch. 225, p. 968, § 2, effective August 10.

Cross references: (1) For the legislative declaration and the lease-purchase agreement for the Colorado state museum contained in the 2008 act enacting subsection (5)(d), see sections 1 and 3 of chapter 417, Session Laws of Colorado 2008.

(2) For additional capitol dome funding sources, see § 2-3-1304.3.

12-47.1-1202. Expenditures from the state historical fund - legislative declaration.

(1) The general assembly hereby finds and declares that when the voters approved the

conduct of limited gaming in the cities of Central, Black Hawk, and Cripple Creek they believed that all moneys expended from the state historical fund would be used to restore and preserve the historic nature of those cities and other sites and municipalities throughout the state. Together with the limitations contained in section 12-47.1-1201 on the expenditure of moneys in the fund that are subject to administration by the state historical society, this section is intended to assure that expenditures from the fund by the society and by the cities of Central, Black Hawk, and Cripple Creek are used for historic restoration and preservation.

(2) The state historical society shall not expend moneys from the eighty percent portion of the state historical fund administered by the society unless they have adopted standards for distribution of grants from that portion of the fund. The standards shall allow for the appropriate use of sustainable solutions such as environmentally sensitive and energy efficient windows, window assemblies, insulating materials, and heating and cooling systems, as long as the use of such sustainable solutions does not adversely affect the appearance or integrity of a historic property. The standards shall further include requirements that assure compliance with the secretary of the interior's standards for treatment of historic properties.

(3) The governing bodies of the cities of Central, Black Hawk, and Cripple Creek shall not expend moneys from their twenty percent portion of the state historical fund unless they have adopted standards for distribution of grants from that portion of the fund. At a minimum, such standards shall include the following:

(a) Requirements that assure compliance with the secretary of the interior's standards for treatment of historic properties;

(a.5) A requirement that the city is a certified local government, as defined in section 12-47.1-103 (4.5), and that the city's historic preservation commission review and recommend grant awards to the governing body;

(b) A provision that prohibits a private individual from receiving more than one grant for the restoration or preservation of the same property within any one-year period;

(c) A provision that limits grants to property that is located within a national historic landmark district or within an area listed on the national register of historic places;

(d) A provision that limits grants for restoration or preservation to structures that have historical significance because they were originally constructed more than fifty years prior to the date of the application;

(e) (Deleted by amendment, L. 2004, p. 743, § 1, effective May 12, 2004.)

(f) A provision that prohibits issuing a grant to a private individual who does not own the residential property that is to be restored or preserved;

(g) (Deleted by amendment, L. 2004, p. 743, § 1, effective May 12, 2004.)

(h) A provision that prohibits making grants for more than one year at a time;

(i) A provision that requires a member of the governing body to disclose any personal interest in a grant before voting on the application;

(j) A provision requiring the award of any grant in excess of fifty thousand dollars for any single residential property to be conditioned upon an agreement to repay the grant upon any sale or transfer of the property within five years of the date the grant is awarded. The amount to be repaid shall equal the amount of the grant less an amount equal to one-sixtieth of the amount of the grant for each full month occurring between the date the grant is awarded and the date of the sale or transfer of the property.

(k) A provision allowing for the appropriate use of sustainable solutions such as environmentally sensitive and energy efficient windows, window assemblies, insulating materials, and heating and cooling systems, as long as the use of such sustainable solutions does not adversely affect the appearance or integrity of a historic property.

(4) The provision contained in paragraph (c) of subsection (3) of this section that requires that the governing bodies of the specified cities not expend moneys from the state historical fund unless they adopt standards that include a provision that limits grants to property that is located within a national historic landmark district or within an area listed on the national register of historic places is not intended to affect the status of the cities as approved sites for limited gaming under section 9 of article XVIII of the state constitution

in the event that the status as a historical landmark district or listing on the national register of historic places is not maintained.

(5) The governing body of a city that is not a certified local government pursuant to paragraph (a.5) of subsection (3) of this section and that receives moneys from the state historical fund for historic preservation purposes shall not expend such moneys but instead shall create an independent restoration and preservation commission for the purpose of expending the moneys in accordance with part 17 of this article.

Source: L. 99: Entire section added, p. 1122, § 2, effective June 2. **L. 2004:** (3)(e) and (3)(g) amended and (3)(j) added, p. 743, § 1, effective May 12. **L. 2008:** (2), (3)(i), and (3)(j) amended and (3)(k) added, p. 113, § 1, effective August 5. **L. 2009:** (3)(a.5) and (5) added, (SB 09-101), ch. 433, pp. 2399, 2400, §§ 2, 3, effective August 1.

PART 13

GENERAL FUND LOAN

12-47.1-1301. Loan from general fund - time frame for repayment - distributions from limited gaming fund. (Repealed)

Source: L. 91: Entire article added, p. 1576, § 1, effective June 4.

Editor's note: Subsection (4) provided for the repeal of this section, effective July 1, 1997. (See L. 91, p. 1576.)

PART 14

CONTIGUOUS COUNTY LIMITED GAMING IMPACT FUND

12-47.1-1401 to 12-47.1-1403. (Repealed)

Editor's note: (1) This part 14 was added in 1991. For amendments to this part 14 prior to its repeal in 1998, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 12-47.1-1403 provided for the repeal of this part 14, effective July 1, 1998. (See L. 97, p. 1378.)

PART 15

MUNICIPAL LIMITED GAMING IMPACT FUND

12-47.1-1501 and 12-47.1-1502. (Repealed)

Editor's note: (1) This part 15 was added in 1994. For amendments to this part 15 prior to its repeal in 2002, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 12-47.1-1502 provided for the repeal of this part 15, effective July 1, 2002. (See L. 1998, p. 818.)

PART 16

LOCAL GOVERNMENT LIMITED GAMING IMPACT FUND

12-47.1-1601. Local government limited gaming impact fund - repeal.

(1) (a) There is hereby created in the office of the state treasurer the local government limited gaming impact fund, referred to in this part 16 as the "fund", and within the fund,

there is created the limited gaming impact account and the gambling addiction account. Of the moneys transferred to the fund pursuant to section 12-47.1-701 (2) (a) (II) (C), ninety-eight percent shall be allocated to the limited gaming impact account and two percent shall be allocated to the gambling addiction account. Moneys in the limited gaming impact account shall be used to provide financial assistance to designated local governments for documented gaming impacts, and moneys in the gambling addiction account shall be used to award grants for the provision of gambling addiction counseling, including prevention and education, to Colorado residents. For the purposes of this part 16, "documented gaming impacts" means the documented expenses, costs, and other impacts incurred directly as a result of limited gaming permitted in the counties of Gilpin and Teller and on Indian lands.

(b) and (c) Repealed.

(2) (Deleted by amendment, L. 2011, (SB 11-159), ch. 54, p. 142, § 2, effective March 25, 2011.)

(3) (Deleted by amendment, L. 2006, p. 1665, § 5, effective June 5, 2006.)

(4) (a) (I) After considering the recommendations of the local government limited gaming impact advisory committee created in section 12-47.1-1602, the moneys from the limited gaming impact account shall be distributed at the authority of the executive director of the department of local affairs to eligible local governmental entities upon their application for grants to finance planning, construction, and maintenance of public facilities and the provision of public services related to the documented gaming impacts. At the end of any fiscal year, all unexpended and unencumbered moneys in the limited gaming impact account shall remain available for expenditure in any subsequent fiscal year without further appropriation by the general assembly.

(II) Notwithstanding any provision of this paragraph (a) to the contrary, on April 15, 2010, the executive director of the department of local affairs shall distribute the moneys from the limited gaming impact account that were transferred in the 2008-09 state fiscal year for use in the 2009-10 state fiscal year.

(a.5) (I) For the 2008-09 fiscal year and each fiscal year thereafter, the executive director of the department of human services shall use the moneys in the gambling addiction account to award grants for the purpose of providing gambling addiction counseling services to Colorado residents. The department of human services may use a portion of the moneys in the gambling addiction account, not to exceed ten percent in the 2008-09 fiscal year and five percent in each fiscal year thereafter, to cover the department's direct and indirect costs associated with administering the grant program authorized in this paragraph (a.5). Grants shall be awarded to state or local public or private entities or programs that provide gambling addiction counseling services and that have or are seeking nationally accredited gambling addiction counselors. For the 2008-09 through 2011-12 fiscal years, the executive director of the department of human services shall award ten percent of the moneys in the gambling addiction account in grants to addiction counselors who are actively pursuing national accreditation as gambling addiction counselors. In order to qualify for an accreditation grant, an addiction counselor applicant shall provide sufficient proof that he or she has completed at least half of the counseling hours required for national accreditation. The executive director of the department of human services shall adopt rules establishing the procedure for applying for a grant from the gambling addiction account, the criteria for awarding grants and prioritizing applications, and any other provision necessary for the administration of the grant applications and awards. Neither the entity, program, or gambling addiction counselor providing the gambling addiction counseling services nor the recipients of the counseling services need to be located within the jurisdiction of an eligible local governmental entity in order to receive a grant or counseling services. At the end of any fiscal year, all unexpended and unencumbered moneys in the gambling addiction account shall remain in the account and shall not revert to the general fund or any other fund or account.

(II) By January 1, 2009, and by each January 1 thereafter, the department of human services shall submit a report to the health and human services committees of the senate and house of representatives, or their successor committees, regarding the grant program. The

report shall detail the following information for the fiscal year in which the report is submitted:

(A) The amount of moneys allocated to the gambling addiction account pursuant to paragraph (a) of subsection (1) of this section;

(B) The number of grant applications received and the total amount of grant moneys requested by grant applicants;

(C) The total amount of moneys in the gambling addiction account that was awarded as grants to applicants; and

(D) The entities or programs that received grants and the amount of grant moneys each grant recipient received.

(III) This paragraph (a.5) is repealed, effective July 1, 2013. Any moneys remaining in the gambling addiction account on June 30, 2013, shall be transferred to the limited gaming impact account.

(b) For the purposes of this part 16, the term "eligible local governmental entity" means the following local governmental entities:

(I) The counties of Boulder, Clear Creek, Grand, Jefferson, El Paso, Fremont, Park, Douglas, Gilpin, Teller, La Plata, Montezuma, and Archuleta;

(II) Any municipality located within the boundaries of any county set forth in subparagraph (I) of this paragraph (b), except the City of Central, the City of Black Hawk, and the City of Cripple Creek; and

(III) Any special district providing emergency services within the boundaries of any county set forth in subparagraph (I) of this paragraph (b).

(5) Notwithstanding the provisions of subparagraph (II) of paragraph (b) of subsection (4) of this section, neither the City of Woodland Park nor the City of Victor shall be eligible local governmental entities prior to July 1, 2002.

(6) (a) (I) Notwithstanding any other provision of this section, moneys accruing to the fund on and after July 1, 2002, and any previously transferred unencumbered moneys in the fund on July 1, 2003, shall be transferred to the general fund. Transfers to the fund shall resume as otherwise provided in this section for any state fiscal year commencing on or after July 1, 2004.

(II) Notwithstanding any provision of this section to the contrary, on April 20, 2009, the state treasurer shall deduct nine hundred fifty thousand dollars from the fund and transfer such sum to the general fund.

(b) If the total amount of revenues collected by the department for state taxes paid pursuant to the tax amnesty program established in section 39-21-201, C.R.S., exceeds the amount of five million dollars, then an amount equal to the amount of any such excess shall be transferred from the general fund to the fund on or before September 1, 2003. In no event shall the amount transferred pursuant to this paragraph (b) exceed the amount transferred to the general fund pursuant to paragraph (a) of this subsection (6).

(7) Notwithstanding any provision of this section to the contrary, on June 1, 2009, the state treasurer shall deduct one hundred thousand dollars from the fund and transfer such sum to the general fund.

(8) Notwithstanding any provisions of this section to the contrary, on June 30, 2010, the state treasurer shall deduct two million dollars from the fund and transfer such sum to the general fund.

Source: L. 97: Entire part added, p. 1373, § 1, effective July 1. L. 2000: (4)(a) amended, p. 1983, § 1, effective July 1. L. 2003: (6) added, p. 1499, § 2, effective May 1. L. 2006: (2) and (3) amended, p. 1665, § 5, effective June 5. L. 2008: (1)(b) and (1)(c) repealed, p. 554, § 12, effective July 1; (1)(a) and (4)(a) amended and (4)(a.5) added, p. 1736, § 1, effective August 5. L. 2009: (6)(a) amended, (SB 09-208), ch. 149, p. 619, § 5, effective April 20; (7) added, (SB 09-279), ch. 367, p. 1925, § 2, effective June 1. L. 2010: (4)(a) amended and (8) added, (HB 10-1339), ch. 136, pp. 456, 457, §§ 2, 3, effective April 15. L. 2011: (1)(a) and (2) amended, (SB 11-159), ch. 54, p. 142, § 2, effective March 25.

12-47.1-1602. Local government limited gaming impact advisory committee - creation - duties. (1) There is hereby created within the department of local affairs a local

government limited gaming impact advisory committee, referred to in this section as the "committee". The committee shall be composed of the following thirteen members:

- (a) The executive director of the department of local affairs;
- (b) Two members, one of whom shall be appointed by and serve at the pleasure of the executive director of the department of public safety and one who shall be appointed by and serve at the pleasure of the executive director of the department of revenue;
- (c) Three members representing the counties eligible to receive moneys from the fund pursuant to section 12-47.1-1601 (4) who shall serve at the pleasure of the boards and who shall be appointed as follows:
 - (I) One member shall be appointed by the chairs of the boards of county commissioners from the counties impacted by gaming in the City of Cripple Creek who shall serve a term of four years, except the initial appointee who shall serve a term of two years;
 - (II) One member shall be appointed by the chairs of the boards of county commissioners from the counties impacted by gaming in the City of Central and the City of Black Hawk who shall serve a term of four years; and
 - (III) One member shall be appointed by the chairs of the boards of county commissioners from the counties impacted by tribal gaming who shall serve a term of four years.
- (d) Two members representing the municipalities eligible to receive moneys from the fund pursuant to section 12-47.1-1601 (4) to be appointed by the mayors of the municipalities and who shall serve at the pleasure of the mayors for terms of four years; except that one of the initial appointees shall serve a term of two years. Not more than one member shall be selected pursuant to this paragraph (d) from each of the groups of counties described in subparagraphs (I) to (III) of paragraph (c) of this subsection (1).
- (e) One member representing the special districts providing emergency services that are eligible to receive moneys from the fund pursuant to section 12-47.1-1601 (4) to be appointed by and who shall serve at the pleasure of the director of the division in the department of public health and environment responsible for statewide emergency medical and trauma services management;
- (f) One member of the Colorado house of representatives to be appointed by the speaker of the house of representatives and who shall serve at the pleasure of the speaker;
- (g) One member of the Colorado senate to be appointed by the president of the senate and who shall serve at the pleasure of the president; and
- (h) Two members representing the governor, to be appointed by the governor and who shall serve at the pleasure of the governor.

(1.5) The terms of the members appointed by the speaker of the house of representatives and the president of the senate who are serving on March 22, 2007, shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly. As soon as practicable after such convening date, the speaker and the president shall each appoint or reappoint one member in the same manner as provided in paragraphs (f) and (g) of subsection (1) of this section. Thereafter, the terms of the members appointed or reappointed by the speaker and the president shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the speaker and the president shall be made as soon as practicable after such convening date. The person making the original appointment or reappointment shall fill any vacancy by appointment for the remainder of an unexpired term. Members appointed or reappointed by the speaker and the president shall serve at the pleasure of the appointing authority and shall continue in office until the member's successor is appointed.

(2) The executive director of the department of local affairs shall convene the first meeting of the committee. The committee shall select a chair of the committee, from among the committee members, who shall convene the committee from time to time as the committee deems necessary.

(3) The committee shall have the following duties:

(a) To establish a standardized methodology and criteria for documenting, measuring, assessing, and reporting the documented gaming impacts upon eligible local governmental entities;

(b) To review the documented gaming impacts upon eligible local governmental entities on a continuing basis;

(c) To review grant applications from eligible local governmental entities, individually or in cooperation with other eligible local governmental entities, based upon the needs of the entities and the documented gaming impacts on the entities;

(d) To make funding recommendations on a continuing basis to be considered by the executive director in making funding decisions for grant applications submitted by eligible local governmental entities pursuant to section 12-47.1-1601 (4) (a).

(e) Repealed.

Source: **L. 97:** Entire part added, p. 1375, § 1, effective July 1. **L. 2006:** (3)(e) repealed, p. 1666, § 6, effective June 5. **L. 2007:** (1.5) added, p. 177, § 6, effective March 22. **L. 2009:** (1)(e) amended, (SB 09-292), ch. 369, p. 1947, § 25, effective August 5.

PART 17

INDEPENDENT RESTORATION AND PRESERVATION COMMISSION

12-47.1-1701. Definitions. As used in this part 17, unless the context otherwise requires:

(1) “City” means a city that is not a certified local government as defined in section 12-47.1-103 (4.5) and that receives moneys from the state historical fund for historic preservation purposes.

(2) “Commission” means an independent restoration and preservation commission created pursuant to section 12-47.1-1202 (5).

Source: **L. 2009:** Entire part added, (SB 09-101), ch. 433, p. 2400, § 4, effective August 1.

12-47.1-1702. Independent restoration and preservation commission - appointments - qualifications - new appointments - appointments without nominations.

(1) Pursuant to section 12-47.1-1202 (5), the governing body of a city shall create an independent restoration and preservation commission. The governing body shall appoint seven members to the commission as follows:

(a) Two persons who are architects shall be appointed from nominees submitted by the Colorado chapter of the American institute of architects or any successor organization.

(b) Two persons who are experts in historic preservation shall be appointed from nominees submitted by the Colorado historical society.

(c) Two persons who shall each have a degree in either urban planning or landscape architecture shall be appointed from nominees submitted by the Colorado chapter of the American planning association or any successor organization.

(d) One person who is a member of the community shall be appointed directly by the governing body of the city.

(2) In making appointments to the commission, the governing body of the city shall give due consideration to maintaining a balance of interests and skills in the composition of the commission and to the individual qualifications of the candidates, including their training, experience, and knowledge in the areas of architecture, landscape architecture, the history of the community, real estate, law, and urban planning.

(3) At any time that the term of office of a member of the commission is due to expire or when a member resigns, the governing body of the city shall request at least two nominees for each such opening from the appropriate entity listed in subsection (1) of this section; except that no such requirement shall apply to the member of the community appointed directly by the governing body. The governing body shall make the appointments from the appropriate list of nominations.

(4) If the nominations required to make appointments or to fill vacancies have not been received by the governing body of the city within forty-five days after a written request for the required list has been sent to the nominating entity, the governing body may appoint members of the commission without nominations. However, the governing body shall give consideration to the qualifications of the appointee as if such appointee were nominated by the designated nominating entity.

(5) Members of the commission shall be appointed by and shall serve at the pleasure of the governing body of the city. Each member shall continue to serve until the member's successor has been duly appointed pursuant to subsection (1) of this section and is acting, but no such period shall extend more than ninety days past the expiration of the first member's term. The governing body shall determine the length of terms and whether the terms are staggered.

Source: L. 2009: Entire part added, (SB 09-101), ch. 433, p. 2400, § 4, effective August 1.

12-47.1-1703. Funding - compensation. (1) Costs associated with the operation of the commission shall be paid from the city's share of preservation and restoration moneys from the state historical fund.

(2) Members of the commission shall serve without compensation. To the extent authorized by the governing body of the city, members of the commission may be reimbursed for actual and necessary expenses incurred in the discharge of their official duties, including an allowance for mileage.

Source: L. 2009: Entire part added, (SB 09-101), ch. 433, p. 2401, § 4, effective August 1.

12-47.1-1704. Officers - bylaws - rules. (1) The commission shall elect a chairperson and such officers as it may require.

(2) The commission shall make and adopt bylaws governing its work.

(3) The commission may adopt rules and regulations for the administration and enforcement of part 12 of this article and this part 17.

Source: L. 2009: Entire part added, (SB 09-101), ch. 433, p. 2401, § 4, effective August 1.

12-47.1-1705. Meetings. The commission shall act only at regularly scheduled semi-monthly meetings, which shall be held at a time determined by the governing body of the city, or at meetings of which not less than five days' notice has been given. Absent the objection of any member, the chairperson may cancel or postpone a regularly scheduled meeting of the commission.

Source: L. 2009: Entire part added, (SB 09-101), ch. 433, p. 2402, § 4, effective August 1.

12-47.1-1706. Quorum - action. No official business of the commission shall be conducted unless a quorum of not less than four members is present. The concurring vote of at least four members of the commission is necessary to constitute an official act of the commission.

Source: L. 2009: Entire part added, (SB 09-101), ch. 433, p. 2402, § 4, effective August 1.

12-47.1-1707. Final agency action - judicial review. Any official decision of the commission shall be considered final agency action and subject to judicial review in a court of competent jurisdiction. No official decision of the commission shall be appealable to or reviewable by the governing body of the city.

Source: L. 2009: Entire part added, (SB 09-101), ch. 433, p. 2402, § 4, effective August 1.

ARTICLE 47.2

Tribal-state Gaming Compact

12-47.2-101. Tribal-state gaming compact. 12-47.2-103. Provisions of compact.
12-47.2-102. Effective date of compact.

12-47.2-101. Tribal-state gaming compact. In accordance with federal Indian gaming regulations in 25 U.S.C. 2710 (d) (3) (C), any Indian tribe having jurisdiction over the Indian lands upon which class III gaming activity is being conducted or is to be conducted shall request the governor of Colorado on behalf of this state to enter into negotiations for the purpose of entering into a tribal-state compact governing the conduct of gaming activities. Upon receiving such a request, the governor shall negotiate, after consultation with the Colorado limited gaming control commission created in section 12-47.1-301, with the Indian tribe in good faith to enter such a compact.

Source: L. 91: Entire article added, p. 1579, § 2, effective June 4.

12-47.2-102. Effective date of compact. The tribal-state compact entered into between the governor and an Indian tribe governing gaming activities on the Indian lands of the Indian tribe shall take effect when notice of approval of such compact by the secretary of the federal department of the interior has been published by said secretary in the federal register.

Source: L. 91: Entire article added, p. 1579, § 2, effective June 4.

12-47.2-103. Provisions of compact. (1) Any tribal-state compact entered into pursuant to section 12-47.2-101 may include, but shall not be limited to, the following provisions:

- (a) The application of the criminal and civil laws and regulations of the Indian tribe or of this state that are directly related to, and necessary for, the licensing and regulation of such activity;
 - (b) The allocation of criminal and civil jurisdiction between this state and the Indian tribe necessary for the enforcement of such laws and regulations;
 - (c) The assessment by this state of such activities in such amounts as are necessary to defray the costs of regulating such activity;
 - (d) Taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by this state for comparable activities;
 - (e) Remedies for breach of contract;
 - (f) Standards for the operation of such activity and maintenance of the gaming facility, including licensing; and
 - (g) Any other subjects that are directly related to the operation of gaming activities.
- (2) It is the intent of the general assembly that the restrictions set forth in section 9 of article XVIII of the state constitution shall apply to limited gaming activities on tribal lands.

Source: L. 91: Entire article added, p. 1580, § 2, effective June 4.

ARTICLE 48

Liquors - Special Event Permits

12-48-101.	Special licenses authorized.	12-48-104.	Fees for special permits.
12-48-102.	Qualifications of organizations for permit - qualifications of municipalities or municipalities owning arts facilities - qualifications of candidates.	12-48-105.	Restrictions related to permits.
		12-48-106.	Grounds for denial of special permit.
		12-48-107.	Applications for special permit.
12-48-103.	Grounds for issuance of special permits.	12-48-108.	Exemptions.

12-48-101. Special licenses authorized. The state or local licensing authority, as defined in articles 46 and 47 of this title, may issue a special event permit for the sale, by the drink only, of fermented malt beverages, as defined in section 12-46-103, or the sale, by the drink only, of malt, spirituous, or vinous liquors, as defined in section 12-47-103, to organizations and political candidates qualifying under this article, subject to the applicable provisions of articles 46 and 47 of this title and to the limitations imposed by this article.

Source: L. 71: p. 866, § 1. C.R.S. 1963: § 75-3-1. L. 76: Entire section amended, p. 507, § 1, effective April 30. L. 83: Entire section amended, p. 563, § 1, effective May 26. L. 2011: Entire section amended, (SB 11-066), ch. 206, p. 879, § 1, effective August 10.

12-48-102. Qualifications of organizations for permit - qualifications of municipalities or municipalities owning arts facilities - qualifications of candidates. (1) A special event permit issued under this article may be issued to an organization, whether or not presently licensed under articles 46 and 47 of this title, which has been incorporated under the laws of this state for purposes of a social, fraternal, patriotic, political, or athletic nature, and not for pecuniary gain, or which is a regularly chartered branch, lodge, or chapter of a national organization or society organized for such purposes and being nonprofit in nature, or which is a regularly established religious or philanthropic institution, or which is a state institution of higher education, and to any political candidate who has filed the necessary reports and statements with the secretary of state pursuant to article 45 of title 1, C.R.S. For purposes of this article, a state institution of higher education includes each principal campus of a state system of higher education.

(2) A special event permit may be issued to any municipality owning arts facilities at which productions or performances of an artistic or cultural nature are presented for use at such facilities, subject to the provisions of this article.

Source: L. 71: p. 866, § 1. C.R.S. 1963: § 75-3-2. L. 81: Entire section amended, p. 802, § 4, effective May 26. L. 83: (1)(a) amended, p. 563, § 2, effective May 25. L. 2011: (1) amended, (HB 11-1301), ch. 297, p. 1423, § 14, effective August 10.

Editor's note: The provisions in this section were renumbered in 1999 for ease of location.

12-48-103. Grounds for issuance of special permits.

(1) Repealed.

(2) (a) A special event permit may be issued under this section notwithstanding the fact that the special event is to be held on premises licensed under the provisions of section 12-47-403, 12-47-403.5, 12-47-416, 12-47-417, or 12-47-422. The holder of a special event permit issued pursuant to this subsection (2) shall be responsible for any violation of article 47 of this title.

(b) If a violation of this article or of article 47 of this title occurs during a special event wine festival and the responsible licensee can be identified, such licensee may be charged and the appropriate penalties may apply. If the responsible licensee cannot be identified, the

state licensing authority may send written notice to every licensee identified on the permit applications and may fine each the same dollar amount. Such fine shall not exceed twenty-five dollars per licensee or two hundred dollars in the aggregate. No joint fine levied pursuant to this paragraph (b) shall apply to the revocation of a limited wineries license under section 12-47-601.

(3) Nothing in this article shall be construed to prohibit the sale or dispensing of malt, vinous, or spirituous liquors on any closed street, highway, or public byway for which a special event permit has been issued.

Source: L. 71: p. 866, § 1. C.R.S. 1963: § 75-3-3. L. 76: Entire section amended, p. 507, § 2, effective April 30. L. 81: (2) and (3) amended, p. 816, § 1, effective June 12. L. 83: (2) amended, p. 565, § 1, effective May 4; (1) amended, p. 564, § 3, effective May 25. L. 97: (2) amended, p. 301, § 11, effective July 1. L. 2004: (2) amended, p. 1084, § 1, effective May 25. L. 2008: (2)(a) amended, p. 1557, § 6, effective July 1. L. 2011: (1) repealed, (SB 11-066), ch. 206, p. 879, § 2, effective August 10.

12-48-104. Fees for special permits. (1) Special event permit fees are:

(a) Ten dollars per day for a malt beverage permit;

(b) Twenty-five dollars per day for a malt, vinous, and spirituous liquor permit.

(2) All fees are payable in advance to the department of revenue for applications for special event permits submitted to the state licensing authority for approval.

Source: L. 71: p. 867, § 1. C.R.S. 1963: § 75-3-4. L. 2011: (2) amended, (SB 11-066), ch. 206, p. 880, § 3, effective August 10.

12-48-105. Restrictions related to permits. (1) Each special event permit shall be issued for a specific location and is not valid for any other location.

(2) A special event permit authorizes sale of the beverage or the liquors specified only during the following hours:

(a) Between the hours of five a.m. of the day specified in a malt beverage permit and until twelve midnight on the same day;

(b) Between the hours of seven a.m. of the day specified in a malt, vinous, and spirituous liquor permit and until two a.m. of the day immediately following.

(3) The state or a local licensing authority shall not issue a special event permit to any organization for more than fifteen days in one calendar year.

(4) No issuance of a special event permit shall have the effect of requiring the state or local licensing authority to issue such a permit upon any subsequent application by an organization.

(5) Sandwiches or other food snacks shall be available during all hours of service of malt, spirituous, or vinous liquors, but prepared meals need not be served.

Source: L. 71: p. 867, § 1. C.R.S. 1963: § 75-3-5. L. 76: (3) and (4) amended and (5) added, p. 508, § 3, effective April 30. L. 2011: (3) amended, (SB 11-066), ch. 206, p. 880, § 4, effective August 10.

12-48-106. Grounds for denial of special permit. (1) The state or local licensing authority may deny the issuance of a special event permit upon the grounds that the issuance would be injurious to the public welfare because of the nature of the special event, its location within the community, or the failure of the applicant in a past special event to conduct the event in compliance with applicable laws.

(2) Public notice of the proposed permit and of the procedure for protesting issuance of the permit shall be conspicuously posted at the proposed location for at least ten days before approval of the permit by the local licensing authority.

Source: L. 71: p. 867, § 1. C.R.S. 1963: § 75-3-6. L. 76: Entire section R&RE, p. 508, § 4, effective April 30. L. 2011: (1) amended, (SB 11-066), ch. 206, p. 880, § 5, effective August 10.

12-48-107. Applications for special permit. (1) Applications for a special event permit shall be made with the appropriate local licensing authority on forms provided by the state licensing authority and shall be verified by oath or affirmation of an officer of the organization or of the political candidate making application.

(2) In addition to the fees provided in section 12-48-104, an applicant shall include payment of a fee established by the local licensing authority, not to exceed one hundred dollars, for both investigation and issuance of a permit. Upon approval of any application, the local licensing authority shall notify the state licensing authority of the approval, except as provided by subsection (5) of this section. The state licensing authority shall promptly act and either approve or disapprove the application. In reviewing an application, the local licensing authority shall apply the same standards for approval and denial applicable to the state licensing authority under this article.

(3) The local licensing authority shall cause a hearing to be held if, after investigation and upon review of the contents of any protest filed by affected persons, sufficient grounds appear to exist for denial of a permit. Any protest shall be filed by affected persons within ten days after the date of notice pursuant to section 12-48-106 (2). Any hearing required by this subsection (3) or any hearing held at the discretion of the local licensing authority shall be held at least ten days after the initial posting of the notice, and notice thereof shall be provided the applicant and any person who has filed a protest.

(4) The local licensing authority may assign all or any portion of its functions under this article to an administrative officer.

(5) (a) A local licensing authority may elect not to notify the state licensing authority to obtain the state licensing authority's approval or disapproval of an application for a special event permit. The local licensing authority is required only to report to the liquor enforcement division, within ten days after it issues a permit, the name of the organization to which a permit was issued, the address of the permitted location, and the permitted dates of alcohol beverage service.

(b) A local licensing authority electing not to notify the state licensing authority shall promptly act upon each application and either approve or disapprove each application for a special event permit.

(c) The state licensing authority shall establish and maintain a web site containing the statewide permitting activity of organizations that receive permits under this article. In order to ensure compliance with section 12-48-105 (3), which restricts the number of permits issued to an organization in a calendar year, the local licensing authority shall access information made available on the web site of the state licensing authority to determine the statewide permitting activity of the organization applying for the permit. The local licensing authority shall consider compliance with section 12-48-105 (3) before approving any application.

Source: L. 71: p. 867, § 1. C.R.S. 1963: § 75-3-7. L. 76: (2) amended and (3) and (4) added, p. 508, § 5, effective May 25. L. 83: (1) amended, p. 564, § 4, effective May 25. L. 84: (2) amended, p. 431, § 25, effective July 1. L. 2007: (2) amended, p. 600, § 2, effective August 3. L. 2011: (2) amended and (5) added, (SB 11-066), ch. 206, p. 880, § 6, effective August 10.

12-48-108. Exemptions. An organization otherwise qualifying under section 12-48-102 shall be exempt from the provisions of this article and shall be deemed to be dispensing gratuitously and not to be selling fermented malt beverages or malt, spirituous, or vinous liquors when it serves, by the drink, fermented malt beverages or malt, spirituous, or vinous liquors to its members and their guests at a private function held by such organization on unlicensed premises so long as any admission or other charge, if any, required to be paid or given by any such member as a condition to entry or participation in the event is uniform as to all without regard to whether or not a member or such member's guest consumes or does not consume such beverages or liquors. For purposes of this section, all invited attendees at a private function held by a state institution of higher education shall be considered members or guests of the institution.

Source: **L. 81:** Entire section added, p. 812, § 2, effective July 1. **L. 2011:** Entire section amended, (HB 11-1301), ch. 297, p. 1423, § 15, effective August 10.

ARTICLE 48.5

Massage Parlor Code

12-48.5-101.	Short title.	12-48.5-111.	Violations and penalty.
12-48.5-102.	Legislative declaration.	12-48.5-112.	Powers of peace officers, local licensing authority.
12-48.5-103.	Definitions.	12-48.5-113.	Building plans to accompany application.
12-48.5-104.	Licensing - general provisions.	12-48.5-114.	Public notice - posting and publication.
12-48.5-105.	Application to local licensing authority - issuance.	12-48.5-115.	Results of investigation - decision of authorities.
12-48.5-106.	Refusal of license by local licensing authority.	12-48.5-116.	Restrictions for applications for new licenses.
12-48.5-107.	Suspension and revocation.	12-48.5-117.	Local option.
12-48.5-108.	Persons prohibited as licensees.	12-48.5-118.	Local government regulation.
12-48.5-109.	License fees.	12-48.5-119.	Repeal of article - review of functions.
12-48.5-110.	Unlawful acts.		

12-48.5-101. Short title. This article shall be known and may be cited as the “Colorado Massage Parlor Code”.

Source: **L. 77:** Entire article added, p. 733, § 1, effective July 1.

12-48.5-102. Legislative declaration. (1) The general assembly hereby declares that this article shall be deemed an exercise of the police powers of the state for the protection of the economic and social welfare and the health, welfare, and safety of the people of this state.

(2) The general assembly further declares that the licensing and regulation of massage parlors are matters of statewide concern; therefore, this article shall be applicable in every city, town, county, and city and county in this state.

Source: **L. 77:** Entire article added, p. 733, § 1, effective July 1.

ANNOTATION

The Colorado Massage Parlor Code is not unconstitutionally vague so as to violate due process of law; nor is it in violation of equal protection of the laws or the principle of constitutional overbreadth. *Regency Servs. v. Bd. of Co. Comm’rs*, 819 P. 2d 1049 (Colo. 1991).

There is no fundamental right to operate a massage parlor; therefore, a rational basis

standard of review is applied to determine the validity of massage parlor regulations. *Regency Servs. v. Bd. of Co. Comm’rs*, 819 P. 2d 1049 (Colo. 1991).

Applied in *R & F Enters., Inc. v. Bd. of County Comm’rs*, 199 Colo. 137, 606 P.2d 64 (1980).

12-48.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “License” means a grant to a licensee to operate a massage parlor.

(2) “Licensed premises” means the premises specified in an approved application for a license under this article which are owned or in the possession of the licensee and within which such licensee is authorized to carry on the practice of massage.

(3) “Local licensing authority” means the governing body of a municipality or city and county, the board of county commissioners of a county, or any authority designated by municipal or county charter, municipal ordinance, or county resolution.

(4) “Location” means a particular parcel of land that may be identified by an address or by other descriptive means.

(5) "Massage" means a method of treating the body for remedial or hygienic purposes, including but not limited to rubbing, stroking, kneading, or tapping with the hand or an instrument or both.

(6) "Massage parlor" means an establishment providing massage, but it does not include training rooms of public and private schools accredited by the state board of education or approved by the division charged with the responsibility of approving private occupational schools, training rooms of recognized professional or amateur athletic teams, and licensed health care facilities. A facility that is operated for the purpose of massage therapy performed by a massage therapist is not a massage parlor. For purposes of this subsection (6), "massage therapist" has the meaning set forth in section 12-35.5-103. For the purposes of this subsection (6), a massage therapy school may include an equivalency program approved by the state educational board or division charged with the responsibility of approving private occupational schools.

(7) "Person" means a natural person, partnership, association, company, corporation, organization, or managing agent, servant, officer, or employee of any of them.

(8) "Premises" means a distinct and definite location which may include a building, a part of a building, a room, or any other definite area contiguous thereto.

Source: L. 77: Entire article added, p. 733, § 1, effective July 1. L. 90: (6) amended, p. 827, § 1, effective April 16. L. 2008: (6) amended, p. 1981, § 1, effective July 1.

12-48.5-104. Licensing - general provisions. (1) All licenses granted pursuant to the provisions of this article shall be valid for a period of one year from the date of their issuance unless revoked or suspended pursuant to section 12-48.5-107.

(2) Application for the renewal of an existing license shall be made to the local licensing authority not less than forty-five days prior to the date of expiration. The local licensing authority may cause a hearing on the application for renewal to be held. No such renewal hearing shall be held by the local licensing authority until a notice of hearing has been conspicuously posted on the licensed premises for a period of ten days and notice of the hearing has been provided the applicant at least ten days prior to the hearing. The local licensing authority may refuse to renew any license for good cause, subject to judicial review.

(3) Upon receipt of an application for a license to operate a massage parlor, the local licensing authority shall, at its next regular meeting, set the boundaries of the neighborhood to be considered pursuant to subsection (4) of this section in determining whether or not to grant said license. At such time the applicant or any other interested party may attend and present evidence regarding said boundaries.

(4) Before granting any license, the local licensing authority shall consider, except where this article specifically provides otherwise, the reasonable requirements of the neighborhood, the desires of the inhabitants as evidenced by petitions, remonstrances, or otherwise, and all other reasonable restrictions which are or may be placed on the neighborhood by the local licensing authority.

(5) Each license issued under this article is separate and distinct, and no person shall exercise any of the privileges granted under any license other than that which he holds. A separate license shall be issued for each specific business or business entity and each geographical location.

(6) No license granted under the provisions of this article shall be transferable as to ownership except as provided in subsection (9) of this section.

(7) No changes of location for licensed premises shall be allowed.

(8) When a license has been issued to a husband and wife or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new license. All rights and privileges granted under the original license shall continue in full force and effect as to such survivors for the balance of the license.

(9) For any other transfer of ownership, application shall be made to the local licensing authority on forms prepared and furnished by the local licensing authority. In determining whether to permit a transfer of ownership, the local licensing authority shall consider only the requirements of section 12-48.5-108. The local licensing authority may cause a hearing

on the application for transfer of ownership to be held. No such hearing shall be held by the local licensing authority until the notice of hearing has been conspicuously posted on the licensed premises for a period of ten days and notice of the hearing has been provided the applicant at least ten days prior to the hearing.

(10) The licenses provided pursuant to this article shall specify the date of issuance, the period which is covered, the name of the licensee, and the premises licensed. Said license shall be conspicuously placed at all times in the massage parlor thereby licensed.

Source: L. 77: Entire article added, p. 734, § 1, effective July 1.

ANNOTATION

Councilman's actions not violative of due process. Where a councilman helps organize a petition drive in opposition to a proposed massage parlor and disqualifies himself from voting on the license application, then appears at, and participates in, the public hearing on the massage parlor license, such actions, while they create the appearance of impropriety, do not bias the quasi-judicial proceeding in violation of procedural due process. *Soon Yee Scott v. City of Englewood*, 672 P.2d 225 (Colo. App. 1983).

Appropriate guidelines for determining reasonable requirements of neighborhood. County commissioners regulations establishing

fees and location of massage parlors, requirements that employees possess identity cards, and restrictions on the transfer of a license were appropriate guidelines for determining the reasonable requirements of the neighborhood and were consistent with subsection (4). *JRM, Inc. v. Bd. of County Comm'rs*, 200 Colo. 384, 615 P.2d 31 (1980).

Applied in *Hide-A-Way Massage Parlor, Inc. v. Bd. of County Comm'rs*, 198 Colo. 175, 597 P.2d 564 (1979).

12-48.5-105. Application to local licensing authority - issuance. (1) Application for a license under the provisions of this article shall be made to the local licensing authority on forms prepared and furnished by the local licensing authority which shall set forth such information as the local licensing authority may require to enable the authority to determine whether a license should be granted. Such information shall include the name and address of the applicant and, if a partnership, also the names and addresses of all the partners and, if a corporation, association, or other organization, also the names and addresses of the president, vice-president, secretary, and managing officer, together with all other information deemed necessary by the local licensing authority. Each application shall be verified by the oath or affirmation of such persons as the local licensing authority may prescribe.

(2) (a) Before granting any license for which application has been made, the local licensing authority or one or more of its inspectors may visit and inspect the premises or property in which the applicant proposes to conduct his business and investigate the fitness to conduct such business of any person or officers and directors of any corporation applying for a license. In investigating the fitness of any applicant, licensee, or employee or agent of the licensee or applicant, the local licensing authority may have access to criminal history record information furnished by criminal justice agencies subject to any restrictions imposed by such agencies. In the event the local licensing authority takes into consideration information concerning the applicant's criminal history record, the local licensing authority shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of his application for a license.

(b) As used in this subsection (2), "criminal justice agency" means any federal, state, or municipal court or any governmental agency or subunit of such agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

(3) No application to have a massage parlor at a particular location by or on behalf of the same person shall be received or acted upon concerning a location for which, within two years preceding, the local licensing authority has refused to approve a license on the ground,

in whole or in part, that the licenses already granted for the particular locality were adequate for the reasonable requirements of the neighborhood and the desires of the inhabitants at the time of such refusal.

(4) Every applicant, licensee, or agent or employee of said applicant or licensee shall, prior to commencing work in or upon the licensed premises, obtain an identity card from the law enforcement agency within the licensing jurisdiction in a form prescribed by the local licensing authority and shall carry said identity card at all times while in or upon the licensed premises.

Source: L. 77: Entire article added, p. 735, § 1, effective July 1.

ANNOTATION

Applied in *R & F Enters., Inc. v. Bd. of County Comm'rs*, 199 Colo. 137, 606 P.2d 64 (1980).

12-48.5-106. Refusal of license by local licensing authority. The local licensing authority shall refuse a license if the premises on which the applicant proposes to conduct its business do not meet the requirements of this article, or if the character of the applicant or its officers or directors is such that violations of this article would be likely to result if a license were granted, or if, in its opinion, licenses already granted for the particular locality are adequate for the reasonable needs of the neighborhood.

Source: L. 77: Entire article added, p. 736, § 1, effective July 1.

12-48.5-107. Suspension and revocation. In addition to any other penalties prescribed by this article, the local licensing authority has the power, on its own motion or on complaint, after investigation and public hearing at which the licensee shall be afforded an opportunity to be heard, to suspend or revoke any license issued by such authority for any violation by the licensee or by any of its agents, servants, or employees of the provisions of this article, or of any of the rules or regulations authorized pursuant to this article, or of any of the terms, conditions, or provisions of the license issued by such authority. In addition, the local licensing authority, in its discretion, may revoke or elect not to renew a license if it determines that the licensed premises have been inactive for at least three months or, in the case of a license approved for a facility which has not been constructed, such facility has not been constructed and placed in operation within one year of approval of the license application or construction of the facility has not been commenced within one year of such approval. The local licensing authority has the power to administer oaths and issue subpoenas to require the presence of persons and production of papers, books, and records necessary to the determination of any hearing which the local licensing authority conducts.

Source: L. 77: Entire article added, p. 736, § 1, effective July 1.

12-48.5-108. Persons prohibited as licensees. (1) No license provided by this article shall be issued to or held by:

(a) Any corporation, any of whose officers, directors, or stockholders holding over ten percent of the outstanding initial capital stock thereof are not of good moral character;

(b) Any partnership, association, or company, any of whose officers, or any of whose members holding more than ten percent interest therein, are not of good moral character;

(c) Any person employing, assisted by, or financed in whole or in part by any other person who is not of good moral character satisfactory to the local licensing authority;

(d) A peace officer or any of the local licensing authority's inspectors or employees;

(e) Any person unless such person is of moral character and has a record that is satisfactory to the local licensing authority.

Source: L. 77: Entire article added, p. 736, § 1, effective July 1. L. 2002: (1)(c) and (1)(e) amended, p. 116, § 4, effective March 26. L. 2003: (1)(d) amended, p. 1631, § 74, effective August 6.

ANNOTATION

Standard of conduct in this section is sufficiently defined to provide adequate notice to license applicants and their employees. R & F Enters., Inc. v. Bd. of County Comm'rs, 199 Colo. 137, 606 P.2d 64 (1980).

Local government must state standards for determining whether an applicant's character and reputation is satisfactory for the granting of a license under the Colorado Massage Parlor Code. Hide-A-Way Massage Parlor, Inc. v. Bd. of County Comm'rs, 198 Colo. 175, 597 P.2d 564 (1979).

"Reputation", is unconstitutionally vague and cannot suffice as standard of conduct since it connotes merely an "opinion of the community". R & F Enters., Inc. v. Bd. of County Comm'rs, 199 Colo. 137, 606 P.2d 64 (1980).

Meaning of "good moral character", "good character", or "character" includes the applicant's, or his employees', propensities toward criminal conduct and a criminal record, if any, taking into account such record as ameliorated by any rehabilitation. The criminal conduct referred to is limited to felonies or other offenses involving moral turpitude. R & F Enters., Inc. v. Bd. of County Comm'rs, 199 Colo. 137, 606 P.2d 64 (1980).

"Record", as used in the Massage Parlor Code, refers to the criminal record of the applicant, or that of his employee when determining the "good character" of the employee. R & F Enters., Inc. v. Bd. of County Comm'rs, 199 Colo. 137, 606 P.2d 64 (1980).

Employee who engaged in act of prostitution is "not of good character" within the meaning of this section. R & F Enters., Inc. v. Bd. of County Comm'rs, 199 Colo. 137, 606 P.2d 64 (1980).

Appropriate guidelines for determining reasonable requirements of neighborhoods. County commissioners regulations establishing fees and location of massage parlors, requirements that employees possess identity cards, and restrictions on the transfer of a license were appropriate guidelines for determining the reasonable requirements of the neighborhood and were consistent with § 12-48.5-104 (4). JRM, Inc. v. Bd. of County Comm'rs, 200 Colo. 384, 615 P.2d 31 (1980).

Board of county commissioners is not restricted to inquiring into prior felony convictions in making an examination of an applicant for a massage parlor license. JRM, Inc. v. Bd. of County Comm'rs, 200 Colo. 384, 615 P.2d 31 (1980).

12-48.5-109. License fees. (1) The following license fees shall be paid to the local licensing authority annually in advance:

(a) For the issuance of a new license, an amount to be set by the local licensing authority, but in no event to exceed three hundred fifty dollars;

(b) For each renewal of a license, an amount to be set by the local licensing authority, but in no event to exceed one hundred fifty dollars.

Source: L. 77: Entire article added, p. 737, § 1, effective July 1.

12-48.5-110. Unlawful acts. (1) It is unlawful for any person:

(a) To operate a massage parlor without holding a validly issued local license;

(b) To work in or upon the licensed premises of a massage parlor without obtaining and carrying a valid identity card pursuant to section 12-48.5-105 (4);

(c) To obtain the services provided in a massage parlor by misrepresentation of age or by any other method in any place where massage is practiced when such person is under eighteen years of age, unless such person is accompanied by his parent or has a physician's prescription for massage services;

(d) To allow the sale, giving, or procuring of any massage services to any person under the age of eighteen years, unless such person is accompanied by his parent or has a physician's prescription for massage services;

(e) To permit any person under the age of eighteen years to be employed as an employee in a massage parlor. If any person who, in fact, is not eighteen years of age exhibits a fraudulent proof of age, any action relying on such fraudulent proof of age shall not constitute grounds for the revocation or suspension of any license issued under this

article unless the person employing such person knew or should have known that said proof of age was fraudulent.

(f) To operate a massage parlor while failing to display at all times in a prominent place on the licensed premises a printed card with a minimum height of fourteen inches and a width of eleven inches with each letter a minimum of one-half inch in height, which shall read as follows:

WARNING

IT IS ILLEGAL FOR ANY PERSON UNDER EIGHTEEN YEARS OF AGE TO BE IN OR UPON THESE PREMISES AT ANY TIME, UNLESS HE OR SHE IS ACCOMPANIED BY HIS OR HER PARENT OR HAS A PHYSICIAN'S PRESCRIPTION FOR MASSAGE SERVICES.

IT IS ILLEGAL FOR ANY PERSON TO ALLOW A PERSON UNDER EIGHTEEN YEARS OF AGE TO BE IN OR UPON THESE PREMISES AT ANY TIME, UNLESS HE OR SHE IS ACCOMPANIED BY HIS OR HER PARENT OR HAS A PHYSICIAN'S PRESCRIPTION FOR MASSAGE SERVICES.

PART 5 OF ARTICLE 3 OF TITLE 18, COLORADO REVISED STATUTES, PROHIBITS TRAFFICKING OF ADULTS, TRAFFICKING OF CHILDREN, AND COERCION OF INVOLUNTARY SERVITUDE AND ESTABLISHES CRIMINAL PENALTIES FOR THESE OFFENSES.

FINES OR IMPRISONMENT MAY BE IMPOSED BY THE COURTS FOR VIOLATION OF THESE PROVISIONS UNDER ARTICLE 48.5 OF TITLE 12, COLORADO REVISED STATUTES.

(g) To operate a massage parlor while failing to display at all times in a prominent place on the licensed premises a printed card with a minimum height of fourteen inches and a width of eleven inches with each letter a minimum of one-half inch in height, which provides the name and contact information of a state or local organization that provides services or other assistance to victims of human trafficking.

Source: L. 77: Entire article added, p. 737, § 1, effective July 1. L. 2012: (1)(f) amended and (1)(g) added, (HB 12-1151), ch. 174, p. 622, § 5, effective August 8.

12-48.5-111. Violations and penalty. (1) Any person violating any of the provisions of this article or any of the rules and regulations authorized and adopted pursuant thereto is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars for each offense, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. The court trying such offense may decree that any license theretofore issued under the provisions of this article or of any law relating to the operation of massage parlors where such offense was committed be suspended or revoked and may decree that no license for the operation of a massage parlor shall thereafter be issued to any such person for a period not to exceed five years.

(2) The penalties provided in this section shall not be affected by the penalties provided in any other section of this article but shall be construed to be an addition to any other penalties.

(3) Any adult who causes a violation of the provisions of section 12-48.5-110 (1) (d) to (1) (f) may be proceeded against pursuant to section 18-6-701, C.R.S., for contributing to the delinquency of a minor.

Source: L. 77: Entire article added, p. 738, § 1, effective July 1. L. 87: (3) amended, p. 813, § 5, effective October 1.

12-48.5-112. Powers of peace officers, local licensing authority. The peace officers of the city, town, county, or city and county or the duly authorized representatives of the local

licensing authority authorized to enforce the provisions of this article, while engaged in performing their duties and while acting under proper orders or regulations, shall have and exercise all the powers vested in peace officers of the state, including the power to arrest and the authority to issue summons for violations of the provisions of this article.

Source: L. 77: Entire article added, p. 738, § 1, effective July 1.

12-48.5-113. Building plans to accompany application. At the time of filing the application for the issuance of a license, the applicant shall file complete plans and specifications for the interior of the building if the building to be occupied is in existence at the time. If the building is not in existence, the applicant shall, in addition to the plans and specifications for the interior, submit an architect's drawing of the building to be constructed.

Source: L. 77: Entire article added, p. 738, § 1, effective July 1.

12-48.5-114. Public notice - posting and publication. (1) Upon receipt of an application, except an application for renewal or for transfer of ownership, the local licensing authority shall schedule a public hearing upon the application not less than thirty days from the date of the application and shall post and publish the public notice thereof not less than ten days prior to such hearing. Public notice shall be given by the posting of a sign in a conspicuous place on the premises for which application has been made and by publication in a newspaper of general circulation in the municipality or county in which the premises are located.

(2) Notice given by posting shall include a sign of suitable material, not less than twenty-two inches wide and twenty-six inches high, composed of letters not less than one inch in height and stating the type of license applied for, the date of the application, the date of the hearing, the name and address of the applicant, and such other information as may be required to fully apprise the public of the nature of the application. If the applicant is a partnership, the sign shall contain the names and addresses of all partners, and, if the applicant is a corporation, association, or other organization, the sign shall contain the names and addresses of the president, vice-president, secretary, and manager or other managing officers.

(3) Notice given by publication shall contain the same information as that required for signs.

(4) If the building in which the massage parlor is to be operated is in existence at the time of the application, any sign posted as required in subsections (1) and (2) of this section shall be placed so as to be conspicuous and plainly visible to the general public. If the building is not constructed at the time of the application, the applicant shall post the premises upon which the building is to be constructed in such a manner that the notice shall be conspicuous and plainly visible to the general public.

(5) (a) At the public hearing held pursuant to this section, any party in interest shall be allowed to present evidence and cross-examine witnesses.

(b) As used in this subsection (5), "party in interest" includes the applicant, a resident of the neighborhood under consideration, or the owner or manager of a business located in the neighborhood under consideration.

(6) The local licensing authority, in its discretion, may limit the presentation of evidence and cross-examination so as to prevent repetitive and cumulative evidence or examination.

Source: L. 77: Entire article added, p. 738, § 1, effective July 1.

12-48.5-115. Results of investigation - decision of authorities. (1) Not less than five days prior to the date of the hearing, the local licensing authority shall make known its findings based upon its investigation, in writing, to the applicant and other interested parties.

The local licensing authority has authority to refuse to issue any license for good cause, subject to judicial review.

(2) Before entering any decision approving or denying the application, the local licensing authority shall consider, except where this article specifically provides otherwise, the facts and evidence produced as a result of its investigation, including the reasonable requirements of the neighborhood for the license for which application has been made, the desires of the inhabitants, the number, type, and availability of other massage parlors located in or near the neighborhood under consideration, and any other pertinent matters affecting qualifications of the applicant for the conduct of the business proposed.

(3) Any decision of a local licensing authority approving or denying an application shall be in writing stating the reasons therefor and shall be made within thirty days after the date of the public hearing, and a copy of such decision shall be sent by certified mail to the applicant at the address shown in the application.

(4) No license shall be issued by any local licensing authority after approval of an application until the building in which the business is to be conducted is ready for occupancy with such furniture, fixtures, and equipment in place as are necessary to comply with the provisions of this article, and then only after inspection of the premises has been made by the licensing authority to determine that the applicant has complied with the architect's drawing and plans and specifications submitted upon application.

Source: L. 77: Entire article added, p. 739, § 1, effective July 1.

12-48.5-116. Restrictions for applications for new licenses. (1) No application for the issuance of any license authorized by this article shall be received or acted upon:

(a) If, within two years next preceding the date of the application, the local licensing authority has denied an application at the same location for the reason that the reasonable requirements of the neighborhood and the desires of the inhabitants were satisfied by the existing outlets;

(b) Until it is established that the applicant is, or will be, entitled to possession of the premises for which application is made under a lease, rental agreement, or other arrangement for possession of the premises or by virtue of the ownership thereof;

(c) For a location in an area where the operation of a massage parlor as contemplated is not permitted under the applicable zoning laws of the municipality, city and county, or county.

Source: L. 77: Entire article added, p. 740, § 1, effective July 1.

12-48.5-117. Local option. The application of this article shall be statewide unless any city, city and county, county, or incorporated town by a majority of the registered electors of any of them, voting at any regular election or special election called for that purpose in accordance with the election laws of this state or of the political subdivision concerned, decides against the right to operate massage parlors as provided by this article within its limits. Said local option question shall be submitted only upon a petition signed by not less than fifteen percent of the registered electors in said political subdivision; otherwise, the procedure with reference to the calling and holding of such election shall be substantially in accordance with the election laws of the state or of any of said local subdivisions. The expenses of such election shall be borne by the local subdivision in which said election is held. The question of the prohibition of the operation of massage parlors shall not be submitted to the voters more than once in any four-year period. If the question is passed in the election, licenses issued shall remain in effect but shall not be renewed after the effective date of prohibition according to the local option election.

Source: L. 77: Entire article added, p. 740, § 1, effective July 1. L. 87: Entire article amended, p. 305, § 20, effective July 1.

12-48.5-118. Local government regulation. This article is intended to provide minimum standards for the licensing of massage parlors. Nothing in this article shall prohibit a

local government from enacting an ordinance or resolution providing more stringent standards for such licensing, but such ordinance shall meet the minimum standards established by this article.

Source: L. 77: Entire article added, p. 740, § 1, effective July 1.

ANNOTATION

Local government must define and give notice of standards. While a local government may apply, in massage parlor cases, more stringent standards than those required by the Colorado Massage Parlor Code, it may not do so without clearly defining those standards and giving fair notice of what evidence it will consider in determining whether its requirements have been met. *Hide-A-Way Massage Parlor, Inc. v. Bd. of County Comm'rs*, 198 Colo. 175, 597 P.2d 564 (1979).

Appropriate guidelines for determining reasonable requirements of neighborhood. County commissioners regulations establishing fees and location of massage parlors, require-

ments that employees possess identity cards, and restrictions on the transfer of a license were appropriate guidelines for determining the reasonable requirements of the neighborhood and were consistent with § 12-48.5-104 (4). *JRM, Inc. v. Bd. of County Comm'rs*, 200 Colo. 384, 615 P.2d 31 (1980).

Consideration of evidence of sex acts in operation of massage parlors was proper for license. Consideration by board of county commissioners of evidence of sex acts and nudity in the operation of massage parlors by applicants for a massage parlor license was proper and could be considered. *JRM, Inc. v. Bd. of County Comm'rs*, 200 Colo. 384, 615 P.2d 31 (1980).

12-48.5-119. Repeal of article - review of functions. This article is repealed, effective July 1, 2015. Prior to such repeal, the licensing functions of the local licensing authorities shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 88: Entire section added, p. 930, § 10, effective April 28. **L. 91:** Entire section amended, p. 684, § 33, effective April 20. **L. 92:** Entire section amended, p. 2013, § 1, effective March 24. **L. 2002:** Entire section amended, p. 116, § 1, effective March 26.

ARTICLE 49

Merchants - Chain Store License

12-49-101 to 12-49-111. (Repealed)

Source: L. 85: Entire article repealed, p. 1284, § 4, effective January 1, 1986.

Editor's note: This article was numbered as article 3 of chapter 85, C.R.S. 1963. For amendments to this article prior to its repeal in 1986, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 50

Merchants - Dealers, Transient

12-50-101 to 12-50-113. (Repealed)

Source: L. 83: Entire article repealed, p. 566, § 1, effective July 1, 1983.

Editor's note: This article was numbered as article 2 of chapter 85, C.R.S. 1963. For amendments to this article prior to its repeal in 1983, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 51

Merchants - Mercantile Licenses

12-51-101.	License required to sell.	12-51-106.	Operating without license - penalty.
12-51-102.	County commissioners grant licenses.	12-51-107.	Theatres - circuses included.
12-51-103.	License shall authorize.	12-51-108.	Officials to report fines.
12-51-104.	Clerk may grant permit - when.	12-51-109.	Prosecutors competent witnesses.
12-51-105.	County board to examine permits.	12-51-110.	Recovering of penalties.
		12-51-111.	Appeal.

12-51-101. License required to sell. No auctioneer, or other person, or corporation shall be permitted to sell, vend, or retail, either at private sale or public auction, any goods, wares, or merchandise without first obtaining a license for that purpose, as provided in sections 12-51-102, 12-51-104, and 12-51-105. This section shall not extend to any person selling produce, provisions, or mining tools.

Source: R.S. p. 424, § 1. G.L. § 1618. G.S. § 2096. R.S. 08: § 3985. C.L. § 3730. CSA: C. 100, § 1. CRS 53: § 85-1-1. C.R.S. 1963: § 85-1-1.

Cross references: For licenses to operate public livestock markets, see article 55 of title 35.

ANNOTATION

A license is not a contract; it confers the right to do that which without it would be unlawful. *People v. Raims*, 20 Colo. 489, 39 P. 341 (1895).

A state, through its general assembly, may require a license to engage in any trade, business, or profession, but such license must be uniform, and not discriminate in favor of one

class and against another, nor in favor of its own citizens as against those of other states or require a license which will constitute a regulation of interstate commerce. *Ames v. People*, 25 Colo. 508, 55 P. 725 (1898).

For construction of former law, see *Ames v. People*, 25 Colo. 508, 55 P. 725 (1898).

12-51-102. County commissioners grant licenses. The board of county commissioners of the respective counties in this state have power to grant such licenses on the payment into the county treasury by the applicant for such license of a sum, to be assessed by said commissioners, of not less than five nor more than one hundred dollars.

Source: R.S. p. 424, § 2. G.L. § 1619. G.S. § 2097. L. 1887: p. 338, § 1. R.S. 08: § 3986. C.L. § 3731. CSA: C. 100, § 2. CRS 53: § 85-1-2. C.R.S. 1963: § 85-1-2.

ANNOTATION

This article is not one for revenue only. *Downes v. McClellan*, 72 Colo. 204, 210 P. 397 (1922).

It is one related to the exercise of the police power and to regulate the businesses enumerated. *Downes v. McClellan*, 72 Colo. 204, 210 P. 397 (1922).

The power to license in such cases includes the power to refuse a license, even where statutory or preliminary requirements are com-

plied with. *Downes v. McClellan*, 72 Colo. 204, 210 P. 397 (1922).

The power to refuse a license necessarily means having a discretion to grant or refuse, and mandamus will not lie to compel the granting of a license where it is not alleged and shown that the exercise of such discretion was arbitrary. *Downes v. McClellan*, 72 Colo. 204, 210 P. 397 (1922); *Van DeVegt v. Bd. of County Comm'rs*, 98 Colo. 161, 55 P.2d 703 (1936).

12-51-103. License shall authorize. Such license shall authorize the person receiving it to vend, sell, and retail goods, wares, and merchandise within said county for one year from the time of granting the same.

Source: R.S. p. 424, § 3. G.L. § 1620. G.S. § 2098. R.S. 08: § 3897. C.L. § 3732. CSA: C. 100, § 3. CRS 53: § 85-1-3. C.R.S. 1963: § 85-1-3.

12-51-104. Clerk may grant permit - when. If the board of county commissioners is not in session when the application is made, the clerk of the county may grant a written permission to the applicant to vend, sell, and retail goods, wares, and merchandise until the end of the next session of the board of county commissioners, or if said board takes no action upon the case, for the term provided in section 12-51-103. At the time of granting such license the clerk may assess the amount to be paid by the applicant, which shall be paid into the county treasury.

Source: R.S. p. 424, § 4. G.L. § 1621. G.S. § 2099. R.S. 08: § 3988. C.L. § 3733. CSA: C. 100, § 4. CRS 53: § 85-1-4. C.R.S. 1963: § 85-1-4.

12-51-105. County board to examine permits. When a permit is granted by the clerk, in vacation, it is the duty of the board of county commissioners, at their next meeting thereafter, to examine such permit and, if approved, to proceed forthwith to assess the amount to be paid for licenses as in the case of original applications. If the board of county commissioners does not approve the same, the license shall be vacated, and no other sum shall be required to be paid than fixed by the clerk.

Source: R.S. p. 424, § 5. G.L. § 1622. G.S. § 2100. R.S. 08: § 3989. C.L. § 3734. CSA: C. 100, § 5. CRS 53: § 85-1-5. C.R.S. 1963: § 85-1-5.

12-51-106. Operating without license - penalty. If any person carries on or transacts any business or occupation without a license therefor, when such license is required by any law of this state, such person is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Source: R.S. p. 426, § 17. G.L. § 1634. G.S. § 2112. R.S. 08: § 3999. C.L. § 3739. CSA: C. 100, § 8. CRS 53: § 85-1-6. C.R.S. 1963: § 85-1-6.

12-51-107. Theatres - circuses included. This article shall extend to and include all theatres, circuses, and shows where an admission fee is charged for entrance thereto.

Source: R.S. p. 426, § 18. G.L. § 1635. G.S. § 2113. R.S. 08: § 4000. C.L. § 3740. CSA: C. 100, § 9. CRS 53: § 85-1-7. C.R.S. 1963: § 85-1-7.

ANNOTATION

In this article, as originally enacted, no mention was made therein of theaters, circuses, menageries, or the like. *Godfrey v. Bd. of County Comm'rs*, 53 Colo. 196, 124 P. 190 (1912).

A later statute not expressly amending the former, imposed a fine upon any person who, without a license, should assume to carry on a business for which a license is required "by any law of this territory", and this was followed by a provision in these words, "This act shall ex-

tend to theaters, circuses, and shows where an admission fee is charged", therefore the county was authorized thereby to exact a license fee, though no statute prescribed the fee or rate to be charged for such an exhibition. *Godfrey v. Bd. of County Comm'rs*, 53 Colo. 196, 124 P. 190 (1912).

Former section did not forbid the opening of a theater on the Sabbath or Lord's day. *People v. Mooney*, 87 Colo. 567, 290 P. 271 (1930).

12-51-108. Officials to report fines. Every official to whom any fines or penalties imposed by this article shall be paid for the use of the county, at the next meeting of the board of county commissioners, shall make a report of the amount thereof and pay the same into the county treasury.

Source: R.S. p. 426, § 19. G.L. § 1636. G.S. § 2114. R.S. 08: § 4001. C.L. § 3741. CSA: C. 100, § 10. CRS 53: § 85-1-8. C.R.S. 1963: § 85-1-8.

12-51-109. Prosecutors competent witnesses. Persons prosecuting or giving information under the provisions of this article are competent witnesses on the trial.

Source: R.S. p. 427, § 20. G.L. § 1637. G.S. § 2115. R.S. 08: § 4002. C.L. § 3742. CSA: C. 100, § 11. CRS 53: § 85-1-9. C.R.S. 1963: § 85-1-9.

12-51-110. Recovering of penalties. Penalties incurred by a violation of the provisions of this article may be recovered by an action in the name of the people of the state of Colorado for the use of the proper county before any court of competent jurisdiction of the proper county upon complaint of any citizen of such county.

Source: R.S. p. 427, § 21. G.L. § 1638. G.S. § 2116. R.S. 08: § 4003. C.L. § 3743. CSA: C. 100, § 12. CRS 53: § 85-1-10. C.R.S. 1963: § 85-1-10. L. 64: p. 288, § 220.

12-51-111. Appeal. Appeals and petitions for certiorari may be taken from proceedings had under the provisions of this article as in other cases.

Source: R.S. p. 427, § 22. G.L. § 1639. G.S. § 2117. R.S. 08: § 4004. C.L. § 3744. CSA: C. 100, § 13. CRS 53: § 85-1-11. C.R.S. 1963: § 85-1-11.

ARTICLE 51.5

Manufactured Housing

12-51.5-101 to 12-51.5-207. (Repealed)

Editor’s note: (1) This article was added in 1975. For amendments to this article prior to its repeal in 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 12-51.5-102 (5)(b) provided for the repeal of this article, effective July 1, 1992. (See L. 91, p. 684.)

Cross references: For the “Mobile Home Park Act”, see part 2 of article 12 of title 38; for mobile home, manufactured housing, and factory-built housing standards, see part 33 of article 32 of title 24; for camper trailer and camper coach standards, see part 9 of article 32 of title 24.

ARTICLE 52

Money Transmitters

Cross references: For exemption of industrial banks from provisions of this article, see § 11-108-401 (13).

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PART 1

GENERAL PROVISIONS

12-52-101. Short title. This article shall be known and may be cited as the "Money Transmitters Act".

Source: L. 59: p. 703, § 2. CRS 53: § 125-8-2. C.R.S. 1963: § 125-7-2. L. 2004: Entire section amended, p. 525, § 10, effective April 21.

12-52-102. Legislative declaration. It is declared to be the policy of this state that checks, drafts, money orders, or other instruments for the transmission or payment of credit or money are widely used by the people of this state as a process of settling accounts or debts and that sellers and issuers of such instruments receive, in the aggregate, large sums of money from the people of this state and it is therefore imperative that the integrity, experience, and financial responsibility and reliability of those engaged in the various types of businesses dealing in such instruments be above reproach. In order that the people of this state may be safeguarded from default in the payment of these instruments, it is necessary that proper regulatory authority be established through the banking board. Any person who sells or issues such instruments without complying with the provisions of this article endangers the public interest.

Source: L. 59: p. 703, § 1. CRS 53: § 125-8-1. C.R.S. 1963: § 125-7-1. L. 88: Entire section amended, p. 418, § 13, effective April 11.

12-52-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Banking board" or "board" means the banking board created in section 11-102-103, C.R.S.

(1.5) "Commissioner" means the state bank commissioner appointed and serving pursuant to section 11-102-101 (2), C.R.S.

(1.7) "Engagement letter" means a letter that sets the scope and terms of an independent audit.

(2) "Exchange" means any check, draft, money order, or other instrument for the transmission or payment of money or credit. It does not mean money or currency of any nation.

(3) "Issuing" means the act of drawing any instrument of exchange by a person who engages in the business of drawing such instruments as a service or for a fee or other consideration.

(4) "Licensee" means any person duly licensed by the banking board pursuant to the provisions of this article.

(4.1) “Management letter” means a letter, written by the auditor to the management of a licensee, reporting the auditor’s findings and suggestions resulting from an independent audit.

(4.2) “Managing official” means a person who has significant oversight duties over a licensee or applicant as determined by the board.

(4.3) “Money transmission” means the sale or issuance of exchange or engaging in the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any and all means including but not limited to payment instrument, wire, facsimile, or electronic transfer.

(4.5) “Outstanding payment instrument” means any exchange sold or issued by a licensee or any exchange issued by the licensee which has been sold by an agent of the licensee in the United States, which has been reported to the licensee as having been sold and which has not yet been paid by or for the licensee.

(4.7) “Owner” means a person with an ownership interest in a licensee or applicant that is a sole proprietorship or partnership.

(5) “Person” means any natural person, firm, association, partnership, registered limited liability partnership, syndicate, joint stock company, unincorporated company or association, limited liability company, common law trust, or any corporation organized under the laws of the United States or of any state or territory of the United States or of any foreign country.

(6) “Principal member” means a person who has a significant ownership interest in a licensee or applicant that is an association, trust, or limited liability company or similar entity, as determined by the board.

(7) “Principal shareholder” means a person who has a significant ownership interest in a corporate licensee or applicant.

(8) “Significant ownership interest” means an ownership interest that causes the owner to have significant control of a licensee or applicant as determined by the board.

Source: L. 59: p. 703, § 3. CRS 53: § 125-8-3. C.R.S. 1963: § 125-7-3. L. 88: (1) amended, p. 419, § 14, effective April 11. L. 90: (1) R&RE and (1.5) and (4) amended, pp. 685, 686, §§ 70, 71, 72, effective June 7. L. 92: (4.5) added, p. 2047, § 1, effective July 1. L. 94: (4.3) added and (5) amended, p. 568, § 2, effective July 1. L. 95: (5) amended, p. 815, § 37, effective May 24. L. 2003: (1) and (1.5) amended, p. 1208, § 14, effective July 1. L. 2004: (1) amended and (1.7), (4.1), (4.2), (4.7), and (6) to (8) added, p. 524, § 9, effective April 21.

12-52-103.5. Applicability of powers of banking board and bank commissioner to money orders. The powers, duties, and functions of the banking board and the commissioner contained in article 102 of title 11, C.R.S., and the declaration of policy contained in section 11-101-102, C.R.S., shall apply to the provisions of this article. For the purposes of this section and section 11-102-104, C.R.S., the banking board shall have the same powers, duties, and functions concerning a violation of this article or a rule issued pursuant to this article as the board has concerning a violation of the “Colorado Banking Code”, a statute, or a rule issued pursuant to that code.

Source: L. 90: Entire section added, p. 686, § 75, effective June 7. L. 91: Entire section amended, p. 1911, § 18, effective April 20. L. 2003: Entire section amended, p. 1208, § 15, effective July 1. L. 2004: Entire section amended, p. 525, § 11, effective April 21.

12-52-104. License required. A person shall not engage in the business of selling or issuing exchange or in the business of money transmission without first procuring a license from the banking board; except that no license under this article shall be required of any agent, subagent, or representative of a licensee or employee of such agent, subagent, or representative who acts on behalf of such licensee in the sale of exchange issued by the licensee.

Source: L. 59: p. 704, § 4. **CRS 53:** § 125-8-4. **C.R.S. 1963:** § 125-7-4. **L. 90:** Entire section amended, p. 686, § 73, effective June 7. **L. 94:** Entire section amended, p. 569, § 3, effective July 1.

12-52-105. Exemptions. Nothing in this article shall apply to: Departments or agencies of the United States of America, or to any state or municipal government, or to corporations organized under the general banking, savings and loan, or credit union laws of this state or of the United States, or to the receipt of money by an incorporated telegraph or cable company at any office or agency thereof for immediate transmission by telegraph or cable.

Source: L. 59: p. 704, § 5. **CRS 53:** § 125-8-5. **C.R.S. 1963:** § 125-7-5. **L. 83:** Entire section amended, p. 485, § 9, effective July 1.

12-52-106. Application for license. (1) Application for a license shall be made in writing, under oath, to the banking board on such form as it may prescribe. The application shall:

(a) State the name of the applicant and the address of his principal office;

(b) Contain evidence that the applicant possesses qualifications and experience as required by the banking board pursuant to rule. If the applicant is a joint stock association, common law trust, unincorporated company or association, limited liability company, or corporation, the secretary or any assistant secretary thereof shall certify the name and address of each of the officers, directors, trustees, or other managing officials together with a designation of the office or offices held by each and evidence that each such individual possesses the qualifications and experience required by the banking board pursuant to rule and shall submit such certificate to the banking board with the application.

(c) State the date and place of incorporation;

(d) If the applicant has one or more branches, subsidiaries, affiliates, agents, or other locations at or through which the applicant proposes to engage in the business of issuing checks, drafts, money orders, or other instruments for the transmission or payment of money or credit, state the name and address of each such location;

(d.5) Contain a set of fingerprints for each of the owners, principal shareholders, principal members, directors, trustees, officers, or other managing officials. The commissioner shall forward the fingerprints to the Colorado bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. Upon receipt of fingerprints and payment for the costs, the Colorado bureau of investigation shall conduct a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. The board shall be the authorized agency to receive information regarding the result of any national criminal history record check. Only the actual costs of such record check shall be borne by the applicant.

(e) Contain such other data, financial statements, and pertinent information as the banking board may require from time to time with respect to the applicant or its directors, trustees, officers, members, branches, subsidiaries, affiliates, or agents.

(2) Each application for a license shall be accompanied by financial statements of the applicant and a bond in the form and the amount specified in this article.

Source: L. 59: p. 704, § 6. **CRS 53:** § 125-8-6. **C.R.S. 1963:** § 125-7-6. **L. 77:** (1)(c) to (1)(e) added, p. 750, § 1, effective May 26. **L. 90:** IP(1), (1)(b), and (1)(e) amended, p. 686, § 74, effective June 7. **L. 94:** (1)(b) amended, p. 569, § 4, effective July 1. **L. 2004:** (1)(d.5) added, p. 526, § 13, effective April 21.

12-52-107. Bond - condition - amount. (1) (a) Each approved applicant shall furnish a corporate surety bond in the principal sum of one million dollars, except as otherwise provided in this subsection (1), by a bonding company or insurance company authorized to do business in this state, in which the applicant is named as obligor, to be approved by the banking board, which shall run to the state of Colorado for the use and benefit of the state

and of any creditor of the licensee for any liability incurred on any exchange issued by the licensee. The bond shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this article and will honestly and faithfully apply all funds received for the performance of all obligations and undertakings for exchange issued and sold under this article and will pay to the state and to any person all money that becomes due and owing to the state or to such person under the provisions of this article because of any exchange sold or issued by such licensee. The bond shall remain in force and effect until the surety is released from liability by the banking board or until the bond is cancelled by the surety, which cancellation may be had only upon ninety days' written notice to the banking board. Such cancellation shall not affect any liability incurred or accrued prior to the termination of the ninety-day period. If the banking board finds, at any time, any bond to be exhausted, a replacement bond in an equal amount shall be filed by the licensee within thirty days after written demand therefor.

(b) The banking board shall by rule establish financial standards by which to evaluate the financial condition or solvency of licensees and for the bond amount set under paragraph (a) of this subsection (1) to be decreased to not less than two hundred fifty thousand dollars, following application by the licensee and an opportunity for hearing before the banking board, in such amounts as necessary up to the amount provided in paragraph (a) of this subsection (1) to protect purchasers of exchange.

(c) The banking board shall by rule establish financial standards by which to evaluate the financial condition or solvency of licensees and for the bond amount to be increased above the amount provided in paragraph (a) of this subsection (1) if the banking board determines, following notice to the licensee and an opportunity for hearing before the banking board, that the customers of such licensees are at undue risks, but in no case shall the total bond required of a licensee be greater than two million dollars. In promulgating such rules, the banking board shall utilize and adopt generally accepted accounting principles for the evaluation and determination of the financial condition of licensees.

(2) In lieu of such surety bond, the licensee may deposit with the banking board securities with a par value equal to the amount of any such surety bond. Such securities shall consist of: General obligations of, or securities fully guaranteed by, the United States of America or any agency or instrumentality of or corporation wholly owned by the United States of America directly or indirectly; or direct general obligations of the state of Colorado, or of any county, town, city, village, school district, or other political subdivision or municipal corporation of the state of Colorado. Such securities shall be held by the banking board to secure the same obligations as would any surety bond required by this article. The securities so deposited may be exchanged from time to time for other securities which qualify as aforesaid. All said securities shall be subject to sale and transfer and the disposal of the proceeds by said banking board only on the order of a court of competent jurisdiction. Such licensee shall be permitted to receive the interest or dividends on such securities unless prohibited by a court of competent jurisdiction. The banking board may provide for custody of such securities by any qualified trust company or bank located in the state of Colorado. The compensation of any custodian for acting as such under this section shall be paid by the depositing licensee.

(3) In addition to the bond required under subsection (1) of this section, the commissioner, pursuant to rules promulgated by the banking board, may require a licensee to possess investments having an aggregate market value at least equal to the amount of outstanding payment instruments issued or sold by the licensee. For the purposes of this subsection (3), permissible investments shall be:

(a) Cash;

(b) Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;

(c) Bills of exchange or time drafts drawn on and accepted by federally insured financial depository institutions;

(d) Any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates such securities;

(e) Investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest of the

United States, or any obligations of any state, municipality, or any political subdivision thereof;

(f) Shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures, or stock traded on any national securities exchange or on a national over-the-counter market;

(g) Such other investments as may be approved by the banking board.

(4) It is the intent of the general assembly that in applying the provisions of this section the purpose of the required bond and permissible investments is to protect the Colorado purchasers of exchange, and the amount of the bond and investments that are required of any licensee should not be more than is necessary to afford such protection given the financial condition of the licensee as determined under generally accepted accounting principles.

(5) Permissible investments, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event of the bankruptcy of the licensee.

Source: L. 59: p. 705, § 7. CRS 53: § 125-8-7. C.R.S. 1963: § 125-7-7. L. 73: p. 1351, § 1. L. 77: (2) amended, p. 750, § 2, effective May 26. L. 90: Entire section amended, p. 686, § 76, effective June 7. L. 92: (1) amended and (3) and (4) added, p. 2047, § 2, effective July 1. L. 94: (5) added, p. 569, § 5, effective July 1. L. 2004: (1)(a) amended, p. 523, § 6, effective April 21.

12-52-108. Issuance of license. (1) Upon the filing of an application, the commissioner shall investigate the applicant. If the banking board finds that the applicant is of good moral character and financially responsible and can comply with this article, the banking board shall approve the application and notify the applicant in writing, who shall within ninety days post the required bond and pay the license fee, whereupon the banking board shall issue to the applicant a license to engage in the business of selling or issuing exchange subject to the provisions of this article.

(2) No license shall be issued to an applicant, if a natural person, unless he is over twenty-one years of age; or if a partnership or syndicate, unless each of the partners is over twenty-one years of age; or if a joint stock association, common law trust, unincorporated company or association, or corporation, unless each of the officers, directors, trustees, or other managing officials is over twenty-one years of age.

(3) No application shall be denied unless the applicant has had notice of a hearing on said application and an opportunity to be heard thereon. If the application is denied, the banking board shall, within thirty days thereafter, prepare and file in its office a written order of denial which shall contain the banking board's findings and reasons supporting the denial and, within ten days after the filing of such order, shall notify the applicant and send him a copy of such order.

(4) A license shall not be issued to an applicant if an owner, principal shareholder, principal member, director, trustee, officer, or other managing official:

(a) Submitted a license application under this article that was false or misleading as a result of an untrue statement of a material fact or an omission to state a material fact unless the applicant did not know, and in the exercise of reasonable care should not have known, of the untruth or omission;

(b) Willfully violated or willfully failed to comply with this article or a rule promulgated or order issued under this article;

(c) Within the past ten years, entered a plea of guilty or nolo contendere to, or was convicted of, a felony or misdemeanor involving a breach of fiduciary duty or fraud; or

(d) Is subject to a temporary or permanent injunction for violating a state or federal law regulating the financial services industry, including, but not limited to, federal provisions regarding money laundering, record-keeping, and registration.

Source: L. 59: p. 706, § 8. CRS 53: § 125-8-8. C.R.S. 1963: § 125-7-8. L. 90: (1) and (3) amended, p. 687, § 77, effective June 7. L. 2004: (1) amended and (4) added, pp. 524, 526, §§ 7, 14, effective April 21.

12-52-109. Issuance of license - renewal - fee. (1) Before any license is issued, and annually thereafter on or before January 1 of each succeeding year, the applicant or licensee shall pay to the banking board a license fee in an amount set by the banking board pursuant to section 11-102-104 (11), C.R.S. For each license originally issued between July 1 and December 31 of any year, the applicant shall pay one-half the annual fee required in this section. Each license shall expire on January 1 unless the annual fee for the year has been paid prior to such date.

(2) Beginning July 1, 1977, before any license may be renewed, the licensee shall be required to provide the same amount of bond coverage or securities for deposit as an initial applicant under section 12-52-107.

Source: L. 59: p. 706, § 9. CRS 53: § 125-8-9. C.R.S. 1963: § 125-7-9. L. 73: p. 1352, § 2. L. 77: Entire section amended, p. 751, § 3, effective May 26. L. 90: (1) amended, p. 688, § 78, effective June 7. L. 2003: (1) amended, p. 1209, § 16, effective July 1.

12-52-110. Examination - fee - financial statements and reports to commissioner.

(1) (a) The commissioner may examine the books and records of a licensee using risk-based criteria and considering other available regulatory mechanisms as directed by the banking board; shall make and file in the office of the commissioner a correct report in detail disclosing the results of such examination; and shall mail a copy of such report to the licensee examined. If the licensee's records are located outside this state, the licensee shall, at the option of such licensee, either make them available to the commissioner at a convenient location within this state or pay the reasonable and necessary expenses for the commissioner or the commissioner's representative to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on behalf of the commissioner. For such examination, the commissioner shall charge a fee in an amount set by the banking board pursuant to section 11-102-104 (11), C.R.S. If any licensee refuses to permit the commissioner to make an examination, such licensee shall be subject to such penalty as the commissioner may assess, not in excess of one hundred dollars for each day any such refusal shall continue.

(b) In lieu of any examination required by this section to be made by the commissioner, the commissioner may accept the audit of an independent certified public accountant or an independent registered accountant, but the cost of such audit shall be borne by the licensee.

(2) (a) Every licensee shall file an annual financial statement with the commissioner, audited by an independent certified public accountant or an independent registered accountant, within one hundred fifty days following the close of the licensee's fiscal year. Such financial statements shall include a balance sheet, a profit and loss statement, and a statement of retained earnings of the licensee and the licensee's agents and subagents resulting from selling or issuing exchange under this article. The financial statements shall be accompanied by copies of the engagement and management letters issued by the independent auditor.

(b) Every licensee shall make and file with the commissioner not less than three reports during each calendar year according to the form which may be prescribed by the commissioner. Each such report shall exhibit in detail, as may be required by the commissioner, the resources and liabilities of the licensee at the close of business on the day past to be specified by said commissioner in writing.

(c) If any licensee fails to submit any statement or report to the commissioner as required by this subsection (2), such licensee shall pay to the commissioner a penalty of two hundred fifty dollars for each additional day of delinquency as set by the banking board pursuant to section 11-102-104 (11), C.R.S.; except that, if in the opinion of the banking board the delay is excusable for good cause shown, no penalty shall be paid.

Source: L. 59: p. 707, § 10. CRS 53: § 125-8-10. C.R.S. 1963: § 125-7-10. L. 77: Entire section amended, p. 751, § 4, effective May 26. L. 90: Entire section amended, p.

688, § 79, effective June 7. **L. 92:** (1) amended, p. 2049, § 3, effective July 1. **L. 94:** Entire section amended, p. 570, § 6, effective July 1. **L. 2003:** (1)(a) and (2)(c) amended, p. 1209, § 17, effective July 1. **L. 2004:** (1)(a), (2)(a), and (2)(c) amended, pp. 523, 524, §§ 4, 8, effective April 21.

12-52-110.5. Compliance with federal law. Each licensee shall comply with state and federal money laundering laws, including, but not limited to, the federal "Bank Secrecy Act", 12 U.S.C. sec. 1951 et seq.

Source: **L. 2004:** Entire section added, p. 525, § 12, effective April 21.

12-52-111. Multiple locations. (1) Each licensee may conduct business at such locations within this state as such licensee may desire and through such agents and subagents as such licensee may from time to time appoint. Each licensee shall notify the banking board within ten days, by certified mail, of any increase in the number of locations at which it conducts its business and shall provide proof that the bond or securities required have been increased accordingly.

(2) Each licensee may, without violating section 5-2-212, C.R.S., notwithstanding whether or not a facility or mode only accepts credit cards, conduct business through physical and electronic facilities, including by telephone and internet, and may charge a different price for the provision of services based upon the type of facility or mode of services used in such transaction so long as the price for such service within a single such facility or mode is not greater for a credit card than for other forms of payment.

Source: **L. 59:** p. 707, § 11. **CRS 53:** § 125-8-11. **C.R.S. 1963:** § 125-7-11. **L. 77:** Entire section amended, p. 752, § 5, effective May 26. **L. 90:** Entire section amended, p. 689, § 80, effective June 7. **L. 94:** Entire section amended, p. 570, § 7, effective July 1. **L. 2002:** Entire section amended, p. 889, § 1, effective August 7.

12-52-112. Revocation or surrender of license. (1) The banking board may, upon ten days' notice served personally upon the licensee stating the contemplated action and the grounds therefor, hold a hearing at which the licensee shall have a reasonable opportunity to be heard, for the purpose of determining whether a license should be revoked.

(2) After such hearing the banking board may revoke any license issued under this article if it finds that:

- (a) The licensee has failed to maintain the required bond; or
- (b) The licensee has failed to comply with any order, decision, or finding of the banking board or the commissioner made pursuant to this article; or
- (c) The licensee has violated any provision of this article; or
- (d) Facts exist which would have warranted the banking board's refusal to issue the original license; or
- (e) The licensee is engaged in a business a substantial portion of which involves the processing, manufacture, or purchase and sale of commodities or articles of tangible personal property and such licensee has failed to maintain constantly a separate bank deposit account or accounts for the exclusive payment of exchange issued by such licensee; or

(f) The licensee has sold or issued exchange without receiving payment for the face value of the exchange prior to the time of such sale or issuance.

(3) A licensee may surrender any license by delivering to the banking board written notice that he surrenders such license, but such surrender shall not affect the licensee's civil or criminal liability for acts committed prior to the surrender, or affect the liability on any bond, or entitle the licensee to a return of any part of any license fee.

Source: **L. 59:** p. 707, § 12. **CRS 53:** § 125-8-12. **C.R.S. 1963:** § 125-7-12. **L. 73:** p. 1352, § 3. **L. 77:** (2)(f) amended, p. 752, § 6, effective May 26. **L. 90:** (1), 1P(2), (2)(b), (2)(d), and (3) amended, p. 689, § 81, effective June 7.

12-52-113. Rules and regulations. The banking board may make, promulgate, alter, amend, or revise reasonable rules and regulations as may be necessary for the enforcement and execution of this article.

Source: L. 59: p. 708, § 13. CRS 53: § 125-8-13. C.R.S. 1963: § 125-7-13. L. 90: Entire section amended, p. 690, § 82, effective June 7.

12-52-114. Review. Any person aggrieved and directly affected by an order of the banking board issued under this article may seek a review in the district court of Colorado in and for the county in which the principal place of business of the licensee or applicant is located. The filing of such a petition for review shall not, of itself, stay enforcement of an order, but the court may order a stay upon such terms as it deems proper.

Source: L. 59: p. 708, § 14. CRS 53: § 125-8-14. C.R.S. 1963: § 125-7-14. L. 90: Entire section amended, p. 690, § 83, effective June 7.

12-52-115. Penalty for violations. Any person who violates any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars. Each such violation shall constitute a separate offense.

Source: L. 59: p. 708, § 15. CRS 53: § 125-8-15. C.R.S. 1963: § 125-7-15. L. 94: Entire section amended, p. 571, § 8, effective July 1.

12-52-115.5. Civil remedies - restraining orders - injunctions. (1) (a) If the board has cause to believe that a person has sold or issued exchange or transmitted money without a license issued under this article 52, the board may obtain from the district court of the city and county of Denver a temporary restraining order or a preliminary or permanent injunction prohibiting the person from violating this article. In such action, the board shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law.

(b) The court shall not require the board to post a bond.

(c) The district court may issue any orders or judgments necessary to prevent a violation of this article. The district court may award to the board the costs and attorney fees incurred in enforcing this article.

(2) A person who violates a district court order or injunction entered pursuant to this section shall be subject to the contempt powers of the district court and shall pay a civil penalty of not more than ten thousand dollars for each such violation. Each day a person continues to violate the district court order shall be a separate violation; except that the aggregate total of civil penalties shall not exceed one hundred thousand dollars for a related series of violations.

(3) The civil remedies imposed by this section shall be in addition to any other penalty or remedy for a violation of this article.

Source: L. 2004: Entire section added, p. 526, § 12, effective April 21.

12-52-116. Notice - banking board - consumers. (1) The licensee or such licensee's agents or subagents shall give notice to the banking board, by certified mail, of any legal action which shall be brought against the licensee and of any judgment which shall be entered against such licensee, by any creditor or claimant, relating to selling or issuing exchange or transmitting money under this article, together with details sufficient to identify the action or judgment, within ten days after the commencement of any such action or notice to the licensee of entry of any such judgment. Within ten days after it pays any claim of judgment to any such creditor or such claimant, the corporate surety shall give notice to the banking board, by certified mail, of such payment, together with details sufficient to identify the claimant or creditor and the claim or judgment so paid.

(2) The licensee or such licensee's affiliates, agents, or subagents shall immediately give notice to the banking board, by certified mail, of any information in their possession with regard to money orders issued by them that have been returned to purchasers unpaid.

(3) (a) Except for a money exchange or transmission conducted at a branch of a federally insured depository institution, a licensee shall post and maintain at its establishment a notice advising the customer that the selling or issuing of exchange is regulated by the division of banking and that the customer may report alleged violations of the law to the division of banking. Such notice shall be created and furnished to the licensee by the commissioner.

(b) Such notice shall be posted conspicuously in a well-lighted place visible to customers.

Source: L. 77: Entire section added, p. 752, § 7, effective May 26. L. 90: Entire section amended, p. 690, § 84, effective June 7. L. 94: Entire section amended, p. 571, § 9, effective July 1. L. 2004: (3) added, p. 523, § 5, effective April 21.

12-52-117. Repeal of article - review of functions. (1) This article is repealed, effective July 1, 2013.

(2) Prior to such repeal, the licensing functions of the commissioner and the banking board shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 88: Entire section added, p. 930, § 11, effective April 28. L. 90: Entire section amended, p. 690, § 85, effective June 7. L. 91: Entire section amended, p. 684, § 35, effective April 20. L. 94: Entire section amended, p. 571, § 10, effective July 1. L. 2004: (1) amended, p. 522, § 1, effective April 21.

PART 2

MONEY TRANSMITTER AGENTS

12-52-201. Agent information - rules. (1) A money transmitter licensed pursuant to part 1 of this article shall annually send the following information to the banking board on such form as it may prescribe:

(a) The name of each agent and the address and telephone number of each of the agent's offices that engage in the business of money transmission;

(b) The name, address, and telephone number of each of the owners of the agent holding more than a ten percent interest in the business if the agent is a partnership or an entity created pursuant to title 7, C.R.S.;

(c) The services concerning money transmission that are offered by the agent and the locations where such services are offered;

(d) Such other pertinent information that the banking board may require concerning the agent or its directors, trustees, officers, members, branches, subsidiaries, affiliates, or agents as promulgated by rule.

(2) The banking board may promulgate rules necessary to implement this section.

Source: L. 2010: Entire part added, (HB 10-1114), ch. 192, p. 823, § 2, effective July 1.

12-52-202. Applicability. (1) This part 2 does not apply to an agent of a business licensed pursuant to part 1 of this article to the extent that the agent is selling or adding additional money to stored value issued by the business.

(2) For purposes of this section, "stored value" means a card, code, or other device that is issued to a consumer in a specified dollar amount, which may or may not be increased in value, and is redeemable at a single merchant, an affiliated group of merchants, or multiple unaffiliated groups of merchants or usable at automated teller machines.

Source: L. 2010: Entire part added, (HB 10-1114), ch. 192, p. 824, § 2, effective July 1.

12-52-203. Notice of laws. (1) The banking board shall promulgate rules to create a form containing a notice of the contents of section 18-5-309, C.R.S., and other state and federal laws concerning money laundering.

(2) (a) An agent of a business licensed pursuant to part 1 of this article shall require each employee who performs money transmission services to either:

(I) Understand and sign the form, created under subsection (1) of this section, affirming knowledge of the money laundering laws prior to the employee performing such services; or

(II) Receive training that covers the money laundering laws within thirty days before the employee performs such services.

(b) The agent shall maintain a record of each employee along with the signed notice or evidence of training in compliance with paragraph (a) of this subsection (2) so long as the employee provides such services. The records may be maintained in an electronic or digital format that reproduces the signature on the documents by the agent.

Source: L. 2010: Entire part added, (HB 10-1114), ch. 192, p. 824, § 2, effective July 1; (1) amended, (HB 10-1081), ch. 256, p. 1141, § 5, effective August 11.

12-52-204. Records. The information sent to the banking board under section 12-52-201 and the records required by section 12-52-203 shall be open to any law enforcement officer acting within the scope and course of the officer's official duties.

Source: L. 2010: Entire part added, (HB 10-1114), ch. 192, p. 825, § 2, effective July 1.

12-52-205. Agent requirements. (1) No money transmitter licensed pursuant to part 1 of this article shall knowingly contract with an agent or owner of an agent holding more than a ten percent interest in the business who has been convicted of or pleaded guilty or nolo contendere to the offenses in article 5 of title 18, C.R.S.; a felony in the selling or issuing of exchange or in money transmission; a felony involving a financial institution; or an equivalent crime outside Colorado.

(2) No agent of a money transmitter licensed pursuant to this article shall knowingly employ a person to perform money transmission services who has been convicted of or pleaded guilty or nolo contendere to the offenses in article 5 of title 18, C.R.S.; a felony in the selling or issuing of exchange or in money transmission; a felony involving a financial institution; or an equivalent crime outside Colorado.

Source: L. 2010: Entire part added, (HB 10-1114), ch. 192, p. 825, § 2, effective July 1; entire section amended, (HB 10-1081), ch. 256, p. 1141, § 6, effective August 11.
L. 2011: Entire section amended, (HB 11-1303), ch. 264, p. 1152, § 16, effective August 10.

12-52-206. Violations. (1) A person who violates this part 2 commits a class 2 misdemeanor and, for the second or any subsequent offense, the person commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) A person who acts as an agent of an unlicensed person required to be licensed by part 1 of this article knowing the unlicensed person does not hold such license commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 2010: Entire part added, (HB 10-1114), ch. 192, p. 825, § 2, effective July 1.

ARTICLE 53**Motor Clubs and Similar Organizations****12-53-101 to 12-53-113. (Repealed)**

Source: L. 92: Entire article repealed, p. 1615, § 174, effective May 20.

Editor's note: (1) This article was numbered as article 7 of chapter 125, C.R.S. 1963. For amendments to this article prior to its repeal in 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 12-53-101 (14) was amended in Senate Bill 92-104. Those amendments were superseded by the repeal of the section in Senate Bill 92-90.

ARTICLE 54**Mortuaries****PART 1****MORTUARY SCIENCE CODE**

12-54-101.	Short title.
12-54-102.	Definitions.
12-54-103.	Funeral establishment.
12-54-104.	Unlawful acts.
12-54-105.	Embalming or refrigeration of bodies required.
12-54-106.	Consumer protection.
12-54-107.	Violations and penalties.
12-54-108.	Exceptions - safe harbor.
12-54-109.	Effect of criminal charges. (Repealed)
12-54-110.	Registration required.
12-54-111.	Title protection.
12-54-112.	Standards of practice - embalming - transporting.

PART 2**ASSESSMENT OF MORTUARIES**

12-54-201.	Mortuaries in cemeteries not exempt.
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PART 3**CREMATION**

12-54-301.	Unlawful acts.
12-54-302.	Exceptions - safe harbor.
12-54-303.	Registration required.
12-54-304.	Title protection.
12-54-305.	Records and receipts.
12-54-306.	Limited liability.
12-54-307.	Standards of practice - cremating.

PART 4**ADMINISTRATION**

12-54-401.	Powers and duties of the director - rules.
12-54-402.	Fees.
12-54-403.	Immunity.
12-54-404.	Letters of concern.
12-54-405.	Letters of admonition - funeral homes and crematories.
12-54-406.	Cease-and-desist orders - procedure.
12-54-407.	Civil penalty - fine.
12-54-408.	Enforcement - injunctions.
12-54-409.	Deferment prohibited.
12-54-410.	Repeal.

PART 1**MORTUARY SCIENCE CODE**

Editor's note: This part 1 was numbered as article 4 of chapter 61, C.R.S. 1963. This part 1 was repealed and reenacted in 1978 and was subsequently amended with relocations in 2003, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers prior to 2003 are shown in editor's notes following those sections that were relocated.

12-54-101. Short title. This article shall be known and may be cited as the "Mortuary Science Code".

Source: L. 2003: Entire part amended with relocations, p. 1916, § 1, effective July 1.
L. 2010: Entire section amended, (HB 10-1422), ch. 419, p. 2068, § 20, effective August 11.

ANNOTATION

For the statutory history of mortuaries,
Rich v. Cleere, 188 Colo. 342, 535 P.2d 510
(1975).

12-54-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Alternative container" means a nonmetal receptacle or enclosure, without ornamentation or a fixed interior lining, that is designed for the encasement of human remains and is made of fiberboard, pressed wood, composition materials, or other similar materials.

(2) "Casket" means a rigid container that is designed for the encasement of human remains and is ornamented and lined with fabric.

(3) "Cremated remains" or "cremains" means all human remains recovered after cremation, including pulverization, that leaves only bone fragments that have been reduced to unidentifiable dimensions.

(4) "Cremation" or "cremate" means the reduction of human remains to essential elements, the processing of the remains, and the placement of the processed remains in a cremated remains container.

(4.3) "Cremation chamber" means the enclosed space inside of which human remains are cremated.

(4.5) "Cremation container" means a container in which the human remains are transported to the crematory and intended to be placed in the cremation chamber.

(4.7) "Cremationist" means a person who cremates or prepares for cremation human remains.

(5) "Crematory" means a building, facility, or structure where human remains are cremated.

(5.3) "Custodian" means the person with possession and control of human remains.

(5.5) "Designee" means an individual designated by a funeral establishment registered in accordance with section 12-54-110 or 12-54-303.

(5.7) "Director" means the director of the division of professions and occupations or the director's designee.

(6) "Division" means the division of professions and occupations created in section 24-34-102, C.R.S.

(7) "Embalm" or "embalming" means the disinfection and temporary preservation of human remains by chemically treating the body to reduce the presence and growth of organisms, to retard organic decomposition, or to attempt restoration of the physical appearance.

(8) "Embalmer" means any person who embalms, or prepares for embalming, human remains for compensation.

(9) "Final disposition" means the disposition of human remains by entombment, burial, cremation, or removal from the state.

(10) "Funeral", "funeral service", or "funeral ceremony" means a service or rite commemorating the deceased and at which service or rite the body of the deceased is present.

(11) "Funeral director" means a person who, for compensation:

(a) Arranges, directs, or supervises funerals, memorial services, or graveside services;
or

(b) Prepares human remains for final disposition by means other than embalming.

(12) "Funeral establishment" means:

(a) An establishment that holds, cares for, or prepares human remains prior to final disposition, including a crematory or embalming room; except that this paragraph (a) does not apply to establishments in which individuals regularly die;

(b) An establishment that holds itself out to the general public as providing funeral goods and services;

(c) Facilities used to hold, care for, or prepare human remains prior to final disposition; except that this paragraph (c) does not apply to facilities in which individuals regularly die; or

(d) An establishment that provides funeral or memorial services to the public for compensation.

(13) "Funeral goods" means goods that are sold or offered for sale directly to the public for use in connection with funeral or cremation services.

(14) "Funeral services" means:

(a) Preparation of human remains for final disposition; except that this paragraph (a) does not apply to cremation;

(b) Arrangement, supervision, or conduct of the funeral ceremony or the final disposition of human remains; or

(c) Transportation of human remains to or from a funeral establishment.

(14.2) "Human remains" means the physical remains of a dead human.

(14.5) "Implanted device" means a mechanical device that may explode or cause damage to crematory equipment.

(15) "Memorial service" means a service or rite commemorating the deceased and at which service or rite the body of the deceased is not present.

(16) "Mortuary science practitioner" means a person who, for compensation, does the following or offers to do the following:

(a) Embalms or cremates human remains;

(b) Arranges, directs, or supervises funerals, memorial services, or graveside services; or

(c) Prepares human remains for final disposition.

(17) "Next of kin" means a family member or members of the deceased who, under Colorado law, have legal authority over the disposition of human remains.

(17.5) "Ossuary" means a receptacle used for the communal placement of cremated remains, without using an urn or other container, in which cremated remains are commingled with other cremated remains.

(18) "Preneed contract" means a preneed contract as defined in section 10-15-102 (13), C.R.S.

(19) "Preparation of the body" means embalming, washing, disinfecting, shaving, dressing, restoring, casketing, positioning, caring for the hair of or applying cosmetics to human remains.

(20) "Processing" means the removal of foreign objects from cremated remains and the reduction of such remains by mechanical means to granules appropriate for final disposition.

Source: L. 2003: Entire part amended with relocations, p. 1916, § 1, effective July 1. L. 2009: IP, (4), (8), (12), IP(14), (14)(a), and (16) amended and (4.5), (4.7), (5.5), (5.7), and (14.5) added, (HB 09-1202), ch. 422, p. 2340, § 1, effective July 1. L. 2011: (1), (2), (4), (4.5), (4.7), (5), (7) to (9), (11)(b), (12), (14), (16), (17), and (19) amended and (4.3), (5.3), (14.2), and (17.5) added, (HB 11-1178), ch. 89, p. 254, § 1, effective August 10.

Editor's note: This section is similar to former § 12-54-103 as it existed prior to 2003, and the former § 12-54-102 was repealed.

12-54-103. Funeral establishment. (1) A funeral establishment shall have the appropriate equipment and personnel to adequately provide the funeral services it contracts to provide and shall provide written notice to the consumer specifying any subcontractors or agents routinely handling or caring for human remains. To comply, the notice must be given when the consumer inquires about the goods or services the funeral establishment provides and must include the names and addresses of the subcontractors, agents, or other providers; except that, if the inquiry is over the telephone, the written notice must be provided when

the customer finalizes the arrangements for goods or services with the funeral establishment.

(2) A funeral establishment shall retain all documents and records concerning the final disposition of human remains for at least seven years after the disposition.

Source: L. 2003: Entire part amended with relocations, p. 1918, § 1, effective July 1.
L. 2011: (1) and (2) amended, (HB 11-1178), ch. 89, p. 256, § 2, effective August 10.

Editor's note: This section is similar to former § 12-54-108 as it existed prior to 2003, and the former § 12-54-103 was relocated to § 12-54-102.

12-54-104. Unlawful acts. (1) It is unlawful:

(a) To disinfect or preserve or to make final disposition of human remains with knowledge sufficient to arouse a reasonable suspicion of a crime in connection with the cause of death of the deceased until the permission of the coroner, deputy coroner, or district attorney, if there is no coroner, has been first obtained;

(b) To discriminate because of race, creed, color, religion, disability, sex, sexual orientation, marital status, national origin, or ancestry in the provision of funeral services;

(c) For any public officer or employee or any other person having a professional relationship with the decedent to approve or cause the final disposition of human remains in violation of this article;

(d) For a person in the business of paying for or providing death benefits, funerals, funeral ceremonies, final dispositions, or preneed contracts to pay or provide benefits in a manner that deprives the next of kin or legal representative of the right to use those payments or benefits at a funeral establishment of his or her choice;

(e) For a funeral director, mortuary science practitioner, embalmer, funeral establishment, or facility in which people regularly die or such person's or facility's agent to engage in a business practice that interferes with the freedom of choice of the general public to choose a funeral director, mortuary science practitioner, embalmer, or funeral establishment;

(f) For a county coroner to violate section 30-10-619, C.R.S.;

(g) To transport or otherwise transfer by common carrier human remains unless:

(I) A funeral director, mortuary science practitioner, or embalmer has embalmed or hermetically sealed the body for transportation and complies with applicable common carrier law; or

(II) The transport or transfer is to a funeral establishment, funeral director, or embalmer within the state of Colorado;

(h) To advertise as holding a degree, a certificate of registration, a professional license, or a professional certification issued by a state, political subdivision, or agency unless the person holds such degree, registration, license, or certification and it is current and valid at the time of advertisement;

(i) For a funeral director, mortuary science practitioner, or embalmer to admit or permit any person to visit the embalming, cremation, or preparation room during the time a body is being embalmed, cremated, or prepared for final disposition, unless such person:

(I) Is a funeral director, mortuary science practitioner, cremationist, or embalmer;

(II) Is an authorized employee of a funeral establishment;

(III) Has the written consent of the next of kin of such deceased person or of a person having legal authority to give such permission in the absence of any next of kin;

(IV) Enters by order of a court of competent jurisdiction or a peace officer level I, Ia, II, III, or IIIa;

(V) Is a student enrolled in a mortuary science program;

(VI) Is a registered or licensed nurse with a medical reason to be present;

(VII) Is a licensed physician or surgeon with a medical reason to be present;

(VIII) Is a technician representing a procurement organization as defined in section 12-34-102 for purposes of an anatomical gift; or

(IX) Is the director or the director's designee;

(j) To refuse to properly and promptly release human remains or cremated remains to the custody of the person who has the legal right to effect such release whether or not any costs have been paid;

(k) To tell a person that a casket is required when the expressed wish is for immediate cremation;

(l) To embalm or cremate human remains without obtaining permission from the person with the right of final disposition unless otherwise required by section 12-54-105;

(m) To prohibit, hinder, or restrict or to attempt to prohibit, hinder, or restrict the following:

(I) The offering or advertising of immediate cremation, advance funeral arrangements, or low-cost funerals;

(II) Arrangements between memorial societies and funeral industry members; or

(III) A funeral service industry member from disclosing accurate information concerning funeral merchandise and services;

(n) To engage in willfully dishonest conduct or commit negligence in the practice of embalming, funeral directing, or providing for final disposition that defrauds or causes injury or is likely to defraud or cause injury;

(o) To fail to include in a contract for funeral services the following statement: "INQUIRIES REGARDING YOUR FUNERAL AGREEMENT MAY BE DIRECTED TO THE DEPARTMENT OF REGULATORY AGENCIES", along with the current address or telephone number of the department of regulatory agencies.

(2) For purposes of this section only, "next of kin" shall not include any person who is arrested on suspicion of having committed, is charged with, or has been convicted of, any felony offense specified in part 1 of article 3 of title 18, C.R.S., involving the death of the deceased person. If charges are not brought, charges are brought but dismissed, or the person charged is acquitted of the alleged crime before final disposition of the deceased person's body, this subsection (2) shall not apply.

Source: **L. 2003:** Entire part amended with relocations and (2) amended, pp. 1919, 1924, §§ 1, 6, effective July 1; (1)(a) and (1)(c) to (1)(f) amended and (2) added, p. 2602, § 1, effective July 1. **L. 2008:** (1)(b) amended, p. 1600, § 17, effective May 29. **L. 2009:** (1)(c), (1)(e), (1)(g)(I), (1)(h), IP(1)(i), (1)(i)(I), (1)(i)(VI), and (1)(i)(VII) amended and (1)(i)(VIII), (1)(i)(IX), (1)(n), and (1)(o) added, (HB 09-1202), ch. 422, pp. 2341, 2342, §§ 2, 3, effective July 1. **L. 2011:** (1)(a), (1)(c), IP(1)(g), (1)(j), and (1)(l) amended, (HB 11-1178), ch. 89, p. 256, § 3, effective August 10.

Editor's note: (1) This section is similar to former § 12-54-117 as it existed prior to 2003.

(2) Subsections (1)(a), (1)(c), (1)(d), (1)(e), and (1)(f), as amended by Senate Bill 03-038, were relocated and renumbered from § 12-54-117 (1)(a), (1)(f), (1)(g), (1)(h), and (1)(h.1), respectively, and harmonized with House Bill 03-1305.

Cross references: For the legislative declaration contained in the 2008 act amending subsection (1)(b), see section 1 of chapter 341, Session Laws of Colorado 2008.

12-54-105. Embalming or refrigeration of bodies required. The custodian shall not keep the human remains more than twenty-four hours after death before final disposition but shall embalm or properly refrigerate the body after twenty-four hours.

Source: **L. 2003:** Entire part amended with relocations, p. 1921, § 1, effective July 1. **L. 2011:** Entire section amended, (HB 11-1178), ch. 89, p. 257, § 4, effective August 10.

Editor's note: This section is similar to former § 12-54-111 as it existed prior to 2003.

12-54-106. Consumer protection. (1) A funeral establishment whose services are purchased shall make every reasonable attempt to fulfill the expressed needs and desires of the person with the right of final disposition, and shall make a full disclosure of all its available services and merchandise to the arrangers prior to selection of the casket.

(2) Before a person selects the funeral, the funeral establishment shall provide a written itemized list of the prices of all available merchandise and individual services at that funeral establishment. Full disclosure shall also be made in the case of a memorial service and as to use of funeral merchandise and facilities. In no event shall such person be required to purchase services or products contained on the itemized list that are not desired for the funeral unless such services or goods are required by law.

(3) Any statements of legal or practical requirements shall be complete and accurate, including the conditions under which embalming is required or advisable. Representations as to the use or necessity of a casket or alternative container in connection with a funeral or alternatives for final disposition shall be truthful and shall disclose all pertinent information.

(4) When quoting funeral prices, either orally, by use of a disclosure statement, or by a final bill, the funeral establishment shall only list those items as cash advances or accommodation items that are paid for or could be paid for by the next of kin in the same amount that is paid by the funeral home.

Source: L. 2003: Entire part amended with relocations, p. 1921, § 1, effective July 1.

Editor's note: This section is similar to former § 12-54-120 as it existed prior to 2003.

12-54-107. Violations and penalties. Any person who violates this part 1 or part 3 of this article is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than twenty-four months or by both such fine and imprisonment.

Source: L. 2003: Entire part amended with relocations, p. 1922, § 1, effective July 1.
L. 2009: Entire section amended, (HB 09-1202), ch. 422, p. 2343, § 4, effective July 1.

Editor's note: This section is similar to former § 12-54-118 as it existed prior to 2003.

12-54-108. Exceptions - safe harbor. (1) This part 1 shall not apply to, or in any way interfere with, the duties of the following persons:

- (a) An officer of a public institution;
- (b) An officer of a medical college, county medical society, anatomical association, or college of embalming; or

(c) A person acting under the authority of part 2 of article 34 of this title.

(2) (a) This part 1 shall not apply to, nor in any way interfere with, any custom or rite of any religious sect in the burial of its dead, and the members and followers of the religious sect may continue to provide memorial services for, care for, prepare, and bury the bodies of deceased members of the religious sect, free from any term or condition, or any provision of this part 1, and are not subject to this part 1, so long as the human remains are refrigerated, frozen, embalmed, interred, or cremated within seven days after death.

(b) If human remains are refrigerated or embalmed pursuant to paragraph (a) of this subsection (2), the body must be interred, frozen, or cremated within thirty days after death unless the coroner authorizes otherwise in writing. The coroner shall not permit an exception to this paragraph (b) unless the applicant can demonstrate a legitimate delay caused by unforeseen uncontrollable circumstances or by a criminal investigation.

(c) Notwithstanding this subsection (2), upon the receipt of evidence that the human remains likely contained a serious contagious disease, the state department of public health and environment, the state board of health, or a local department of health may issue an order overruling this subsection (2).

(3) A person who sells or offers to sell caskets, urns, or other funeral goods, but does not provide funeral services, shall not be subject to this article.

(4) If a funeral director, mortuary science practitioner, or embalmer has acted in good faith, the funeral director, mortuary science practitioner, or embalmer may rely on a signed

statement from a person with the right of final disposition under section 15-19-106, C.R.S., that:

(a) The person knows of no document expressing the deceased's wishes for final disposition that qualifies to direct the final disposition under section 15-19-104, C.R.S.;

(b) The person has made a reasonable effort under section 15-19-106, C.R.S., to contact each person with the right of final disposition and to learn his or her wishes; and

(c) The person knows of no objections to the final disposition.

(5) (a) (I) A funeral establishment, funeral director, or mortuary science practitioner may dispose of cremated remains at the expense of the person with the right of final disposition one hundred eighty days after cremation if the person was given clear prior notice of this paragraph (a) and a reasonable opportunity to collect the cremated remains, the exact location of the final disposition and the costs associated with the final disposition are recorded, and the recovery of the cremated remains is possible. Recovery of costs is limited to a reasonable amount of the costs actually expended by the funeral establishment, funeral director, or mortuary science practitioner.

(II) A funeral establishment, funeral director, or mortuary science practitioner may comply with this paragraph (a) by transferring the cremated remains and the records showing the funeral establishment and the deceased's name, date of birth, and next of kin for final disposition to a facility or place normally used for final disposition if the new custodian can comply with this paragraph (a).

(III) If cremated remains are not claimed by the person with the right of final disposition within three years after cremation, a funeral establishment, funeral director, or mortuary science practitioner may dispose of the remains in an unrecoverable manner by placing the remains in an ossuary or by scattering the remains in a dedicated cemetery, scattering garden, or consecrated ground used exclusively for these purposes.

(IV) The custodian is not liable for the loss or destruction of records required to be kept by this paragraph (a) if the loss or destruction was not caused by the custodian's negligence.

(b) If the person was cremated prior to July 1, 2003, and the funeral director or mortuary science practitioner reasonably attempts to notify the person with the right of final disposition of the provisions of this subsection (5), the cremated remains may be disposed of in accordance with this subsection (5) notwithstanding a failure to provide the notice of the provisions of this subsection (5) to the person with the right of final disposition prior to disposing of the remains.

Source: L. 2003: Entire part amended with relocations, p. 1922, § 1, effective July 1. L. 2004: IP(4), (4)(a), and (4)(b) amended, p. 1196, § 44, effective August 4. L. 2009: (3), IP(4), and (5) amended, (HB 09-1202), ch. 422, p. 2343, § 5, effective July 1. L. 2011: (2) and (5)(a) amended, (HB 11-1178), ch. 89, p. 257, § 5, effective August 10.

Editor's note: This section is similar to former § 12-54-119 as it existed prior to 2003, and the former § 12-54-108 was relocated to § 12-54-103.

12-54-109. Effect of criminal charges. (Repealed)

Source: L. 2003: Entire part amended with relocations, p. 1924, § 1, effective July 1. L. 2009: Entire section repealed, (HB 09-1202), ch. 422, p. 2344, § 8, effective July 1.

12-54-110. Registration required. (1) Unless practicing at a registered funeral establishment pursuant to this section, a person shall not practice as, or offer the services of, a mortuary science practitioner, funeral director, or embalmer, nor shall the funeral establishment sell or offer to sell funeral goods and services to the public.

(2) (a) Each funeral establishment shall register with the director using forms as determined by the director. The registration shall include, without limitation, the following:

(I) The specific location of the funeral establishment;

(II) The full name and address of the designee appointed pursuant to subsection (3) of this section;

(III) The date the funeral establishment began doing business; and

(IV) A list of each of the following services provided at each funeral establishment location:

(A) Refrigerating or holding human remains;

(B) Embalming human remains;

(C) Transporting human remains to or from the funeral establishment or the place of final disposition; and

(D) Providing funeral goods or services to the public.

(b) Each funeral establishment registration shall be renewed, according to a schedule established by the director, in a form as determined by the director.

(c) If, after initial registration, the funeral establishment provides a service listed in subparagraph (IV) of paragraph (a) of this subsection (2) that was not included in the initial registration, the funeral establishment shall submit an amended registration within thirty days after beginning to provide the new service.

(d) If, after initial registration, the funeral establishment appoints a new designee, the funeral establishment shall submit an amended registration within thirty days after appointing the designee.

(e) The director may establish registration fees, renewal fees, and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a funeral establishment fails to renew the registration in accordance with the schedule established by the director, the registration shall expire.

(3) Each funeral establishment shall appoint an individual as the designee of the funeral establishment. A designee shall:

(a) Be at least eighteen years of age;

(b) Have at least two years' experience working for a funeral establishment;

(c) Be employed by the registered funeral establishment that the designee represents;

(d) Have the authority within the funeral establishment's organization to require that personnel comply with this article; and

(e) Not be designated for more than one funeral establishment unless the additional establishment is operated under common ownership and management and no funeral establishment is more than sixty miles from another establishment held under the same ownership conditions.

(4) The designee shall require each person employed at the funeral establishment to demonstrate evidence of compliance with section 12-54-111. The designee shall retain the records of such evidence so long as the person is employed at the funeral establishment.

(5) This section shall not require the registration of a nonprofit organization that only provides education or support to an individual who intends to provide for final disposition of human remains.

Source: L. 2009: Entire section added, (HB 09-1202), ch. 422, p. 2344, § 9, effective July 1. L. 2011: (2)(a)(IV)(A), (2)(a)(IV)(B), (2)(a)(IV)(C), and (5) amended, (HB 11-1178), ch. 89, p. 258, § 6, effective August 10.

12-54-111. Title protection. (1) A person shall not advertise, represent, or hold oneself out as or use the title of a mortuary science practitioner unless the person:

(a) Has at least two thousand hours practicing or interning as a mortuary science practitioner, including, without limitation, experience in cremation and embalming;

(b) Has graduated with a certificate, diploma, or degree in mortuary science from:

(I) A program accredited by the American board of funeral service education or its successor, if the successor is approved by the director, and the program is part of a school of higher education; or

(II) A school of higher education accredited by the American board of funeral service education or its successor, if the successor is approved by the director; and

(c) Has taken the mortuary science test, known as the national board examination, administered by the international conference of funeral service examining boards or its successor, if the successor is approved by the director, and received a passing score.

(2) A person shall not advertise, represent, or hold oneself out as or use the title of a funeral director unless the applicant:

- (a) Has at least two thousand hours practicing or interning as a funeral director; and
- (b) Has directed at least fifty funerals or graveside services.

(3) A person shall not advertise, represent, or hold oneself out as or use the title of an embalmer unless the applicant:

- (a) Has at least four thousand hours practicing or interning as an embalmer; and
- (b) Has embalmed at least fifty human remains.

(4) For purposes of this section, intern or practice hours from Colorado or any other state shall meet the standards set by this section.

Source: L. 2009: Entire section added, (HB 09-1202), ch. 422, p. 2345, § 9, effective July 1. **L. 2011:** IP(1), (1)(b), and (3)(b) amended, (HB 11-1178), ch. 89, p. 259, § 7, effective August 10.

12-54-112. Standards of practice - embalming - transporting. (1) A funeral establishment that performs embalming shall:

(a) Maintain a sanitary preparation room with sanitary flooring, drainage, and ventilation;

(b) Employ universal biological hazard precautions;

(c) Employ reasonable care to minimize the risk of transmitting communicable diseases from human remains;

(d) Be equipped with instruments and supplies necessary to protect the health and safety of the public and employees of the funeral establishment; and

(e) Transport human remains in a safe and sanitary manner.

(2) A funeral establishment that transports human remains shall:

(a) Use a motor vehicle that is appropriate for the transportation of human remains; and

(b) Transport human remains in a safe and sanitary manner.

(3) A funeral establishment shall remove any implanted device in human remains before transporting the body to a crematory.

Source: L. 2009: Entire section added, (HB 09-1202), ch. 422, p. 2346, § 9, effective July 1. **L. 2011:** (1)(c), (1)(e), (2), and (3) amended, (HB 11-1178), ch. 89, p. 259, § 8, effective August 10.

PART 2

ASSESSMENT OF MORTUARIES

12-54-201. Mortuaries in cemeteries not exempt. No person, firm, association, partnership, or corporation engaged in the ownership, operation, or management of a cemetery or mausoleum in this state which is exempt from payment of general property taxes, shall, either directly or indirectly, own, manage, conduct, or operate a funeral home or mortuary in such cemetery or mausoleum, or adjacent thereto and in connection therewith, unless said cemetery or mausoleum and funeral home or mortuary is listed for assessment purposes. The attorney general, county attorney, or any interested party may maintain injunction proceedings to prevent any violation of this section.

Source: L. 53: p. 183, § 1. **CRS 53:** § 61-2-1. **C.R.S. 1963:** § 61-2-1.

Cross references: For exemption of cemetery corporation property, see § 7-47-106.

PART 3

CREMATION

12-54-301. Unlawful acts. (1) It is unlawful for a cremationist:

(a) To discriminate because of race, creed, color, religion, sex, marital status, sexual orientation, or national origin in the provision of funeral services;

(b) To approve or cause the final disposition of human remains in violation of this article;

(c) To engage in a business practice that interferes with the freedom of choice of the general public to choose a funeral director, mortuary science practitioner, cremationist, embalmer, or funeral establishment;

(d) To advertise as holding a degree, a certificate of registration, a professional license, or a professional certification issued by a state, political subdivision, or agency unless the person holds such degree, registration, license, or certification and it is current and valid at the time of advertisement;

(e) To admit or permit any person to visit the crematory or preparation room during the time a body is being cremated or prepared for final disposition unless such person:

(I) Is a funeral director, mortuary science practitioner, or cremationist;

(II) Is an authorized employee of a crematory;

(III) Has the written consent of the next of kin of the deceased person or of a person having legal authority to give consent in the absence of any next of kin;

(IV) Enters by order of a court of competent jurisdiction or a peace officer level I, Ia, II, III, or IIIa;

(V) Is a student or intern enrolled in a mortuary science program;

(VI) Is a registered or licensed nurse with a medical reason to be present;

(VII) Is a licensed physician or surgeon with a medical reason to be present;

(VIII) Is a technician representing a procurement organization as defined in section 12-34-102 for purposes of an anatomical gift; or

(IX) Is the director or the director's designee;

(f) To refuse to properly and promptly release human remains to the custody of the person who has the legal right to effect the release, whether or not any costs have been paid, unless there is a good faith dispute over who controls the right of final disposition;

(g) To cremate human remains without obtaining permission from the person with the right of final disposition;

(h) To prohibit, hinder, or restrict, or attempt to prohibit, hinder, or restrict, the following:

(I) The offering or advertising of immediate cremation, advance funeral arrangements, low-cost funerals, or low-cost cremations;

(II) Arrangements between memorial societies and funeral industry members; or

(III) A funeral service industry member from disclosing accurate information concerning funeral merchandise and services;

(i) To cremate human remains in a facility unless the facility is registered pursuant to section 12-54-303;

(j) To refuse to accept human remains that are not in a casket or to require human remains to be placed in a casket at any time;

(k) To perform services beyond a cremationist's competency, training, or education;

(l) To engage in willfully dishonest conduct or commit negligence in the practice of cremation or providing for final disposition that defrauds or causes injury or is likely to defraud or cause injury.

(2) For purposes of this section only, "next of kin" shall not include any person who is arrested on suspicion of having committed, is charged with, or has been convicted of, any felony offense specified in part 1 of article 3 of title 18, C.R.S., involving the death of the deceased person. This subsection (2) shall not apply if charges are not brought, charges are brought but dismissed, or the person charged is acquitted of the alleged crime before final disposition of the deceased person's body.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2347, § 10, effective July 1. **L. 2011:** (1)(b), (1)(f), (1)(g), (1)(i), and (1)(j) amended, (HB 11-1178), ch. 89, p. 259, § 9, effective August 10.

12-54-302. Exceptions - safe harbor. (1) If a cremationist has acted in good faith, the cremationist may rely on a signed statement from a person with the right of final disposition under section 15-19-106, C.R.S., that:

(a) The person knows of no document expressing the deceased person's wishes for final disposition that qualifies to direct the final disposition under section 15-19-104, C.R.S.;

(b) The person has made a reasonable effort under section 15-19-106, C.R.S., to contact each person with the right of final disposition and to learn his or her wishes; and

(c) The person knows of no objections to the final disposition.

(2) (a) (I) A cremationist may dispose of cremains at the expense of the person with the right of final disposition one hundred eighty days after cremation if the person was given clear prior notice of this paragraph (a) and a reasonable opportunity to collect the cremains, the exact location of the final disposition and the costs associated with the final disposition are recorded, and the recovery of the cremains is possible. Recovery of costs is limited to a reasonable amount of the costs actually expended by the cremationist.

(II) A cremationist may comply with this paragraph (a) by transferring the cremated remains and the records showing the funeral establishment and the deceased's name, date of birth, and next of kin for final disposition to a facility or place normally used for final disposition if the new custodian can comply with this paragraph (a).

(III) If cremated remains are not claimed by the person with the right of final disposition within three years after cremation, a cremationist may dispose of the remains in an unrecoverable manner by placing the remains in an ossuary or by scattering the remains in a dedicated cemetery, scattering garden, or consecrated ground used exclusively for these purposes.

(IV) The custodian is not liable for the loss or destruction of records required to be kept by this paragraph (a) if the loss or destruction was not caused by the custodian's negligence.

(b) If the deceased was cremated prior to July 1, 2003, and the cremationist reasonably attempts to notify the person with the right of final disposition of the provisions of this subsection (2), the cremains may be disposed of in accordance with this subsection (2), notwithstanding a failure to provide the notice of the provisions of this subsection (2) to the person with the right of final disposition prior to disposing of the remains.

(3) (a) This part 3 shall not apply to, nor interfere with, any custom or rite of a religious sect in the final disposition of its dead, and the members and followers of the religious sect may continue to provide memorial services for, care for, prepare, and cremate the bodies of deceased members of the religious sect if the human remains are refrigerated, frozen, or cremated within seven days after death.

(b) If human remains are refrigerated pursuant to paragraph (a) of this subsection (3), the body must be cremated within thirty days after death unless the coroner authorizes otherwise in writing. The coroner shall not permit an exception to this paragraph (b) unless the applicant can demonstrate a legitimate delay caused by unforeseen, uncontrollable circumstances or by a criminal investigation.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2349, § 10, effective July 1. **L. 2011:** (2)(a) and (3) amended, (HB 11-1178), ch. 89, p. 260, § 10, effective August 10.

12-54-303. Registration required. (1) Unless practicing at a registered crematory pursuant to this section, a person shall not practice as, or offer the services of, a cremationist, nor shall the crematory sell or offer to sell funeral goods and services to the public.

(2) (a) Each crematory shall register with the director using forms as determined by the director. The registration shall include, without limitation, the following:

(I) The specific location of the crematory;

(II) The full name and address of the designee appointed pursuant to subsection (3) of this section;

(III) The date the crematory began doing business; and

(IV) A list of each of the following services provided at each crematory location:

(A) Refrigerating or holding human remains;

(B) Transporting human remains to or from the crematory or the place of final disposition;

(C) Providing funeral goods or services to the public; and

(D) Cremating human remains.

(b) Each crematory registration shall be renewed, according to a schedule established by the director, in a form as determined by the director.

(c) If, after initial registration, the crematory provides a service listed in subparagraph (IV) of paragraph (a) of this subsection (2) that was not included in the initial registration, the crematory shall submit an amended registration within thirty days after beginning to provide the new service.

(d) If, after initial registration, the crematory appoints a new designee, the crematory shall submit an amended registration within thirty days after appointing the designee.

(e) The director may establish registration fees, renewal fees, and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a crematory fails to renew the registration in accordance with the schedule established by the director, the registration shall expire.

(3) Each crematory shall appoint an individual as the designee of the crematory. A designee shall:

(a) Be at least eighteen years of age;

(b) Have at least two years' experience working for a crematory;

(c) Be employed by the registered crematory that the designee represents;

(d) Have the authority within the crematory's organization to require that personnel comply with this article; and

(e) Not be designated for more than one crematory unless the additional establishment is operated under common ownership and management and no crematory is more than sixty miles from another establishment held under the same ownership conditions.

(4) The designee shall require each person employed at the crematory to demonstrate evidence of compliance with section 12-54-304. The designee shall retain the records of such evidence so long as the person is employed at the crematory.

(5) This section shall not require the registration of a nonprofit organization that only provides education or support to an individual who intends to provide for final disposition of human remains.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2349, § 10, effective July 1. L. 2011: (2)(a)(IV)(A), (2)(a)(IV)(B), (2)(a)(IV)(D), and (5) amended, (HB 11-1178), ch. 89, p. 261, § 11, effective August 10.

12-54-304. Title protection. A person shall not advertise, represent, or hold oneself out as or use the title of a cremationist unless the applicant has at least five hundred hours practicing or interning as a cremationist and has cremated at least fifty human remains.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2351, § 10, effective July 1. L. 2011: Entire section amended, (HB 11-1178), ch. 89, p. 261, § 12, effective August 10.

12-54-305. Records and receipts. (1) The crematory shall furnish to a person who delivers human remains to the crematory a receipt, which shall be signed by both the crematory's representative and the person who delivers the human remains. The crematory shall retain a copy of the receipt in its records pursuant to subsection (3) of this section. The receipt shall include the following:

(a) The date and time of the delivery;

- (b) The type of casket or alternative container that was delivered;
 - (c) The name of the person who delivered the human remains;
 - (d) The name of any business with which the person delivering the human remains is affiliated;
 - (e) The name of the person who received the human remains on behalf of the crematory; and
 - (f) The name of the decedent.
- (2) Upon release of cremains, the crematory shall furnish to the person who receives the cremains a receipt, signed by both the crematory's representative and the person who receives the cremains. The crematory shall retain a copy of the receipt in its records pursuant to subsection (1) of this section. The receipt shall include the following:
- (a) The date and time of the release;
 - (b) The name of the person to whom the cremains were released;
 - (c) The name of the person who released the cremains on behalf of the crematory; and
 - (d) The name of the decedent.
- (3) A crematory shall maintain, for at least five years and available at the registered location, a permanent record of each cremation occurring at the facility and copies of the receipts required by this section.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2351, § 10, effective July 1.

12-54-306. Limited liability. A crematory shall not be liable for any valuables delivered to the crematory if the crematory exercised reasonable care in handling and protecting the valuables.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2352, § 10, effective July 1.

12-54-307. Standards of practice - cremating. (1) A crematory shall:

- (a) Maintain a retort or crematory chamber that is operated at all times in a safe and sanitary manner;
 - (b) Employ reasonable care to minimize the risk of transmitting communicable diseases from human remains;
 - (c) Be equipped with instruments and supplies necessary to protect the health and safety of the public and employees of the crematory; and
 - (d) Transport human remains in a safe and sanitary manner.
- (2) (a) A crematory shall not cremate human remains unless the crematory has obtained a statement containing the following from a funeral establishment, funeral director, mortuary science practitioner, or the person with the right of final disposition:
- (I) The identity of the decedent;
 - (II) The date of death;
 - (III) Authorization to cremate the human remains;
 - (IV) The name of the person authorizing cremation and an affidavit or other document in compliance with article 19 of title 15, C.R.S., that the authorization complies with article 19 of title 15, C.R.S.;
 - (V) A statement that the human remains do not contain an implanted device;
 - (VI) The name of the person authorized to receive the cremains;
 - (VII) A list of items delivered to the crematory along with the human remains;
 - (VIII) A statement as to whether the next of kin has made arrangements for a viewing or service before cremation and the date and time of any viewing or service;
 - (IX) A copy of the disposition permit; and
 - (X) A signature of a representative of any funeral establishment or the next of kin making arrangements for cremation that the representative has no actual knowledge that contradicts any information required by this paragraph (a).

(b) A person who signs the statement required by paragraph (a) of this subsection (2) shall warrant the truthfulness of the facts contained therein. A person who signs the statement with actual knowledge to the contrary shall be civilly liable.

(3) (a) The crematory shall hold human remains in a cremation container and shall not remove the remains.

(b) The crematory shall cremate the human remains in a cremation container.

(c) A cremation container must:

(I) Be composed of materials suitable for cremation;

(II) Be able to be closed in order to provide a complete covering for the human remains;

(III) Be resistant to leaking or spilling;

(IV) Be rigid enough to handle with ease;

(V) Provide reasonable protection for the health and safety of crematory employees; and

(VI) Be used exclusively for the cremation of human remains.

(4) A crematory shall not cremate the human remains of more than one person within the same cremation chamber or otherwise commingle the cremains of multiple human remains unless the next of kin has signed a written authorization. No crematory is civilly liable for commingling the cremains of human remains if the next of kin has signed the written authorization.

(5) (a) A crematory shall use a tag to identify human remains and cremains. The tag must be verified, removed, and placed near the cremation chamber control panel prior to cremation. The tag must remain next to the cremation chamber until the cremation is complete.

(b) After cremation is complete, all of the cremains and reasonable recoverable residue shall be removed from the cremation chamber and processed as necessary. Anything other than the cremains shall be disposed of unless the next of kin authorizes otherwise.

(c) The processed cremains shall be placed in a temporary container or urn. Any cremains that do not fit within such enclosure shall be placed in a separate temporary container or urn. Each container shall be marked with the decedent's identity and the name of the crematory. If a temporary container is used, the crematory shall disclose that the temporary container should not be used for permanent storage.

(d) If cremated remains are shipped, the crematory shall use a method that employs an internal tracking system and obtains a signed receipt from the person accepting delivery.

(6) Cremains shall not be commingled with other cremains in final disposition or scattering without written authorization from the next of kin unless the disposition or scattering occurs within a dedicated cemetery or consecrated grounds used exclusively for such purposes.

(7) (a) A crematory shall not cremate human remains containing an implanted device. If the funeral establishment that had control of the human remains failed to ensure that a device was removed, the funeral establishment is responsible for removing the device.

(b) If the person authorizing cremation fails to inform the crematory of the presence of an implanted device, the person shall be solely liable for any resulting damage to the crematory.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2352, § 10, effective July 1. **L. 2011:** (1)(b), (1)(d), IP(2)(a), (2)(a)(III), (2)(a)(V), (2)(a)(VII), (2)(a)(IX), (3)(a), (3)(b), IP(3)(c), (3)(c)(I), (3)(c)(II), (4), (5)(a), and (7)(a) amended and (3)(c)(VI) added, (HB 11-1178), ch. 89, p. 261, § 13, effective August 10.

PART 4

ADMINISTRATION

12-54-401. Powers and duties of the director - rules. (1) The director may deny, suspend, refuse to renew, issue a letter of admonition or confidential letter of concern to, revoke, place on probation, or limit the scope of practice of the registration of a funeral establishment or crematory under this article that has:

(a) Filed an application with the director containing material misstatements of fact or has omitted any disclosure required by this article;

(b) Had a registration issued by Colorado, or an equivalent license, registration, or certification issued by another state, to practice mortuary science or to embalm or cremate human remains revoked; or

(c) Violated this article or any rule of the director adopted under this article.

(2) (a) The director may deny or revoke a registration if the funeral establishment, crematory, or the designee thereof has been convicted of a felony related to another activity regulated under this article or a felony of moral turpitude. The director shall promptly notify the funeral establishment or crematory of such revocation.

(b) A crematory or funeral establishment whose registration has been revoked shall not be eligible for a registration for two years after the effective date of the revocation.

(3) The director may investigate the activities of a funeral establishment or crematory upon his or her own initiative or upon receipt of a complaint or a suspected or alleged violation of this article.

(4) The director or an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., shall conduct disciplinary hearings concerning a registration issued under this article. Such hearings shall conform to article 4 of title 24, C.R.S.

(5) (a) The director or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing or investigation conducted by the director or an administrative law judge.

(b) Upon failure of a witness to comply with a subpoena or service of process, the district court of the county in which the subpoenaed witness resides or conducts business may issue an order requiring the witness to appear before the director or administrative law judge and produce the relevant papers, books, records, documentary evidence, testimony, or materials in question. Failure to obey the order of the court may be punished as a contempt of court. The director or an administrative law judge may apply for such order.

(6) The director shall keep records of registrations and disciplinary proceedings. The records kept by the director shall be open to public inspection in a reasonable time and manner determined by the director.

(7) When the director or administrative law judge deems it appropriate and useful, the director or administrative law judge may consult with or obtain a written opinion from an appropriate professional organization or association of businesses who offer services requiring registration under this article for the purpose of investigating possible violations or weighing the appropriate standard of care to be applied to specific events or the facts in a hearing being held under this article.

(8) (a) The director may promulgate reasonable rules necessary to implement this section, sections 12-54-110, 12-54-111, 12-54-303, and 12-54-304, and this part 4.

(b) Before promulgating rules, the director shall seek input and advice from a person, or any state professional organization of persons, offering services that require registration pursuant to this article.

(c) Before promulgating rules, the director may seek input and advice from a consumer representative who advocates for consumers affected by this article.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2354, § 10, effective July 1. **L. 2011:** (1)(b) amended, (HB 11-1178), ch. 89, p. 262, § 14, effective August 10.

12-54-402. Fees. (1) The director shall establish and collect the fees for a registration issued under this article pursuant to section 24-34-105, C.R.S.

(2) All fees collected by the director shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations for expenditures of the director required to perform his or her duties under this article, which expenditures shall be made from such appropriations upon vouchers and warrants drawn pursuant to law. The division shall employ, subject to section 13 of article XII of the state constitution, such clerical or other assistants as are necessary for the proper performance of its work.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2356, § 10, effective July 1.

12-54-403. Immunity. The director, any member of the director's staff, any person acting as a witness or consultant to the director, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action for acts occurring while acting within the scope of the person's capacity as director, staff, consultant, witness, or complainant respectively, if the person was acting in good faith, made a reasonable effort to obtain the facts of the matter as to which the person acted, and acted in the reasonable belief that the action taken was warranted by the facts. A person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil liability that may result from such participation.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2356, § 10, effective July 1.

12-54-404. Letters of concern. The director may issue and send a confidential letter of concern to the funeral establishment or crematory when a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, the complaint should be dismissed, but the director has noticed indications of possible errant conduct by the funeral establishment or crematory that could lead to serious consequences if not corrected.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2356, § 10, effective July 1.

12-54-405. Letters of admonition - funeral homes and crematories. (1) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, a letter of admonition may be issued and sent to a person by certified mail.

(2) When a letter of admonition is sent by the director, the subject shall be advised of the right to request that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based. The subject shall make the request in writing within twenty days after receipt of the letter.

(3) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2356, § 10, effective July 1.

12-54-406. Cease-and-desist orders - procedure. (1) (a) If it appears to the director, based upon credible evidence as presented in a written complaint, that a person is acting in a manner that creates an imminent threat to the health and safety of the public, or a person is acting or has acted without the required registration, the director may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unauthorized practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (1), the respondent may request a hearing on the question of whether the alleged acts or practices have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(2) (a) If it appears to the director, based upon credible evidence as presented in a written complaint, that a person has violated this article or rules promulgated under this

article, then, in addition to any specific powers granted pursuant to this article, the director may issue to such person an order to show cause as to why the director should not issue a final order directing such person to cease and desist from such violations.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) shall be promptly notified by the director of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (2) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (2). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (2) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the director reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required registration or has engaged in acts or practices constituting violations of this article or rules promulgated under this article, a final cease-and-desist order may be issued, directing such person to cease and desist from further violations.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (2), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order shall be effective when issued and shall be a final order for purposes of judicial review.

(3) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged in an act or practice constituting a violation of this article, a rule promulgated pursuant to this article, an order issued pursuant to this article, or an act or practice constituting grounds for administrative sanction pursuant to this article, the director may enter into a stipulation with the person.

(4) If a person fails to comply with a final cease-and-desist order or a stipulation, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(5) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2357, § 10, effective July 1.

12-54-407. Civil penalty - fine. (1) On motion of the director, the court may impose a civil penalty of not more than one thousand dollars for a violation of this article or a rule promulgated under this article. The penalty shall be transmitted to the state treasurer and credited to the general fund.

(2) In addition to any other penalty that may be imposed pursuant to this section, a funeral establishment or crematory violating this article or a rule promulgated pursuant to

this article may be fined no less than one hundred dollars and no more than five thousand dollars for each violation proven by the director. All fines collected pursuant to this subsection (2) shall be transferred to the state treasurer, who shall credit such moneys to the general fund.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2358, § 10, effective July 1.

12-54-408. Enforcement - injunctions. (1) The director may forward to a district attorney or a state or federal law enforcement agency any information concerning possible violations of statute or rule under this article committed by any person or complaints filed against a funeral director, mortuary science practitioner, cremationist, or embalmer.

(2) The director may request that an action be brought in the name of the people of the state of Colorado by the attorney general or the district attorney of the district in which the violation is alleged to have occurred to enjoin a person from engaging in or continuing the violation or from doing any act that furthers the violation. In such an action, an order or judgment may be entered awarding such preliminary or final injunction as is deemed proper by the court. The notice, hearing, or duration of an injunction or restraining order shall be made in accordance with the Colorado rules of civil procedure.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2359, § 10, effective July 1.

12-54-409. Deferment prohibited. When a complaint or an investigation discloses misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2359, § 10, effective July 1.

12-54-410. Repeal. Sections 12-54-110, 12-54-111, 12-54-303, and 12-54-304 and this part 4 are repealed, effective July 1, 2015. Prior to such repeal, the regulation of persons registered to practice cremation and mortuary science shall be reviewed pursuant to section 24-34-104, C.R.S.

Source: L. 2009: Entire part added, (HB 09-1202), ch. 422, p. 2359, § 10, effective July 1.

ARTICLE 55

Notaries Public

PART 1

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12-55-301.	Short title.
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PART 1

GENERAL PROVISIONS

Editor's note: This part 1 was numbered as article 1 of chapter 96, C.R.S. 1963. The provisions of this part 1 were repealed and reenacted in 1981, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 1 prior to 1981, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Law reviews: For article, "Notary Public Beware", see 29 Colo. Law. 71 (March 2000).

12-55-101. Short title. This part 1 shall be known and may be cited as the "Notaries Public Act".

Source: L. 81: Entire part R&RE, p. 834, § 1, effective July 1.

12-55-102. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Attested" means subscribed, signed, acknowledged, sworn to, affirmed, certified, verified, or attested to and includes other words and phrases that have a substantially similar meaning.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic record" means a record containing information that is created, generated, sent, communicated, received, or stored by electronic means.

(4) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

(5) "Facsimile" means any copy, photocopy, facsimile, replica, or other reproduction of a document.

(6) "Misdemeanor involving dishonesty" means a violation of, or a conspiracy to violate, a civil or criminal law involving fraud, dishonesty, bribery, perjury, larceny, theft, robbery, extortion, forgery, counterfeiting, embezzlement, misappropriation of property, or any other offense adversely affecting such person's fitness to serve as a notary public.

(7) "Notarial acts" means those acts that a notary public is empowered to perform pursuant to section 12-55-110 (1).

(8) "Notarization" means the performance of a notarial act.

(9) "Notary" or "notary public" means any individual appointed and commissioned to perform notarial acts.

Source: L. 81: Entire part R&RE, p. 834, § 1, effective July 1. L. 98: (1) amended and (1.5) added, p. 740, § 1, effective January 1, 1999. L. 2002: (1.1) to (1.3) added, p. 793, § 6, effective August 7. L. 2004: (1.4) added, p. 1370, § 4, effective May 28. L. 2012: Entire section amended, (HB 12-1274), ch. 214, p. 919, § 1, effective August 8.

12-55-102.5. Disposition of fees. (1) The secretary of state shall collect all fees pursuant to this article in the manner required by section 24-21-104 (3), C.R.S., and shall transmit them to the state treasurer, who shall credit the same to the department of state cash fund created in section 24-21-104 (3) (b), C.R.S.

(2) The general assembly shall make annual appropriations from the department of state cash fund for expenditures of the secretary of state incurred in the performance of the secretary of state's duties under this article.

(3) and (4) (Deleted by amendment, L. 2012.)

(5) On August 8, 2012, the state treasurer shall transfer the unexpended and unencumbered balance of the notary administration cash fund to the department of state cash fund.

Source: L. 98: Entire section added, p. 27, § 4, effective July 1. L. 2009: (4) added, (SB 09-208), ch. 149, p. 619, § 6, effective April 20. L. 2012: Entire section amended, (HB 12-1274), ch. 214, p. 920, § 2, effective August 8.

12-55-103. Appointment - terms. Upon application pursuant to this part 1, the secretary of state may appoint and commission individuals as notaries public for a term of four years, unless said commission is revoked as provided in section 12-55-107. An applicant who has been denied appointment and commission may appeal such decision pursuant to article 4 of title 24, C.R.S. The secretary of state shall promptly notify the applicant in writing of such denial.

Source: L. 81: Entire part R&RE, p. 834, § 1, effective July 1.

12-55-103.5. Training - rules. (1) The office of the secretary of state may enter into a contract with a private contractor or contractors to conduct notary training programs. The contractor or contractors may charge a fee for any such training program.

(2) The office of the secretary of state may promulgate rules to require notaries public to complete a training program.

Source: L. 98: Entire section added, p. 27, § 6, effective July 1. L. 2009: Entire section amended, (SB 09-111), ch. 180, p. 795, § 8, effective July 1.

12-55-104. Application - rules. (1) Every applicant for appointment and commission as a notary public shall complete an application form furnished by the secretary of state to be filed with the secretary of state, stating:

(a) That the applicant is a resident of Colorado who is at least eighteen years of age;

(b) That the applicant is able to read and write the English language;

(c) The addresses and telephone numbers of the applicant's business and residence in this state;

(d) That the applicant's commission as a notary public has never been revoked;

(e) That the applicant has not been convicted of a felony or, in the prior five years, a misdemeanor that disqualifies him or her from being a notary public pursuant to section 12-55-107 (1) (b).

(2) The application shall include a sample of the applicant’s official signature, the applicant’s typed legal name, and the affirmation as provided in section 12-55-105.

(3) Subject to subsection (2) of this section, the secretary of state shall ensure, at the earliest practicable time, that an application pursuant to this article may be delivered electronically. All such applications shall be stored by the secretary of state in a medium that is retrievable by the secretary of state in perceivable form.

(4) On and after July 1, 2009, the secretary of state shall verify the lawful presence in the United States of each applicant through the verification process outlined in section 24-76.5-103 (4), C.R.S.

(5) In accordance with section 24-21-111 (1), C.R.S., the secretary of state may require, at the secretary of state’s discretion, the application required by this section, and any renewal of the application, to be made by electronic means designated by the secretary of state. The secretary of state may promulgate rules for use of the electronic filing system in accordance with article 4 of title 24, C.R.S.

(6) In accordance with section 42-1-211, C.R.S., the department of state and the department of revenue shall allow for the exchange of information between the systems used by the departments to collect information on legal names and signatures of all applicants for driver’s licenses or state identification cards.

Source: L. 81: Entire part R&RE, p. 835, § 1, effective July 1. **L. 92:** (2) amended, p. 1999, § 1, effective July 1. **L. 2004:** (1) and (2) amended and (3) added, p. 1369, § 1, effective May 28. **L. 2009:** (4) added, (SB 09-111), ch. 180, p. 795, § 4, effective July 1. **L. 2012:** (2) amended and (5) and (6) added, (HB 12-1274), ch. 214, p. 920, § 3, effective August 8.

ANNOTATION

Any qualified elector may be appointed a notary public under the Colorado constitution. In re House Bill No. 166, 9 Colo. 628, 21 P. 473 (1895) (decided under former law).

12-55-105. Applicant’s affirmation. Every applicant for appointment and commission as a notary public shall take the following affirmation in the presence of a person qualified to administer an affirmation in this state:

“I, _____ (name of applicant) _____ solemnly affirm, under the penalty of perjury in the second degree, as defined in section 18-8-503, Colorado Revised Statutes, that I have carefully read the notary law of this state, and, if appointed and commissioned as a notary public, I will faithfully perform, to the best of my ability, all notarial acts in conformance with the law.

(signature of applicant)
Subscribed and affirmed before me this _____ day of _____, 20____.

(official signature and seal of person qualified to administer affirmation) _____.”

Source: L. 81: Entire part R&RE, p. 835, § 1, effective July 1.

12-55-106. Bond. (Repealed)

Source: L. 81: Entire part R&RE, p. 835, § 1, effective July 1. **L. 92:** Entire section repealed, p. 1999, § 2, July 1.

12-55-106.5. Notary’s electronic signature - secretary of state. (1) In every instance, the electronic signature of a notary public shall contain or be accompanied by the

following elements, all of which shall be immediately perceptible and reproducible in the electronic record to which the notary's electronic signature is attached: The notary's name; the words "NOTARY PUBLIC" and "STATE OF COLORADO"; a document authentication number issued by the secretary of state; and the words "my commission expires" followed by the expiration date of the notary's commission. A notary's electronic signature shall conform to any standards promulgated by the secretary of state.

(2) The secretary of state shall promulgate rules necessary to establish standards, procedures, practices, forms, and records relating to a notary's electronic signature.

(3) To the extent the provisions of this part 1 differ from the requirements of the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., the provisions of this part 1 are intended to modify, limit, or supercede the requirements of such act, as provided for in section 7002 (a) of such act.

Source: L. 2002: Entire section added, p. 794, § 7, effective August 7. **L. 2004:** (1) amended, p. 1370, § 3, effective May 28.

ANNOTATION

Law reviews. For article, "Electronic Notaries in Colorado", see 33 Colo. Law. 45 (June 2004).

12-55-106.7. Pictorial notary public - secretary of state - rules. (Repealed)

Source: L. 2005: Entire section added, p. 321, § 1, effective August 8. **L. 2009:** Entire section repealed, (SB 09-111), ch. 180, p. 795, § 7, effective July 1.

12-55-107. Revocation of commission. (1) The secretary of state or the secretary of state's designee may deny the application of any person for appointment or reappointment or take disciplinary or nondisciplinary action against a notary public if the notary public:

(a) Submits an application for commission and appointment that contains substantial and material misstatement or omission of fact;

(b) Is convicted of official misconduct under this part 1 or any felony or, in the prior five years, a misdemeanor involving dishonesty;

(c) Fails to exercise the powers or perform the duties of a notary public in accordance with this part 1;

(d) Knowingly uses false or misleading advertising in which such notary represents that such notary has powers, duties, rights, or privileges that such notary does not possess by law;

(e) Is found by a court of this state to have engaged in the unauthorized practice of law;

(f) Ceases to fulfill the requirements applicable to such notary's most recent appointment;

(g) Notarizes any blank document;

(h) Knowingly uses false or misleading advertising to represent a level of authority not permitted to a notary public by law;

(i) Fails to comply with any term of suspension imposed under this section; or

(j) Performs any notarial act when the notary public's commission is suspended.

(1.5) Whenever the secretary of state or the secretary of state's designee believes that a violation of this article has occurred, the secretary of state or the secretary of state's designee may investigate any such violation. The secretary of state or the secretary of state's designee may also investigate possible violations of this article upon a signed complaint from any person.

(2) For the purposes of this section, disciplinary action may include the following:

(a) Revocation of the notary public's commission;

(b) Suspension of the notary public's commission for a specified period of time, or until the fulfillment of a condition, such as notary retraining, or both.

(2.5) For the purposes of this section, nondisciplinary action includes the issuance of a letter of admonition, which may be placed in the notary public's file. The secretary of state or the secretary of state's designee may issue a letter of admonition to a notary public when a complaint or investigation results in a finding of misconduct that, in the secretary of state's discretion, does not warrant initiation of a disciplinary proceeding.

(3) After a notary public receives notice from the secretary of state or the secretary of state's designee that such notary's commission has been revoked, and unless such revocation has been enjoined, such notary shall immediately send or have delivered to the secretary of state such notary's journal of notarial acts, all other papers and copies relating to such notary's notarial acts, and such notary's official seal.

(4) A person whose notary commission has been revoked pursuant to this part 1 may not apply for or receive a commission and appointment as a notary.

Source: L. 81: Entire part R&RE, p. 835, § 1, effective July 1. L. 92: (1)(g) and (4) added, p. 1999, §§ 3, 4, effective July 1. L. 98: (1), (2), and (3) amended and (1.5) added, p. 28, § 7, effective July 1. L. 2002: (1)(h) added, p. 44, § 1, effective August 7. L. 2004: IP(1), (1)(b), and (4) amended, p. 1370, § 2, effective May 28. L. 2009: IP(1) amended, (SB 09-111), ch. 180, p. 795, § 5, effective July 1. L. 2012: IP(1) and (2) amended and (1)(i), (1)(j), and (2.5) added, (HB 12-1274), ch. 214, p. 921, § 4, effective August 8.

12-55-108. Reappointment - failure to be reappointed. Every notary public, before or at the expiration of the notary's commission, may submit an application for reappointment along with only the information and documentation necessary to reflect any changes to the information submitted in the notary's original application, filed pursuant to sections 12-55-104 and 12-55-105, for the initial application. The secretary of state shall then determine whether or not to reappoint the person as a notary public. If the secretary of state determines not to reappoint the applicant, the applicant may appeal the determination pursuant to article 4 of title 24, C.R.S.

Source: L. 81: Entire part R&RE, p. 836, § 1, effective July 1. L. 92: Entire section amended, p. 2000, § 5, effective July 1. L. 2012: Entire section amended, (HB 12-1274), ch. 214, p. 921, § 5, effective August 8.

12-55-109. Certificate of appointment - recording. (1) If a person meets the application requirements of sections 12-55-104 and 12-55-105, the secretary of state may issue a certificate of authority qualifying the person as a notary public. The certificate must state the date of expiration of the commission and any other fact concerning the notary public that is required by the laws of this state.

(2) A notary public may record his or her certificate of authority in any county of this state and, after the recording, the county clerk and recorder of the county may issue a certificate that the person is a notary public, the date of expiration of his or her commission, and any other fact concerning the notary public that is required by the laws of this state.

(3) A notary public may exhibit to the judge or clerk of any court of record his or her certificate of authority, and the judge or clerk may thereupon issue a certificate that the person is a notary public, the date of expiration of his or her commission, and any other fact concerning the notary that is required by the laws of this state.

Source: L. 81: Entire part R&RE, p. 836, § 1, effective July 1. L. 2012: Entire section amended, (HB 12-1274), ch. 214, p. 922, § 6, effective August 8.

Cross references: For the authority of the secretary of state to set a fee for issuing a notary public's commission, see § 24-21-104.

ANNOTATION

Law reviews. For article, "Curative Statutes of Colorado Respecting Titles to Real Estate", see 26 Dicta 281 (1949).

12-55-110. Powers and limitations. (1) Every notary public is empowered to:

(a) Take acknowledgments and other unsworn statements, proof of execution, and attest documents and electronic records;

(b) Administer oaths and affirmations;

(c) Give certificates or other statements as to a notarial act performed by such notary. Such acts shall include, but are not limited to, the giving of certificates as to, or certified copies of, any record or other document relating to a notarial act performed by such notary and certifying that a copy of a document is a true copy of another document or that a facsimile is a true facsimile of another document in accordance with section 12-55-120.

(d) Take depositions, affidavits, verifications, and other sworn testimony or statements;

(d.5) Perform any other act that is recognized or otherwise given effect under the law, rules, or regulations of another jurisdiction, including the United States, provided such other law, rule, or regulation authorizes a notary in this state to perform such act. However, no notary is empowered to perform an act under this paragraph (d.5) if such performance is prohibited by the law, rules, or regulations of this state.

(e) Perform any other act authorized by law, rules, or regulations;

(f) Present and give notice of dishonor and protest notes and other negotiable instruments as provided in part 5 of article 3 of title 4, C.R.S., or the corresponding laws of another jurisdiction.

(2) A notary public who has a disqualifying interest in a transaction may not legally perform any notarial act in connection with such transaction. For the purposes of this section, a notary public has a disqualifying interest in a transaction in connection with which notarial services are requested if he:

(a) May receive directly, and as a proximate result of the notarization, any advantage, right, title, interest, cash, or property exceeding in value the sum of any fee properly received in accordance with this part 1; or

(b) Is named, individually, as a party to the transaction.

(3) In no case shall a notary public notarize any blank document.

(4) No notary shall sign a certificate or other statements as to a notarial act to the effect that a document or any part thereof was attested by an individual, unless:

(a) Such individual has attested such document or part thereof while in the physical presence of such notary; and

(b) Such individual is personally known to such notary as the person named in the certificate, statement, document, or part thereof, or such notary receives satisfactory evidence that such individual is the person so named. For purposes of this paragraph (b), "satisfactory evidence" includes but is not limited to the sworn statement of a credible witness who personally knows such notary and the individual so named, or a current identification card or document issued by a federal or state governmental entity containing a photograph and signature of the individual who is so named.

Source: L. 81: Entire part R&RE, p. 836, § 1, effective July 1. L. 92: (3) added, p. 2000, § 6, effective July 1. L. 98: (1) amended and (4) added, p. 740, § 2, effective January 1, 1999. L. 2002: (1)(a) amended, p. 794, § 8, effective August 7.

Cross references: For other persons authorized to administer oaths, see § 24-12-103.

ANNOTATION

Law reviews. For article, "Signatures on Documents Affecting Title to Colorado Real

Property — Parts I and II", see 12 Colo. Law. 61 and 258 (1983).

Annotator's note. Since § 12-55-110 is similar to § 12-55-102 as it existed prior to the 1981 repeal and reenactment of this part 1, relevant cases construing that provision have been included in the annotation to this section.

A notary may perform certain functions with respect to legal papers by virtue of his office. People ex rel. Attorney Gen. v. Bennett, 101 Colo. 403, 74 P.2d 671 (1937).

A notary will not be adjudged guilty of contempt of court for practicing law without a license because he publishes his name in a business directory under the classification "notary" and in juxtaposition to the words, "legal documents". People ex rel. Attorney Gen. v. Kimsey, 101 Colo. 392, 74 P.2d 663 (1937).

Because the advertisement, "legal papers made", is not sufficient nor indeed any proof that the respondent intended to exceed his authority in the making of legal papers other than those which he was authorized by statute to make. People ex rel. Attorney Gen. v. Wicks, 101 Colo. 397, 74 P.2d 665 (1937).

12-55-110.3. Advertisements for services - unauthorized practice of law - prohibited conduct - penalties. (1) (a) A notary public who is not a licensed attorney in the state of Colorado and who advertises, including by signage, his or her services in a language other than English shall include in the advertisement the following notice, both in English and in the language of the advertisement:

I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE
STATE OF COLORADO AND I MAY NOT GIVE LEGAL ADVICE OR
ACCEPT FEES FOR LEGAL ADVICE.

(b) All written advertisements shall include the language exactly as written in paragraph (a) of this subsection (1). Such language shall be clearly visible. Oral advertisements or solicitations, including those on radio or television, shall contain the same message but shall not be required to use the exact language.

(2) A notary public who advertises in a language other than English shall post a list of fees permitted by law for notarial services. Such list shall be written in English and in the language of the advertisement and shall be posted in a highly visible location at the notary's place of business. Such list shall include the notice included in paragraph (a) of subsection (1) of this section.

(3) (a) A notary public who is not a licensed attorney in the state of Colorado shall not represent or advertise himself or herself as an immigration consultant or an expert on immigration matters.

(b) A notary public who is not an attorney licensed to practice law in Colorado is prohibited from:

(I) Providing any service that constitutes the unauthorized practice of law;

(II) Stating or implying that he or she is an attorney licensed to practice law in this state;

(III) Soliciting or accepting compensation to prepare documents for or otherwise represent the interest of another in a judicial or administrative proceeding, including a proceeding relating to immigration to the United States, United States citizenship, or related matters;

(IV) Soliciting or accepting compensation to obtain relief of any kind on behalf of another from any officer, agency, or employee of the state of Colorado or of the United States; or

(V) Using the phrase "notario" or "notario publico" to advertise the services of a notary public, whether by sign, pamphlet, stationery, or other written communication or by radio, television, or other nonwritten communication.

This section is broad enough to cover affidavits taken and certified by notaries in criminal cases upon applications for change of venue, continuances, and the like, and also affidavits on which an information is based. Walker v. People, 22 Colo. 415, 45 P. 388 (1896).

Signing another's name and notarizing the forged signature violates this section. Willey v. Mayer, 862 P.2d 959 (Colo. App. 1993).

Signing a petition as an elector does not make a notary a named party to the transaction unless the petition itself names the notary as the subject of the petition, such as where a candidate notarizes his or her own nomination petition. The same person can sign and notarize a single petition section without thereby creating a disqualifying interest in the transaction. Therefore, a city clerk abused her discretion in invalidating the petitions that the notary signed as both a notary and an elector. Griff v. City of Grand Junction, 262 P.3d 906 (Colo. App. 2010).

(4) Knowing and willful violation of the provisions of this section shall constitute a deceptive trade practice pursuant to section 6-1-105, C.R.S., and shall also constitute official misconduct pursuant to section 12-55-116.

Source: L. 2002: Entire section added, p. 44, § 2, effective August 7. L. 2004: (3)(b) amended and (4) added, p. 180, § 1, effective July 1.

12-55-110.5. Accommodation of physical limitations. (1) A notary public may certify as to the subscription or signature of an individual when it appears that such individual has a physical limitation that restricts such individual's ability to sign by writing or making a mark, pursuant to the following:

(a) The name of an individual may be signed, or attached electronically in the case of an electronic record, by another individual other than the notary public at the direction and in the presence of the individual whose name is to be signed and in the presence of the notary public.

(b) The words "Signature written by" or "Signature attached by" in the case of an electronic record, "(name of individual directed to sign or directed to attach) at the direction and in the presence of (name as signed) on whose behalf the signature was written" or "attached electronically" in the case of an electronic record, or words of substantially similar effect shall appear under or near the signature.

(2) A notary public may use signals or electronic or mechanical means to take an acknowledgment from, administer an oath or affirmation to, or otherwise communicate with any individual in the presence of such notary public when it appears that such individual is unable to communicate verbally or in writing.

Source: L. 98: Entire section added, p. 741, § 3, effective January 1, 1999. L. 2002: (1)(a) and (1)(b) amended, p. 794, § 9, effective August 7.

12-55-111. Journal. (1) Every notary public shall keep a journal of every notarial act of the notary and, if required, give a certified copy of or a certificate as to any such journal or any of the notary's acts, upon payment of the notary's fee.

(2) For each notarial act, a notary's journal shall contain the following information:

(a) The type and date of the notarial act;

(b) The title or type of document or proceeding that was notarized and the date of such document or proceeding, if different than the date of the notarization;

(c) The name of each person whose oath, affirmation, acknowledgment, affidavit, declaration, deposition, protest, verification, or other statement is taken;

(d) The signature and address of each person whose oath, affirmation, acknowledgment, affidavit, declaration, deposition, protest, verification, or other statement is taken;

(e) The signature, printed name, and address of each witness to the notarization;

(e.5) (Deleted by amendment, L. 2004, p. 1371, § 5, effective May 28, 2004.)

(f) Any other information the notary considers appropriate to record that concerns the notarial act.

(3) (a) Subsection (1) of this section shall not apply to any document or electronic record where the original or a copy of such document or electronic record contains the information otherwise required to be entered in the notary's journal and such original or copy or electronic record is retained by the notary's firm or employer in the regular course of business.

(b) Notwithstanding any provision of this subsection (3) to the contrary, no firm, employer, or professionally licensed person shall prohibit an employee who is a notary from maintaining a journal of his or her notarial acts in the regular course of business of such firm, employer, or professionally licensed person.

(c) For purposes of this subsection (3), "firm" includes but is not limited to an office where the business of a real estate broker, lawyer, title insurance company, title insurance agent, or other licensed professional is regularly carried on and the records of such business are regularly maintained.

(4) Except as otherwise exempted by paragraph (a) of subsection (3) of this section or by another law of this state, for each electronic record or document signed by the notary public, the notary public shall record the document authentication number issued by the secretary of state for each document authenticated in the journal pursuant to this section.

Source: **L. 81:** Entire part R&RE, p. 837, § 1, effective July 1. **L. 98:** Entire section amended, p. 742, § 4, effective January 1, 1999. **L. 2002:** (2)(e.5) added and (3)(a) amended, pp. 794, 795, §§ 10, 11, effective August 7. **L. 2004:** (2)(e.5) amended and (4) added, p. 1371, § 5, effective May 28. **L. 2009:** (1) amended, (SB 09-111), ch. 180, p. 795, § 6, effective July 1. **L. 2012:** IP(2) amended, (HB 12-1274), ch. 214, p. 922, § 7, effective August 8.

ANNOTATION

Law reviews. For article, "S.B. 09-111: Expanding Colorado Notaries' Journal Duties", see 39 Colo. Law. 105 (August 2010).

12-55-112. Official signature - rubber stamp seal - seal embosser - notary's electronic signature. (1) At the time of notarization, a notary public shall sign his or her official signature on every notary certificate or, in the case of an electronic record, a notary public shall affix his or her electronic signature.

(2) Under or near his or her official signature on every notary certificate, a notary public shall clearly and legibly stamp his or her official seal. The official notary seal must be rectangular. The official notary seal shall contain only the outline of the seal and the following information contained within the outline of the seal:

- (a) The printed legal name of the notary;
- (b) The notary's identification number, the notary's commission expiration date, the words "STATE OF COLORADO"; and
- (c) The words "NOTARY PUBLIC".

(2.3) The fact that a notary attests to an instrument relating to real property by affixing a notary seal that is not in compliance with this section does not render the instrument or the attestation invalid or ineffective, nor does it render a title unmarketable.

(2.5) A notary who obtained an official seal before August 8, 2012, may continue to use his or her seal until renewal of his or her notary commission.

(3) Repealed.

(4) A notary public shall not provide, keep, or use a seal embosser.

(4.5) In the case of notarization of an electronic record, the application of a notary's electronic signature in lieu of a handwritten signature and rubber stamp seal is sufficient. A notary shall not use an electronic signature unless:

(a) The notary uses a journal if maintaining the journal is required by section 12-55-111; and

(b) The notary attaches to the document a document authentication number issued by the secretary of state.

(5) The illegibility of any of the information required by this section does not affect the validity of a document or transaction.

(6) For purposes of this section, "notary certificate" means a certificate or other statement of a notary relating to a notarial act performed by the notary.

Source: **L. 81:** Entire part R&RE, p. 837, § 1, effective July 1. **L. 83:** (2) amended, p. 576, § 1, effective May 2. **L. 84:** (3) amended, p. 439, § 1, effective February 23. **L. 98:** Entire section amended, p. 743, § 5, effective January 1, 1999. **L. 2002:** (1) amended and (4.5) added, p. 795, § 12, effective August 7. **L. 2004:** (4.5) amended, p. 1371, § 6, effective May 28. **L. 2012:** (1), (2), (4), IP(4.5), (4.5)(a), and (6) amended, (2.5) added, and (3) repealed, (HB 12-1274), ch. 214, p. 922, § 8, effective August 8.

Editor's note: Subsection (2.3) was numbered as subsection (2)(d) in House Bill 12-1274 but has been renumbered on revision for ease of location.

ANNOTATION

Annotator's note. Since § 12-55-112 is similar to § 12-55-105 as it existed prior to the 1981 repeal and reenactment of this part 1, a relevant case construing that provision has been included in the annotations to this section.

Because everything that is required for the official act of a notary appears on the instrument, to wit, the impression of the notarial seal,

and the designation in writing signed by the notary when his commission as such notary expires. *Quintana v. People*, 168 Colo. 308, 451 P.2d 286 (1969).

The absence of the year in the verification signed by the notary does not make the information fatally defective. *Quintana v. People*, 168 Colo. 308, 451 P.2d 286 (1969).

12-55-113. Lost journal or official seal. Every notary public shall send or have delivered notice to the secretary of state within thirty days after the notary loses or misplaces such notary's journal of notarial acts, or official seal, or the notary becomes aware that any other person has electronic control of his or her electronic signature. The fee payable to the secretary of state for recording notice of a lost journal, or seal, or that another person has electronic control of a notary's electronic signature shall be determined and collected pursuant to section 24-21-104 (3), C.R.S.

Source: L. 81: Entire part R&RE, p. 837, § 1, effective July 1. L. 83: Entire section amended, p. 878, § 45, effective July 1. L. 98: Entire section amended, p. 29, § 8, effective July 1. L. 2002: Entire section amended, p. 795, § 13, effective August 7.

12-55-114. Change of name or address. (1) Every notary public shall notify the secretary of state within thirty days after he or she changes his or her name, business address, or residential address. In the case of a name change, the notary public shall include a sample of the notary's handwritten official signature on the notice. Pursuant to section 24-21-104 (3), C.R.S., the secretary of state shall determine the amount of, and collect, the fee, payable to the secretary of state, for recording notice of change of name or address.

(2) (Deleted by amendment, L. 2012.)

Source: L. 81: Entire part R&RE, p. 837, § 1, effective July 1. L. 83: Entire section amended, p. 878, § 46, effective July 1. L. 98: Entire section amended, p. 29, § 9, effective July 1. L. 2012: Entire section amended, (HB 12-1274), ch. 214, p. 923, § 9, effective August 8.

12-55-115. Death - resignation - removal from state. (1) If a notary public dies during the term of the notary's appointment, the notary's heirs or personal representative, as soon as reasonably possible after the notary's death, shall send or have delivered to the secretary of state the deceased notary's journal of notarial acts and the notary's seal, if available.

(2) If a notary public no longer desires to be a notary public or has ceased to have a business or residence address in this state, the notary shall send or have delivered to the secretary of state a letter of resignation, the notary's journal of notarial acts, and all other papers and copies relating to the notary's notarial acts, including the notary's seal. The notary's commission shall thereafter cease to be in effect.

Source: L. 81: Entire part R&RE, p. 838, § 1, effective July 1. L. 98: Entire section amended, p. 29, § 10, effective July 1.

12-55-116. Official misconduct by a notary public - liability of notary or surety. (1) A notary public who knowingly and willfully violates the duties imposed by this part 1 commits official misconduct and is guilty of a class 2 misdemeanor.

(2) A notary public and the surety or sureties on his bond are liable to the persons involved for all damages proximately caused by the notary's official misconduct.

(3) Nothing in this article shall be construed to deny a notary public the right to obtain a surety bond or insurance on a voluntary basis to provide coverage for liability.

Source: L. 81: Entire part R&RE, p. 838, § 1, effective July 1. L. 92: (3) added, p. 2000, § 7, effective July 1.

Cross references: For the penalty for a class 2 misdemeanor, see § 18-1.3-501.

12-55-117. Willful impersonation. Any person who acts as, or otherwise willfully impersonates, a notary public while not lawfully appointed and commissioned to perform notarial acts is guilty of a class 2 misdemeanor.

Source: L. 81: Entire part R&RE, p. 838, § 1, effective July 1.

Cross references: For the penalty for a class 2 misdemeanor, see § 18-1.3-501.

12-55-118. Wrongful possession of journal or seal. Any person who unlawfully possesses and uses a notary's journal, an official seal, a notary's electronic signature, or any papers, copies, or electronic records relating to notarial acts is guilty of a class 3 misdemeanor.

Source: L. 81: Entire part R&RE, p. 838, § 1, effective July 1. L. 2002: Entire section amended, p. 795, § 14, effective August 7.

Cross references: For the penalty for a class 3 misdemeanor, see § 18-1.3-501.

12-55-119. Affirmation procedures - form. (1) If an affirmation is to be administered by the notary public in writing, the person taking the affirmation shall sign his name thereto, and the notary public shall write or print under the text of the affirmation the fact that the document has been subscribed and affirmed, or sworn to before me in the county of _____, state of Colorado, this _____ day of _____, 20____.
(official signature, seal, and commission expiration date of notary) _____.

(2) If an affirmation is to be administered by the notary public in an electronic record, the person taking the affirmation shall attach his or her electronic signature thereto. Within the affirmation, the notary shall add the fact that the document has been subscribed and affirmed, or sworn to before me in the county of _____, state of Colorado, this _____ day of _____, 20____.
(notary's electronic signature) _____.

Source: L. 81: Entire part R&RE, p. 838, § 1, effective July 1. L. 83: Entire section amended, p. 576, § 2, effective May 2. L. 2002: Entire section amended, p. 795, § 15, effective August 7.

12-55-120. Certified facsimiles of documents - procedure and form. (1) A notary public may certify a facsimile of a document if the original of the document is exhibited to him, together with a signed written request stating that:

(a) A certified copy or facsimile of the document cannot be obtained from the office of any clerk and recorder of public documents or custodian of documents in this state; and

(b) The production of a facsimile, preparation of a copy, or certification of a copy of the document does not violate any state or federal law.

(2) The certification of a facsimile shall be substantially in the following form:

"State of _____, County (or City) of _____, I, (name of notary) _____, a Notary Public in and for said state, do certify that on _____ (date), I carefully compared

with the original the attached facsimile of _____ (type of document) _____ and the facsimile I now hold in my possession. They are complete, full, true, and exact facsimiles of the document they purport to reproduce.

_____ (official signature, official seal, and commission expiration date of notary) _____.”

Source: L. 81: Entire part R&RE, p. 838, § 1, effective July 1. L. 83: (2) amended, p. 576, § 3, effective May 2.

12-55-121. Fees. (1) The fees of notaries public may be, but shall not exceed, five dollars for each document attested by a person before a notary, except as otherwise provided by law. The fee for each such document shall include the following incidental services of such notary:

(a) Receiving evidence of such person’s identity as enumerated in section 12-55-110 (4);

(b) Administering an oath or affirmation to such person; and

(c) Signing and sealing a certificate or statement of such notary that is included in or attached to such document and evidences that the document was attested before such notary.

(2) In lieu of the fee authorized in subsection (1) of this section, a notary public may charge a fee, not to exceed ten dollars, for the notary’s electronic signature.

Source: L. 81: Entire part R&RE, p. 839, § 1, effective July 1. L. 95: Entire section amended, p. 1109, § 59, effective May 31. L. 98: Entire section amended, p. 744, § 6, effective January 1, 1999. L. 2004: (2) added, p. 1371, § 7, effective May 28.

12-55-122. Applicability. This part 1 shall apply to all applications, both new and for reappointment, submitted to the office of secretary of state on or after July 1, 1981. Nothing in this part 1 shall be construed to revoke any notary public commission existing on July 1, 1981.

Source: L. 81: Entire part R&RE, p. 839, § 1, effective July 1.

12-55-123. Repeal of article. This article is repealed, effective July 1, 2018. Prior to such repeal, the appointment function of the secretary of state shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 88: Entire section added, p. 930, § 13, effective April 28. L. 91: Entire section amended, p. 684, § 37, effective April 20. L. 92: Entire section amended, p. 2000, § 8, effective July 1. L. 98: Entire section amended, p. 26, § 1, effective July 1. L. 2009: Entire section amended, (SB 09-111), ch. 180, p. 794, § 1, effective July 1.

PART 2

UNIFORM RECOGNITION OF ACKNOWLEDGMENTS

12-55-201. Short title. This part 2 shall be known and may be cited as the “Uniform Recognition of Acknowledgments Act”.

Source: L. 69: p. 870, § 1. C.R.S. 1963: § 96-2-1.

12-55-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) “Notarial acts” means acts which the laws and regulations of this state authorize notaries public of this state to perform, including, but not limited to, the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents.

Source: L. 69: p. 870, § 1. C.R.S. 1963: § 96-2-2.

12-55-203. Recognition of notarial acts performed outside this state. (1) Notarial acts may be performed outside this state for use in this state with the same effect as if performed by a notary public of this state by the following persons authorized pursuant to the laws and regulations of other governments, in addition to any other person authorized by the laws and regulations of this state:

(a) A notary public authorized to perform notarial acts in the place in which the act is performed;

(b) A judge, clerk, or deputy clerk of any court of record in the place in which the notarial act is performed;

(c) An officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States department of state to perform notarial acts in the place in which the act is performed;

(d) A commissioned officer in active service with the armed forces of the United States and any other person authorized by regulation of the armed forces to perform notarial acts if the notarial act is performed for one of the following or his dependents: A merchant seaman of the United States, a member of the armed forces of the United States, or any other person serving with or accompanying the armed forces of the United States; or

(e) Any other person authorized to perform notarial acts in the place in which the act is performed.

Source: L. 69: p. 870, § 1. C.R.S. 1963: § 96-2-2.

ANNOTATION

Additional evidence of authenticity not required for admissibility. An out-of-state affidavit of indigency, once sworn before and acknowledged by a notary, requires no further

evidence of authenticity as a condition precedent to its admissibility. *Otani v. District Court*, 662 P.2d 1088 (Colo. 1983).

12-55-204. Authentication of authority of officer. (1) If the notarial act is performed by any of the persons described in section 12-55-203 (1) (a) to (1) (d), other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, the signature, rank, or title and serial number, if any, of the person are sufficient proof of the authority of a holder of that rank or title to perform the act. Further proof of his authority is not required.

(2) If the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the act, there is sufficient proof of the authority of that person to act if:

(a) Either a foreign service officer of the United States resident in the country in which the act is performed or a diplomatic or consular officer of the foreign country resident in the United States certifies that a person holding that office is authorized to perform the act;

(b) Either the official seal of the person performing the notarial act is affixed to the document, or, in the case of an electronic record, such information that is required in lieu of a notary seal by the laws of the place granting notarial authority to the person performing the notarial act is attached to or logically associated with the document; or

(c) The title and indication of authority to perform notarial acts of the person appears either in a digest of foreign law or in a list customarily used as a source of such information.

(3) If the notarial act is performed by a person other than one described in subsections (1) and (2) of this section, there is sufficient proof of the authority of that person to act if the clerk of a court of record in the place in which the notarial act is performed certifies to the official character of that person and to his authority to perform the notarial act.

(4) The signature and title of the person performing the act are prima facie evidence that he is a person with the designated title and that the signature is genuine.

Source: L. 69: p. 871, § 1. C.R.S. 1963: § 96-2-3. L. 2002: (2)(b) amended, p. 796, § 16, effective August 7.

12-55-205. Certificate of person taking acknowledgment. (1) The person taking an acknowledgment shall certify that:

(a) The person acknowledging appeared before him and acknowledged he executed the instrument; and

(b) The person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

Source: L. 69: p. 871, § 1. C.R.S. 1963: § 96-2-4.

12-55-206. Recognition of certificate of acknowledgment. (1) The form of a certificate of acknowledgment used by a person whose authority is recognized under section 12-55-203 shall be accepted in this state if:

(a) The certificate is in a form prescribed by the laws or regulations of this state; or

(b) The certificate is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken; or

(c) The certificate contains the words "acknowledged before me", or their substantial equivalent.

Source: L. 69: p. 871, § 1. C.R.S. 1963: § 96-2-5.

12-55-207. Certificate of acknowledgment. (1) "Acknowledged before me" means:

(a) That the person acknowledging appeared before the person taking the acknowledgment; and

(b) That he acknowledged he executed the instrument; and

(c) That, in the case of:

(I) A natural person, he executed the instrument for the purposes therein stated;

(II) A corporation, the officer or agent acknowledged he held the position or title set forth in the instrument and certificate, he signed the instrument on behalf of the corporation by proper authority, and the instrument was the act of the corporation for the purpose therein stated;

(III) A partnership, the partner or agent acknowledged he signed the instrument on behalf of the partnership by proper authority and he executed the instrument as the act of the partnership for the purposes therein stated;

(IV) A person acknowledging as principal by an attorney in fact, he executed the instrument by proper authority as the act of the principal for the purposes therein stated;

(V) A person acknowledging as a public officer, trustee, administrator, guardian, or other representative, he signed the instrument by proper authority and he executed the instrument in the capacity and for the purposes therein stated; and

(d) That the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.

Source: L. 69: p. 872, § 1. C.R.S. 1963: § 96-2-6.

12-55-208. Short forms of acknowledgment. (1) The forms of acknowledgment set forth in this section may be used and are sufficient for their respective purposes under any law of this state. The forms shall be known as "Statutory Short Forms of Acknowledgment" and may be referred to by that name. The authorization of the following forms does not preclude the use of other forms:

(a) For an individual acting in his own right:

"State of

County of

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged).

(signature of person taking acknowledgment)
(title or rank)
(serial number, if any)";

(b) For a corporation:

"State of

County of

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging) a (state or place of incorporation, corporation, on behalf of the corporation).

(signature of person taking acknowledgment)
(title or rank)
(serial number, if any)";

(c) For a partnership:

"State of

County of

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership.

(signature of person taking acknowledgment)
(title or rank)
(serial number, if any)";

(d) For an individual acting as principal by an attorney in fact:

"State of

County of

The foregoing instrument was acknowledged before me this (date) by (name of attorney-in-fact) as attorney in fact on behalf of (name of principal).

(signature of person taking acknowledgment)
(title or rank)
(serial number, if any)";

(e) By any public officer, trustee, or personal representative:

"State of

County of

The foregoing instrument was acknowledged before me this (date) by (name and title of position).

(signature of person taking acknowledgment)
(title or rank)
(serial number, if any)".

Source: L. 69: p. 872, § 1. C.R.S. 1963: § 96-2-7.

12-55-209. Acknowledgments not affected by this part 2. A notarial act performed prior to July 1, 1969, is not affected by this part 2. This part 2 provides an additional method of proving notarial acts. Nothing in this part 2 diminishes or invalidates the recognition accorded to notarial acts by other laws or regulations of this state.

Source: L. 69: p. 873, § 1. C.R.S. 1963: § 96-2-8.

12-55-210. Uniformity of interpretation. This part 2 shall be so interpreted as to make uniform the laws of those states which enact it.

Source: L. 69: p. 873, § 1. C.R.S. 1963: § 96-2-9.

12-55-211. Seals. Whenever any law, rule, or regulation requires the use of a seal, it shall be sufficient that a rubber stamp with a facsimile affixed thereon of the seal required to be used is placed or stamped upon the document requiring the seal with indelible ink or, in the case of an electronic record, attachment of such information that is required in lieu of a notary seal by the laws of the place granting notarial authority to the person performing the notarial act shall be sufficient in lieu of any other form of notary seal.

Source: L. 75: Entire section added, p. 488, § 3, effective July 14. L. 2002: Entire section amended, p. 796, § 17, effective August 7.

PART 3

UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

OFFICIAL COMMENT

UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

PREFATORY NOTE

Declarations of persons abroad are routinely received in state and federal courts and agencies. Many of the declarations are affidavits and other documents sworn to by declarants before authorized officials in United States embassies and consulate offices. Affiants in foreign countries with information relevant to U.S. proceedings or transactions could visit the U.S. consular office to finalize their affidavit or statement in a manner similar to a person within the U.S. visiting a notary public.

In recent years, though, particularly after the September 11, 2001 terrorist attacks, access to U.S. embassies and consulates has become more difficult because of closings or added security. Thus, obtaining appropriately sworn foreign declarations for court or agency use is much more difficult in the post-9/11 environment.

The Uniform Unsworn Foreign Declarations Act (UUFDA) was promulgated by the Uniform Law Commission at its Annual Meeting in 2008 to address this situation and to harmonize state and federal law.

UUFDA affirms the use in state legal proceedings of unsworn declarations made by declarants who are physically outside the boundaries of the United States when making the declaration. Under the UUFDA, if an unsworn declaration is made subject to penalties for perjury and contains the information in the model form provided in the act, then the statement may be used

as an equivalent of a sworn declaration. The UUFDA excludes use of unsworn declarations for depositions, oaths of office, oaths related to self-proved wills, declarations recorded under certain real estate statutes, and oaths required to be given before specified officials other than a notary.

The UUFDA will extend to state proceedings the same flexibility that federal courts have employed for over 30 years. Since 1976, federal law (28 U.S.C. 1746) has allowed an unsworn declaration executed outside the United States to be recognized and valid as the equivalent of a sworn affidavit if it contained an affirmation substantially in the form set forth in the federal act.

Several states also allow the use of foreign declarations (e.g., Cal. Civ. Proc. Code 2015.5), but the state procedures are not uniform. Further, courts have ruled that 28 U.S.C. § 1746 is inapplicable to state court proceedings.

Enactment of the UUFDA harmonizes state and federal treatment of unsworn declarations. The act alleviates foreign affiants' burden in providing important information for state proceedings, while at the same time helping to reduce congestion in U.S. consular offices and allowing consular officials to increase focus on core responsibilities. Further, UUFDA will reduce aspects of confusion abroad regarding differences in federal and state litigation practice and help prevent potential negative connotations about cumbersome and inconsistent legal proceedings in the U.S. It should be enacted in every state.

12-55-301. Short title. This part 3 may be cited as the “Uniform Unsworn Foreign Declarations Act”.

Source: L. 2009: Entire part added, (HB 09-1190), ch. 115, p. 483, § 1, effective August 5.

12-55-302. Definitions. In this part 3:

(1) “Boundaries of the United States” means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(2) “Law” includes the federal or a state constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order, and an administrative rule, regulation, or order.

(3) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) “Sign” means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process.

(5) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(6) “Sworn declaration” means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.

(7) “Unsworn declaration” means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.

Source: L. 2009: Entire part added, (HB 09-1190), ch. 115, p. 483, § 1, effective August 5.

OFFICIAL COMMENT

1. The District of Columbia is included in the definition of “boundaries of the United States” to eliminate any potential ambiguity.

2. The definition of “law” is drafted in an open-ended manner to give it the widest possible application. The term is not ordinarily defined in uniform acts but in this context it is important that judges applying the act be in no doubt about its breadth. The wording is taken from the definition contained in the Revised Model State Administrative Procedure Act.

3. A “record” includes information that is in intangible form (e.g., electronically stored) as

well as tangible form (e.g., written on paper). It is consistent with the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.).

4. The definition of “sign” is broad enough to cover any writing containing a traditional signature and any record containing an electronic signature. It is consistent with the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.).

12-55-303. Applicability. This part 3 applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States. This part 3 does not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe.

Source: L. 2009: Entire part added, (HB 09-1190), ch. 115, p. 484, § 1, effective August 5.

OFFICIAL COMMENT

In keeping with the limited scope of the act, an unsworn declaration made within the geographical boundaries of the United States, even if the location is under the control of another sovereign, such as foreign embassies or consulates or federally recognized Indian lands, should

not be deemed “outside the boundaries of the United States” for the purposes of this act. The act, so limited, meets the immediate needs addressed by the act. Moreover, notaries and officials authorized to administer oaths are more readily available in the United States.

12-55-304. Validity of unsworn declaration. (a) Except as otherwise provided in subsection (b) of this section, if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this part 3 has the same effect as a sworn declaration.

- (b) This part 3 does not apply to:
 - (1) A deposition;
 - (2) An oath of office;
 - (3) An oath required to be given before a specified official other than a notary public;
 - (4) A declaration to be recorded pursuant to article 35 of title 38, C.R.S., for the purposes of conveying and recording title to real property or a declaration required to be recorded for purposes of registering title to real property pursuant to article 36 of title 38, C.R.S.; or
 - (5) An oath required by section 15-11-504, C.R.S., for a self-proved will.

Source: L. 2009: Entire part added, (HB 09-1190), ch. 115, p. 484, § 1, effective August 5.

OFFICIAL COMMENT

The use of unsworn declarations is not limited to litigation. Unsworn declarations would be usable in civil, criminal, and regulatory proceedings and settings. However, there are certain contexts in which unsworn declarations should not be used, and these contexts are listed in this section.

Except as provided in section 4 of this act, pursuant to this section, an unsworn declaration meeting the requirements of this act may be used in a state proceeding or transaction when-

ever other state law authorizes the use of a sworn declaration. Thus, if other state law, permits the use of either sworn testimony or an affidavit, an unsworn declaration meeting the requirements of this act would also suffice. Additionally, if other state law authorizes other substitutes for a sworn declaration, such as an affirmation, then as provided in subsection (a) of this section, an unsworn declaration meeting the requirements of this act could serve as a substitute for an affirmation.

12-55-305. Required medium. If a law of this state requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium.

Source: L. 2009: Entire part added, (HB 09-1190), ch. 115, p. 484, § 1, effective August 5.

OFFICIAL COMMENT

Courts and agencies often restrict the medium in which pleadings, motions, and other documents may be filed. This section recognizes that

such a restriction is binding on a person seeking to introduce a foreign unsworn declaration.

12-55-306. Form of unsworn declaration. An unsworn declaration under this part 3 must be in substantially the following form:

Executed on the _____ day of _____,
(date) (month) (year)

at _____
(city or other location, and state) (country)

(printed name)

(signature)

Source: L. 2009: Entire part added, (HB 09-1190), ch. 115, p. 485, § 1, effective August 5.

OFFICIAL COMMENT

Section 3 of this act authorizes the use of unsworn declarations made outside the boundaries of the United States as defined in Section 2(1). The formal declaration in this section recites the areas defined as within the boundaries and does not rely on the definition in Section 2(1) because the person making the formal declaration might believe, and therefore declare that

he or she is outside the boundaries of the United States even though at the time of the declaration the person making the declaration is in the Virgin Islands, Puerto Rico, or one of the other territories or insular possessions of the United States. The form of the declaration lessens the opportunity for mistake or fraud.

12-55-307. Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: L. 2009: Entire part added, (HB 09-1190), ch. 115, p. 485, § 1, effective August 5.

OFFICIAL COMMENT

This section recites the importance of uniformity among the adopting states when applying and construing the act.

12-55-308. Relation to “Electronic Signatures in Global and National Commerce Act”. This part 3 modifies, limits, and supersedes the federal “Electronic Signatures in Global and National Commerce Act”, 15 U.S.C. sec. 7001, et seq., but does not modify, limit, or supersede section 101 (c) of that act, 15 U.S.C. sec. 7001 (c), or authorize electronic delivery of any of the notices described in section 103 (b) of that act, 15 U.S.C. sec. 7003 (b).

Source: L. 2009: Entire part added, (HB 09-1190), ch. 115, p. 485, § 1, effective August 5.

OFFICIAL COMMENT

This section responds to the specific language of the Electronic Signatures in Global and National Commerce Act and is designed to avoid

preemption of state law under that federal legislation.

ARTICLE 55.5

Outfitters and Guides

Editor’s note: This article was added in 1983. This article was repealed and reenacted in 1988, resulting in the addition, relocation, and elimination of sections as well as subject matter. For

amendments to this article prior to 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Cross references: For the regulation of river outfitters, see article 32 of title 33.

Law reviews: For article, "Recreational Use Of Agricultural Lands", see 23 Colo. Law. 529 (1994).

12-55.5-101.	Legislative declaration.			authorized practice - penalties.
12-55.5-102.	Definitions.			
12-55.5-102.5.	Applicability.	12-55.5-109.		Contracts for outfitting services - writing required.
12-55.5-103.	Registration required - fees.	12-55.5-110.		Other remedies - contracts void - public nuisance - seizure of equipment.
12-55.5-103.5.	Guide qualifications.			
12-55.5-104.	Powers and duties of the director.	12-55.5-111.		Advisory committee.
12-55.5-105.	Issuance of certificate of registration - violations.	12-55.5-112.		Immunity.
12-55.5-106.	Disciplinary actions - grounds for discipline.	12-55.5-113.		Enforcement.
12-55.5-107.	Penalties - distribution of fines.	12-55.5-114.		Fees - cash fund.
12-55.5-107.5.	Violations - penalties - distribution of fines collected. (Repealed)	12-55.5-115.		Judicial review.
12-55.5-108.	Cease-and-desist orders - un-	12-55.5-116.		Persons licensed under previous law. (Repealed)
		12-55.5-116.5.		Notice - hunting and fishing license.
		12-55.5-117.		Repeal of article - review of functions.
		12-55.5-118.		Applicability.

12-55.5-101. Legislative declaration. It is the intent of the general assembly to promote and encourage residents and nonresidents alike to participate in the enjoyment and use of the mountains, rivers, and streams of Colorado and the state's fish and game and, to that end, in the exercise of the police power of this state for the purpose of safeguarding the health, safety, welfare, and freedom from injury or danger of such residents and nonresidents, to register and regulate those persons who, for compensation, provide equipment or personal services to such residents and nonresidents for the purpose of hunting and fishing. It is neither the intent of the general assembly to interfere in any way with the business of livestock operations or to prevent livestock owners from loaning or leasing buildings or animals to persons, nor is it intended to prevent said owner from accompanying a person or persons on land that such person owns, nor is it the intent of the general assembly to interfere in any way with the general public's ability to enjoy the recreational value of Colorado's mountains, rivers, and streams when the services of commercial outfitters are not utilized nor to interfere with the right of the United States to manage the public lands under its control.

Source: L. 88: Entire article R&RE, p. 575, § 1, effective July 1. L. 93: Entire section amended, p. 1489, § 1, effective July 1.

12-55.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Compensation" means making, or attempting to make, a profit, salary, or increase in business or financial standing, or supporting any part of other programs or activities, to include receiving fees, charges, dues, service swaps, or something which is not strictly a sharing of actual expenses incurred from amounts received from or for outfitting services rendered or to be rendered.

(1.5) "Consultant" means a person who is hired by the director to assist in any investigation initiated under this article or any member of an advisory committee appointed pursuant to section 12-55.5-111.

(2) "Director" means the director of the division of professions and occupations in the department of regulatory agencies.

(3) "Division" means the division of professions and occupations in the department of regulatory agencies.

(3.5) "Entity" means an entity authorized by Colorado law to conduct business, including, but not limited to, a corporation, partnership, limited liability partnership, or limited liability company.

(4) "Guide" means any individual who:

(a) Accompanies an outfitter's client to assist the client in the taking or attempted taking of wildlife; and

(b) Either:

(I) Is employed for compensation by an outfitter; or

(II) Has independently contracted with an outfitter.

(5) "Outfitter" means any individual soliciting to provide or providing, for compensation, outfitting services for the purpose of hunting or fishing on land that such individual does not own.

(5.5) "Outfitting services" means providing transportation of individuals, equipment, supplies, or wildlife by means of vehicle, vessel, or pack animal, facilities including but not limited to tents, cabins, camp gear, food, or similar supplies, equipment, or accommodations, and guiding, leading, packing, protecting, supervising, instructing, or training persons or groups of persons in the take or attempted take of wildlife.

(6) "Peace officer" means a peace officer as described in section 16-2.5-101, C.R.S.

(7) (Deleted by amendment, L. 2004, p. 340, § 14, effective July 1, 2004.)

Source: L. 88: Entire article R&RE, p. 575, § 1, effective July 1. L. 93: (1) and (5) amended and (1.5) and (5.5) added, p. 1489, § 2, effective July 1. L. 2003: (6) amended, p. 1619, § 27, effective August 6. L. 2004: (3.5) added and (4), (5), and (7) amended, p. 340, § 14, effective July 1.

12-55.5-102.5. Applicability. This article shall not apply to a person who only authorizes a person to hunt, fish, or take wildlife on property the person owns, rents, or leases, including, without limitation, providing such authorization for compensation.

Source: L. 2004: Entire section added, p. 336, § 3, effective July 1.

ANNOTATION

Soliciting a person to hunt on land the solicitor leases is not providing outfitting services. Since authorizing a person to hunt on land owned by the solicitor is expressly excepted from this article, soliciting such an arrangement

is not providing outfitting services. Therefore, the solicitation does not require registration. *McCool v. Sears*, 186 P.3d 147 (Colo. App. 2008).

12-55.5-103. Registration required - fees. (1) No individual shall engage in activities as an outfitter or advertise in any publication or represent himself as an outfitter unless he first obtains a certificate of registration from the division and unless such certificate of registration is in full force and effect and in such individual's immediate possession. No individual shall continue to act as an outfitter if such registration has been suspended or revoked or has expired.

(2) An applicant for registration as an outfitter shall follow the procedures provided in section 12-55.5-105 and any other procedures required by the director. All applicants shall pay a nonrefundable registration fee to be determined by the director, which fee shall be adequate to cover the direct and indirect expenses incurred for implementation of the provisions of this article. Such registration shall be renewable pursuant to the provisions of this article and upon payment of said fee.

Source: L. 88: Entire article R&RE, p. 576, § 1, effective July 1.

ANNOTATION

Acting as a booking agent is not solicitation to provide outfitting services. Soliciting to provide outfitting services does not require registration unless the person who solicits the services intends to provide the services. *McCool v. Sears*, 186 P.3d 147 (Colo. App. 2008).

Soliciting a person to hunt on land the solicitor leases is not providing outfitting ser-

vices. Since authorizing a person to hunt on land owned by the solicitor is expressly excepted from this article, soliciting such an arrangement is not providing outfitting services. Therefore, the solicitation does not require registration. *McCool v. Sears*, 186 P.3d 147 (Colo. App. 2008).

12-55.5-103.5. Guide qualifications. (1) A person who works as a guide shall be eighteen years of age or older and shall hold either a valid first aid or first aid instructor's card issued by the American red cross or evidence of equivalent training credentials as approved by the director. A person who violates this subsection (1) is guilty of a misdemeanor and shall be punished by a fine of one hundred dollars.

(2) It is a violation of this article for any person whose outfitter registration has been revoked or suspended to work as a guide.

Source: L. 2004: Entire section added, p. 338, § 8, effective July 1.

12-55.5-104. Powers and duties of the director. (1) In addition to all other powers and duties conferred or imposed upon the director by this article or by any other law, the director:

(a) May promulgate rules and regulations pursuant to the provisions of section 24-4-103, C.R.S., to govern the registration of outfitters to carry out the purposes of this article;

(b) (I) May administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to perform the functions of this subparagraph (I) and to take evidence and to make findings and report them to the director.

(II) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(c) Is authorized to apply for injunctive relief, in the manner provided by the Colorado rules of civil procedure, to enforce the provisions of this article or to restrain any violation thereof. In such proceedings, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof.

Source: L. 88: Entire article R&RE, p. 576, § 1, effective July 1. **L. 2004:** (1)(b) amended, p. 1852, § 105, effective August 4.

ANNOTATION

Rules that were expressly or impliedly authorized by the enabling legislation included rules allowing disciplinary action against an outfitter who consistently and intentionally failed to perform promised obligations; rules requiring outfitters to provide clients with a written con-

tract within 30 days of the receipt and acceptance of a deposit from a client; and rules requiring an outfitter to disclose any material condition in his or her written agreement. *Sears v. Romer*, 928 P.2d 745 (Colo. App. 1996).

12-55.5-105. Issuance of certificate of registration - violations. (1) Except as otherwise provided in this article, the director shall issue an initial or renewed certificate of registration as an outfitter to any individual who pays the required fee and furnishes evidence satisfactory to the director that such individual:

- (a) Is eighteen years of age or older;
- (b) Holds a valid instructor's card in first aid or a standard first aid card issued by the American red cross or evidence of equivalent training;
- (c) Possesses minimum liability insurance coverage in the amount of fifty thousand dollars for bodily injury to one person in any single accident and one hundred thousand dollars for bodily injury to all persons in any single accident;
- (d) Has submitted to the director a surety bond in the minimum sum of ten thousand dollars, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Such bond shall be conditioned upon compliance with the provisions of this article and with the rules and regulations promulgated under this article.
- (e) Holds a valid first aid or first aid instructor's card issued by the American red cross or evidence of equivalent training credentials as approved by the director; and
- (f) Has, or will have before providing outfitting services, all the required permits or written permission on the land where the outfitter provides outfitting services.

(2) and (3) (Deleted by amendment, L. 93, p. 1490, § 3, effective July 1, 1993.)

(4) An individual or entity may register as an outfitter. An application for registration of an entity shall include the names of all officers, directors, members, partners, owners of at least ten percent of the entity, and other persons who have managing or controlling authority in the entity. The entity shall designate on the application for outfitter registration one of its officers, directors, members, partners, or other controlling or managing individuals to be the responsible party and agent for the entity for all communications with the division. If the entity changes its responsible party and agent, it shall notify the division within ten working days after the name change and provide contact information for the new responsible party and agent. If such responsible party and agent does not provide guide services, he or she shall not be required to comply with paragraph (b) of subsection (1) of this section.

(5) Renewals and reinstatement of certificates shall be pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her certification pursuant to the schedule established by the director of the division of professions and occupations, such certificate shall expire. Any person whose certificate has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

Source: L. 88: Entire article R&RE, p. 577, § 1, effective July 1. L. 90: (2) amended, p. 983, § 1, effective April 24. L. 93: (1), (2), and (3) amended, p. 1490, § 3, effective July 1. L. 2004: (1)(e) and (1)(f) added and (4) amended, pp. 338, 337, §§ 6, 4, effective July 1; (5) added, p. 1853, § 106, effective August 4.

12-55.5-106. Disciplinary actions - grounds for discipline. (1) The director may deny, suspend, revoke, or place on probation an outfitter's registration if the applicant or holder:

- (a) Violates any order of the division or the director or any provision of this article or the rules and regulations established under this article;
- (b) Fails to meet the requirements of section 12-55.5-105 or uses fraud, misrepresentation, or deceit in applying for or attempting to apply for registration;
- (c) Violates any local, state, or federal law related to public land management, wildlife, health, or cruelty to animals, including, but not limited to, section 33-6-113, C.R.S.;

(d) Is convicted of or has entered a plea of nolo contendere or guilty to a felony; except that the director shall be governed by the provisions of section 24-5-101, C.R.S., in considering such conviction or plea;

(e) Uses false, deceptive, or misleading advertising;

(f) Misrepresents his services, facilities, or equipment to a client or prospective client;

(g) Is addicted to or dependent upon alcohol or any controlled substance or is a habitual user of a controlled substance as defined in section 18-18-102 (5), C.R.S.;

(h) Has incurred disciplinary action related to the practice of outfitting in another jurisdiction. Evidence of such disciplinary action shall be prima facie evidence for denial of registration or other disciplinary action if the violation would be grounds for such disciplinary action in this state.

(i) Has been convicted of second or third degree criminal trespass pursuant to section 18-4-503 or 18-4-504, C.R.S.; except that the director shall be governed by the provisions of section 24-5-101, C.R.S., in considering such conviction;

(j) Hires any person as a guide who fails to meet the requirements of section 12-55.5-103.5, unless such hiring is a result of an emergency situation, as defined by rules promulgated by the director, in which case the outfitter may hire a guide who does not possess a valid first aid card or first aid instructor's card;

(k) Serves or consumes alcohol while engaged in the activities of an outfitter, if the applicant or holder is under twenty-one years of age; or

(l) Violates section 18-4-503 or 18-4-504, C.R.S., resulting in two or more second or third degree criminal trespass convictions within any three- to five-year period while acting as an outfitter or guide.

(2) Any proceeding to deny, suspend, revoke, or place on probation a registration shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S. The director may use an administrative law judge employed by the office of administrative courts in the department of personnel to conduct hearings. Any person whose registration is denied, suspended, placed on probation, or revoked shall pay for the costs incurred in bringing and conducting such proceeding.

(3) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the registrant.

(b) When a letter of admonition is sent by the director, by certified mail, to a registrant, such registrant shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(4) Notwithstanding any other provision of this article, the director may deny an initial or renewal application for registration if:

(a) The applicant is an individual who was previously listed as participating in an entity pursuant to section 12-55.5-105 (4), and such entity was subjected to discipline under this article;

(b) The applicant is an entity, the entity lists an individual as participating in the entity pursuant to section 12-55.5-105 (4), and that individual was previously listed as a participating person in an entity that was subjected to discipline under this article; or

(c) The applicant is an entity, the entity lists an individual as a participating person pursuant to section 12-55.5-105 (4), and that individual was previously subjected to discipline under this article.

(5) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

Source: L. 88: Entire article R&RE, p. 578, § 1, effective July 1. L. 89: (1)(i) amended, p. 1642, § 2, effective June 5. L. 93: (1)(i) and (1)(j) amended and (1)(k) added,

p. 1491, § 4, effective July 1. **L. 95:** (2) amended, p. 637, § 21, effective July 1. **L. 2004:** (1)(c), (1)(g), (1)(j), and (3) amended and (1)(l) and (4) added, pp. 337, 339, §§ 5, 10, effective July 1; (3) amended and (5) added, p. 1854, §§ 108, 109, effective August 4. **L. 2005:** (2) amended, p. 857, § 20, effective June 1. **L. 2006:** (1)(j) amended, p. 228, § 1, effective March 31.

ANNOTATION

Provision for payments of costs does not violate equal protection guarantees in that it has a rational basis and is reasonably related to the state's legitimate governmental purpose of protecting the public safety. The statute discourages statutory violations and encourages settlement of meritorious claims against outfitters while also encouraging the agency to bring only meritorious claims and deterring alleged viola-

tors from raising frivolous claims or defenses. *Sears v. Romer*, 928 P.2d 745 (Colo. App. 1996).

Director's interpretation of the term "costs" to include the amount billed by the division of administrative hearings for an administrative law judge and his or her legal assistant and the appearance fee of the court reporter was reasonable. *Sears v. Romer*, 928 P.2d 745 (Colo. App. 1996).

12-55.5-107. Penalties - distribution of fines. (1) Any person who violates the provisions of this article or the rules of the director promulgated under this article may be penalized by the director upon a finding of a violation subject to article 4 of title 24, C.R.S., as follows:

(a) In the first administrative proceeding against any person, a fine of not less than one hundred dollars but not more than five hundred dollars per violation;

(b) In any subsequent administrative proceeding against any person for transactions occurring after a final agency action determining that a violation of this article has occurred, a fine of not less than one thousand dollars but not more than two thousand dollars per violation;

(c) In an administrative proceeding against a person for a violation of section 12-55.5-103 (1), a fine of not less than one thousand dollars but not more than five thousand dollars per violation.

(1.5) Repealed.

(2) In addition to the penalties provided in subsection (1) of this section, the director, upon a finding of a violation, may deny, suspend, revoke, or place on probation an outfitter's registration or take other disciplinary action as provided in section 12-55.5-106 (3).

(3) Any person who engages in activities as an outfitter shall maintain all applicable documents, records, and other items, for the current year and the preceding four years at the address listed on the registration, required to be maintained by this article or by the rules or regulations of the director when requested to do so by any peace officer. Any such person who refuses to permit the inspection of such documents, records, or items is guilty of a misdemeanor and shall be punished by a fine of one hundred dollars.

(4) (Deleted by amendment, L. 93, p. 1491, § 5, effective July 1, 1993.)

(5) All fines collected pursuant to this article shall be distributed as follows:

(a) Fifty percent divided by the court between any federal, state, or local law enforcement agency assisting with an investigation;

(b) Fifty percent to the division for the cost of administering this article.

Source: **L. 88:** Entire article R&RE, p. 579, § 1, effective July 1. **L. 93:** IP(1) and (4) amended, p. 1491, § 5, effective July 1. **L. 2004:** (1) amended, p. 339, § 9, effective July 1. **L. 2006:** (1.5) repealed and (5) added with relocated provisions, pp. 97, 95, §§ 68, 56, effective August 7.

Editor's note: This section is similar to former § 12-55.5-107.5 (2) as it existed prior to 2006.

ANNOTATION

Provision for payments of costs does not violate equal protection guarantees in that it has a rational basis and is reasonably related to the state's legitimate governmental purpose of protecting the public safety. The statute discourages statutory violations and encourages settle-

ment of meritorious claims against outfitters while also encouraging the agency to bring only meritorious claims and deterring alleged violators from raising frivolous claims or defenses. *Sears v. Romer*, 928 P.2d 745 (Colo. App. 1996).

12-55.5-107.5. Violations - penalties - distribution of fines collected. (Repealed)

Source: **L. 93:** Entire section added, p. 1492, § 6, effective July 1. **L. 2002:** (1) amended, p. 1485, § 111, effective October 1. **L. 2006:** (1) and (2) repealed, p. 95, §§ 58, 57, effective August 7.

Editor's note: Subsection (2) was relocated to § 12-55.5-107 (5) in 2006.

12-55.5-108. Cease-and-desist orders - unauthorized practice - penalties.

(1) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a registrant is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required registration, the director may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (1), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(2) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the director may issue to such person an order to show cause as to why the director should not issue a final order directing such person to cease and desist from the unlawful act or unregistered practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) shall be promptly notified by the director of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (2) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (2). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (2) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the director reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required registration, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or unregistered practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (2), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom such order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(3) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged in or is about to engage in any unregistered act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the director may enter into a stipulation with such person.

(4) If any person fails to comply with a final cease-and-desist order or a stipulation, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(5) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order as provided in section 12-55.5-115.

(6) Any person who engages or offers or attempts to engage in activities as an outfitter without an active registration issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: **L. 88:** Entire article R&RE, p. 579, § 1, effective July 1. **L. 93:** (3) added, p. 1492, § 7, effective July 1. **L. 2004:** (1)(d), (2), and (3) repealed, p. 338, § 7, effective July 1. **L. 2006:** Entire section amended, p. 814, § 40, effective July 1; (6) added, p. 95, § 55, effective August 7.

Editor's note: Subsection (6) was originally enacted as subsection (4) in House Bill 06-1048. Said subsection (4) was harmonized with the amendments to this section in House Bill 06-1264 and relocated to subsection (6).

ANNOTATION

Statute grants authority to regulate "guides". *Sears v. Romer*, 928 P.2d 745 (Colo. App. 1996).

12-55.5-109. Contracts for outfitting services - writing required. (1) Prior to engaging in any activity as an outfitter, an outfitter shall provide a written contract to the client signed by both the outfitter and the client, stating at least the following terms:

- (a) Type of services to be provided;
- (b) Dates of service;
- (c) Transportation arrangements;
- (d) Costs of the services;
- (e) Ratio of clients to guides; and
- (f) The outfitter's policy regarding cancellation of the contract and refund of any deposit.

(2) No action may be maintained by an outfitter for breach of a contract or agreement to provide outfitting services or for the recovery of compensation for services rendered

under such contract or agreement if the outfitter has failed to comply with the provisions of this article.

(3) Any written contract provided pursuant to this section shall also contain a written statement that pursuant to section 12-55.5-105 (1) (c) and (1) (d) outfitters are bonded and required to possess the minimum level of liability insurance and that the activities of outfitters are regulated by the director of the division of professions and occupations in the department of regulatory agencies.

Source: L. 88: Entire article R&RE, p. 580, § 1, effective July 1. L. 93: Entire section amended, p. 1492, § 8, effective July 1.

12-55.5-110. Other remedies - contracts void - public nuisance - seizure of equipment. (1) Every agreement or contract for the services of an outfitter shall be void and unenforceable by the outfitter unless such outfitter is duly registered with the division under the provisions of this article when such services are contracted for and performed.

(2) Every motor vehicle, trailer, vessel, firearm, weapon, trap, equipment, livestock, or other personal property used in outfitting services in violation of the provisions of this article is declared to be a class 2 public nuisance. Unless in conflict with the specific provisions of this section, the provisions of article 13 of title 16, C.R.S., shall apply to any action taken pursuant to this section.

(3) (a) Any personal property subject to seizure under this section which is seized as a part of or incident to a criminal proceeding for violation of this article and for which disposition is not provided by another statute of this state shall be disposed of as provided in this section.

(b) The court may order any such property sold by the director in the manner provided for sales on execution.

(c) The proceeds of such sale shall be applied as follows:

(I) To the fees and costs of removal and sale;

(II) To the payment of any costs the state has incurred from such action; and

(III) The balance, if any, to the office of the district attorney who has brought such action.

Source: L. 88: Entire article R&RE, p. 580, § 1, effective July 1. L. 93: (2) amended, p. 1493, § 9, effective July 1.

12-55.5-111. Advisory committee. The director shall appoint an advisory committee to make recommendations concerning outfitters, which committee shall serve at the request and pleasure of the director. The members of the advisory committee shall receive no compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties under this article.

Source: L. 88: Entire article R&RE, p. 581, § 1, effective July 1. L. 93: Entire section amended, p. 1493, § 10, effective July 1.

12-55.5-112. Immunity. The director, the director's staff, any person acting as a witness or consultant to the director, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 88: Entire article R&RE, p. 581, § 1, effective July 1. L. 2004: Entire section amended, p. 1855, § 110, effective August 4.

12-55.5-113. Enforcement. Every peace officer, as defined in section 12-55.5-102 (6), is hereby authorized to assist the director in the enforcement of the provisions of this article and the rules and regulations prescribed by the director.

Source: L. 88: Entire article R&RE, p. 581, § 1, effective July 1. L. 89: Entire section amended, p. 1643, § 3, effective June 5.

12-55.5-114. Fees - cash fund. Except as otherwise provided in this article and in section 12-55.5-110, all fees collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the division of professions and occupations cash fund created pursuant to section 24-34-105 (2) (b), C.R.S. The general assembly shall make annual appropriations from the division of professions and occupations cash fund for expenditures of the division incurred in the performance of its duties under this article.

Source: L. 88: Entire article R&RE, p. 581, § 1, effective July 1. L. 2003: Entire section amended, p. 2590, § 4, effective July 1.

12-55.5-115. Judicial review. The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

Source: L. 88: Entire article R&RE, p. 582, § 1, effective July 1.

12-55.5-116. Persons licensed under previous law. (Repealed)

Source: L. 88: Entire article R&RE, p. 582, § 1, effective July 1. L. 2004: Entire section repealed, p. 340, § 12, effective July 1.

12-55.5-116.5. Notice - hunting and fishing license. The division and the division of parks and wildlife shall develop a system to provide a written notice with each hunting or fishing license, at the time of issuance, stating that it is illegal to provide outfitting services in Colorado without registering with the division.

Source: L. 2004: Entire section added, p. 340, § 11, effective January 1, 2005.

12-55.5-117. Repeal of article - review of functions. Unless continued by the general assembly, this article is repealed, effective July 1, 2014, and those powers, duties, and functions of the division specified in this article are abolished. The provisions of section 24-34-104 (5) to (12), C.R.S., concerning a wind-up period, an analysis and evaluation, public hearings, and claims by or against an agency shall apply to the powers, duties, and functions of the division specified in this article.

Source: L. 88: Entire article R&RE, p. 582, § 1, effective July 1. L. 93: Entire section amended, p. 1494, § 11, effective July 1. L. 2003: Entire section amended, p. 2589, § 1, effective July 1. L. 2004: Entire section amended, p. 341, § 15, effective July 1.

12-55.5-118. Applicability. This article shall not require a person or entity to register as an outfitter if such person or entity only rents motor vehicles, livestock, or equipment.

Source: L. 2004: Entire section added, p. 340, § 13, effective July 1.

ARTICLE 56

Pawnbrokers

Editor’s note: This article was numbered as article 58 of chapter 139, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1984, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1984, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Law reviews: For article, “Constitutional Law” which discusses a recent Tenth Circuit decision dealing with due process rights of a pawnbroker in consigned property, see 64 Den. U. L. Rev. 202 (1987).

12-56-101.	Definitions.	12-56-103.	Required acts of pawnbro-
12-56-102.	Local authority to license and regulate.	12-56-104.	kers. Prohibited acts - penalties.

12-56-101. Definitions. As used in this article, unless the context otherwise requires:

(1) “Contract for purchase” means a contract entered into between a pawnbroker and a customer pursuant to which money is advanced to the customer by the pawnbroker on the delivery of tangible personal property by the customer on the condition that the customer, for a fixed price and within a fixed period of time, to be no less than thirty days, has the option to cancel said contract.

(2) “Fixed price” means the amount agreed upon to cancel a contract for purchase during the option period. Said fixed price shall not exceed:

- (a) (Deleted by amendment, L. 2004, p. 392, § 1, effective August 4, 2004.)
- (b) One-fifth of the original purchase price for each month, plus the original purchase price.

(3) “Fixed time” means that period of time, to be no less than thirty days, as set forth in a contract for purchase, for an option to cancel said contract.

(4) “Local law enforcement agency” means any marshal’s office, police department, or sheriff’s office with jurisdiction in the locality in which the customer enters into a contract for purchase or a purchase transaction.

(5) “Local licensing authority” means the governing body of a municipality or city and county in any incorporated area of the state and the board of county commissioners of a county in any unincorporated area of the state.

(6) “Option” means the fixed time and the fixed price agreed upon by the customer and the pawnbroker in which a contract for purchase may be but does not have to be rescinded by the customer.

(7) “Pawnbroker” means a person regularly engaged in the business of making contracts for purchase or purchase transactions in the course of his business.

(8) “Purchase transaction” means the purchase by a pawnbroker in the course of his business of tangible personal property for resale, other than newly manufactured tangible personal property which has not previously been sold at retail, when such purchase does not constitute a contract for purchase.

(9) “Tangible personal property” means all personal property other than choses in action, securities, or printed evidences of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of his business in connection with a contract for purchase or purchase transaction.

Source: L. 84: Entire article R&RE, p. 440, § 1, effective July 1. **L. 2004:** (1) to (3) amended, p. 392, § 1, effective August 4.

ANNOTATION

Bankruptcy court determined that under this section a pawn transaction is not a conveyance of title but is a secured transac-

tion, and therefore can be dealt with in the debtor's chapter 13 plan. In re Lopez, 163 Bankr. 189 (Bankr. D. Colo. 1994).

12-56-102. Local authority to license and regulate. Local licensing authorities may license pawnbrokers and require that pawnbrokers be bonded and insured and may enact regulations governing pawnbrokers, which regulations shall be at least as restrictive as the provisions of this article; except that the regulations shall be no more restrictive than this article with respect to fixed time and fixed price.

Source: L. 84: Entire article R&RE, p. 441, § 1, effective July 1. **L. 2004:** Entire section amended, p. 393, § 2, effective August 4.

Cross references: For the authority of counties and municipalities to regulate and license pawnbrokers, see §§ 30-15-401 (1)(k) and 31-15-401 (1)(n).

ANNOTATION

Law reviews. For note, "Colorado Interest Law", see 34 Dicta 398 (1957).

Annotator's note. Since § 12-56-102 is similar to former § 139-58-1, C.R.S. 1963, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Cities and towns administer scheme regulating pawnbrokers. The general assembly has provided a comprehensive scheme for the regulation of pawnbrokers to be administered through its cities and towns. *Lakewood Pawnbrokers, Inc. v. City of Lakewood*, 183 Colo. 370, 517 P.2d 834 (1973).

Municipality may exact additional requirements. The mere fact that the state, in the exercise of the police power, has made certain regu-

lations does not, however, prohibit a municipality from exacting additional requirements. *Provident Loan Soc'y v. City and County of Denver*, 64 Colo. 400, 172 P. 10 (1918).

So long as there is no conflict between state and municipality requirements, and the requirements of the municipality bylaws are not in themselves pernicious, as being unreasonable or discriminatory, both will stand. *Provident Loan Soc'y v. City and County of Denver*, 64 Colo. 400, 172 P. 10 (1918).

An ordinance of a city council regulating the licensing of pawnbrokers to be valid must be subordinate to and in harmony with the provisions of this article. *Solomon v. City of Denver*, 12 Colo. App. 179, 55 P. 199 (1898).

12-56-103. Required acts of pawnbrokers. (1) A pawnbroker shall keep a numerical register or other tangible or electronic record in which the pawnbroker shall record the following information: The name, address, and date of birth of the customer, and the driver's license number or other identification number from any other form of identification that is allowed for the sale of valuable articles pursuant to section 18-16-103, C.R.S., or for the sale of secondhand property pursuant to section 18-13-114, C.R.S.; the date, time, and place of the contract for purchase or purchase transaction; and an accurate and detailed account and description of each item of tangible personal property, including, but not limited to, any trademark, identification number, serial number, model number, brand name, or other identifying marks on such property. The pawnbroker shall also obtain a written declaration of the customer's ownership, which shall state that the tangible personal property is totally owned by the customer, or shall have attached to such declaration a power of sale from the partial owner to the customer, how long the customer has owned the property, whether the customer or someone else found the property, and, if the property was found, the details of the finding.

(2) The customer shall sign the register or other tangible or electronic record and the declaration of ownership and shall receive a copy of the contract for purchase or a receipt of the purchase transaction.

(3) The register or other tangible or electronic record, as well as a copy of the contract for purchase or a receipt of the purchase transaction, shall be made available to any local law enforcement agency for inspection at any reasonable time.

(4) The pawnbroker shall keep each register or other tangible or electronic record for at least three years after the date of the last transaction entered in the register.

(5) A pawnbroker shall hold all contracted goods within his jurisdiction for a period of ten days following the maturity date of the contract for purchase, during which time such goods shall be held separate and apart from any other tangible personal property and shall not be changed in form or altered in any way.

(6) A pawnbroker shall hold all property purchased by him through a purchase transaction for thirty days following the date of purchase, during which time such property shall be held separate and apart from any other tangible personal property and shall not be changed in form or altered in any way.

(7) (a) Every pawnbroker shall provide the local law enforcement agency, on a weekly basis, with two records, on a form to be provided or approved by the local law enforcement agency, of all tangible personal property accepted during the preceding week and one copy of the customer's declaration of ownership. The form shall contain the same information required to be recorded in the pawnbroker's register or other tangible or electronic record pursuant to subsection (1) of this section. The local law enforcement agency shall designate the day of the week on which the records and declarations shall be submitted.

(b) A local law enforcement agency is not required to use the information submitted pursuant to paragraph (a) of this subsection (7) to provide a benefit to the general public. The state and local governments may enact no further fees, charges, or taxes related to the use of the information provided to local law enforcement.

Source: L. 84: Entire article R&RE, p. 441, § 1, effective July 1. L. 2004: (1) to (4) and (7) amended, p. 393, § 3, effective August 4.

ANNOTATION

Law reviews. For article, "Discharge of Security Transactions", see 26 Rocky Mt. L. Rev. 115 (1954).

Person who knowingly provides false information with respect to any item of information required in this section is punishable pur-

suant to § 12-56-104 (5). Use of word "and" does not require a person to knowingly provide false information with respect to each and every item of information required in this section to be guilty of such charge. *People v. Richards*, 23 P.3d 1223 (Colo. 2000).

12-56-104. Prohibited acts - penalties. (1) No pawnbroker shall enter into a contract for purchase or purchase transaction with any individual under the age of eighteen years.

(2) With respect to a contract for purchase, no pawnbroker may permit any customer to become obligated on the same day in any way under more than one contract for purchase agreement with the pawnbroker which would result in the pawnbroker obtaining a greater amount of money than would be permitted if the pawnbroker and customer had entered into only one contract for purchase covering the same tangible personal property.

(3) (a) No pawnbroker shall violate the terms of the contract for purchase.

(b) A pawnbroker who violates the terms of a contract for purchase involving a fixed price as set forth in section 12-56-101 (2) commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(4) Except as otherwise provided in this section, any pawnbroker who violates any of the provisions of this article commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., and upon a second or subsequent conviction of a violation of this article within three years after the date of a prior conviction, a pawnbroker commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(5) Any customer who knowingly gives false information with respect to the information required by section 12-56-103 (1) commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 84: Entire article R&RE, p. 442, § 1, effective July 1. L. 2002: (4) and (5) amended, p. 1582, § 10, effective July 1; (3)(b), (4), and (5) amended, p. 1486, § 112, effective October 1.

Editor's note: Amendments to subsections (4) and (5) by House Bill 02-1046 and House Bill 02-1237 were harmonized.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (3)(b), (4), and (5), see section 1 of chapter 318, Session Laws of Colorado 2002.

ARTICLE 57

Pet Shops and Boarding Kennels

12-57-101 to 12-57-118. (Repealed)

Source: L. 83: Entire article repealed, p. 1069, § 4, effective March 1, 1984.

Editor's note: This article was numbered as article 30 of chapter 66, C.R.S. 1963. For amendments to this article prior to its repeal in 1983, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For regulation of pet animal and psittacine bird facilities, see part 7 of article 4 of title 25.

ARTICLE 58

Plumbers

Editor's note: This article was numbered as article 1 of chapter 142, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1982, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1982, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

12-58-101.	Legislative declaration.	12-58-110.	Disciplinary action by board -
12-58-102.	Definitions.		licenses or registrations denied, suspended, or revoked
12-58-103.	Examining board of plumbers - repeal of article.		- cease-and-desist orders.
12-58-104.	Powers of board - fees - rules.	12-58-110.1.	Reapplication after revocation of licensure.
12-58-104.5.	Colorado plumbing code - amendments - variances.	12-58-110.2.	Reconsideration and review of board action.
12-58-104.6.	Program administrator.	12-58-110.3.	Immunity.
12-58-105.	Plumber must have license - control and supervision.	12-58-110.4.	Judicial review.
12-58-106.	Unauthorized use of title of plumber.	12-58-111.	License by endorsement.
12-58-106.5.	Unauthorized use of title of plumbing contractor.	12-58-112.	Temporary permits.
12-58-107.	License issuance - examination.	12-58-113.	Exemptions.
12-58-107.5.	Credit for experience not subject to supervision of a licensed plumber.	12-58-114.	Disposition of fees.
12-58-108.	License renewal - reinstatement.	12-58-114.2.	State plumbing inspectors.
12-58-109.	License reinstatement. (Repealed)	12-58-114.5.	Inspection - application - standards.
		12-58-115.	Municipal and county regulations.
		12-58-116.	Unauthorized practice - penalties.
		12-58-116.5.	Violation - fines - rules.
		12-58-117.	Apprentices.

12-58-101. Legislative declaration. (1) The general assembly hereby finds that:

(a) Improper plumbing can adversely affect the health of the public and that faulty plumbing is potentially lethal and can cause widespread disease and an epidemic of disastrous consequences;

(b) To protect the health of the public, it is essential that plumbing be installed by persons who have proven their knowledge of the sciences of pneumatics and hydraulics and their skill in installing plumbing.

(2) Consistent with its duty to safeguard the health of the people of this state, the general assembly hereby declares that individuals who plan, install, alter, extend, repair, and maintain plumbing systems should be individuals of proven skill. To provide standards of skill for those in the plumbing trade and to authoritatively establish what shall be good plumbing practice, the general assembly hereby provides for the licensing of plumbers and for the promulgation of a model plumbing code of standards by the examining board of plumbers, and this article is therefore declared to be essential to the public interest.

Source: L. 82: Entire article R&RE, p. 267, § 1, effective July 1.

12-58-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" means the examining board of plumbers.

(1.5) "Gas piping" means any arrangement of piping used to convey fuel gas, supplied by one meter, and each arrangement of gas piping serving a building, structure, or premises, whether individually metered or not. "Gas piping" or "gas piping system" does not include the installation of gas appliances where existing service connections are already installed, nor does such term include the installations, alterations, or maintenance of gas utilities owned by a public utility certified pursuant to article 5 of title 40, C.R.S., or a public utility owned or acquired by a city or town pursuant to article 32 of title 31, C.R.S.

(2) "Journeyman plumber" means any person other than a master plumber, residential plumber, or plumber's apprentice who engages in or works at the actual installation, alteration, repair, and renovation of plumbing in accordance with the standards, rules, and regulations established by the board.

(3) "Master plumber" means a person who has the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and install and repair plumbing apparatus and equipment including the supervision of such in accordance with the standards, rules, and regulations established by the board.

(4) "Colorado plumbing code" means a code established by the board that consists of standards for plumbing installation, plumbing materials, conservation, medical gas, sanitary drainage systems, and solar plumbing that could directly affect the potable water supply.

(4.5) (a) "Conservation" means efficiency measures that meet national guidelines and standards and are tested and approved by a nationally recognized testing laboratory, including:

(I) Water-efficient devices and fixtures; and

(II) The use of locally produced materials, when practicable, to reduce transportation impacts.

(b) When conservation conflicts with safety, the board shall give primary consideration to safety.

(c) Nothing in this subsection (4.5) affects the board's authority to establish the Colorado plumbing code as specified in section 12-58-104.5.

(5) (a) "Plumbing" includes the following items located within the building or extending five feet from the building foundation, excluding any service line extending from the first joint to the property line: All potable water supply and distribution pipes and piping; all plumbing fixtures and traps; all drainage and vent pipes; all building drains, including their respective joints and connections, devices, receptacles, and appurtenances; all multi-purpose residential fire sprinkler systems in one- and two-family dwellings and townhouses that are part of the potable water supply; and all medical gas and vacuum systems in health care facilities. "Plumbing" does not include:

(I) The installation, extension, alteration, or maintenance, including the related water piping and the indirect waste piping therefrom, of domestic appliances equipped with backflow preventers, including lawn sprinkling systems, residential ice makers, humidifiers, electrostatic filter washers, water heating appliances, water conditioning appliances not directly connected to the sanitary sewer system, building heating appliances and systems, fire protection systems except for multipurpose residential fire sprinkler systems in one- and

two-family dwellings and townhouses that are part of the potable water supply, air conditioning installations, process and industrial equipment and piping systems, or indirect drainage systems not a part of a sanitary sewer system; or

(II) The repair and replacement of garbage disposal units and dishwashers directly connected to the sanitary sewer system, including the necessary replacement of all tail pipes and traps, or the repair, maintenance, and replacement of sinks, faucets, drains, showers, tubs, and toilets.

(b) Notwithstanding paragraph (a) of this subsection (5), the following is not included within the definition of “plumbing”:

(I) Installations, extensions, improvements, remodeling, additions, and alterations in water and sewer systems owned or acquired by counties pursuant to article 20 of title 30, C.R.S., cities and towns pursuant to article 35 of title 31, C.R.S., or water and sanitation districts pursuant to article 1 or article 4 of title 32, C.R.S.; or

(II) Installations, extensions, improvements, remodeling, additions, and alterations performed by contractors employed by counties, cities, towns, or water and sewer districts which connect to the plumbing system within a property line; or

(III) Performance, location, construction, alteration, installation, and use of on-site wastewater treatment systems pursuant to article 10 of title 25, C.R.S., which are located within a property line.

(6) “Plumbing apprentice” means any person other than a master, journeyman, or residential plumber who, as his principal occupation, is engaged in learning and assisting in the installation of plumbing.

(7) “Plumbing contractor” means any person, firm, partnership, corporation, association, or other organization who undertakes or offers to undertake for another the planning, laying out, supervising, installing, or making of additions, alterations, and repairs in the installation of plumbing. In order to act as a plumbing contractor, the person, firm, partnership, corporation, association, or other organization must either be or employ full-time a master plumber.

(8) “Potable water” means water which is safe for drinking, culinary, and domestic purposes and which meets the requirements of the department of health.

(9) “Residential plumber” means any person other than a master or journeyman plumber or plumbing apprentice who has the necessary qualifications, training, experience, and technical knowledge, as specified by the board, to install plumbing and equipment in one-, two-, three-, and four-family dwellings, which shall not extend more than two stories aboveground.

Source: **L. 82:** Entire article R&RE, p. 268, § 1, effective July 1. **L. 88:** (5) amended, p. 583, § 1, effective July 1; (5)(b)(I) amended, p. 1438, § 42, effective July 1. **L. 94:** (5)(a) amended, p. 6, § 1, effective February 17. **L. 2007:** (4) and (5)(a) amended, p. 946, § 1, effective January 1, 2008. **L. 2010:** (4) amended and (4.5) added, (HB 10-1204), ch. 67, p. 235, § 1, effective August 11; IP(5)(a) and (5)(a)(I) amended, (HB 10-1241), ch. 354, p. 1646, § 5, effective July 1, 2011. **L. 2012:** IP(5)(b) and (5)(b)(III) amended, (HB 12-1126), ch. 137, p. 494, § 2, effective August 8.

Cross references: For the legislative declaration in the 2010 act amending the introductory portion to subsection (5)(a) and subsection (5)(a)(I), see section 1 of chapter 354, Session Laws of Colorado 2010.

12-58-103. Examining board of plumbers - repeal of article. (1) There is hereby established within the division of professions and occupations of the department of regulatory agencies the examining board of plumbers. The board shall exercise its powers and perform its duties and functions in the department of regulatory agencies as if it were transferred to the department by a **type 1** transfer, as such transfer is defined in the “Administrative Organization Act of 1968”, article 1 of title 24, C.R.S.

(2) (a) The board shall consist of seven appointed members as follows, one a journeyman plumber, one a master plumber, two engaged in the construction of residential or commercial buildings as plumbing contractors, one engaged in the construction of residen-

tial or commercial buildings as a general contractor, one a member or employee of a local government agency conducting plumbing inspections, and one appointed from the public at large. A representative of the department of public health and environment shall serve as an ex officio nonvoting member. At least one member shall be a resident of the western slope of the state, defined as that western part of the state separated from the eastern part of the state by the continental divide.

(b) A majority of the board shall constitute a quorum for the transaction of all business.

(3) (a) The governor, with power of removal, shall appoint the members of the board, subject to confirmation by the senate; except that the five members serving on June 30, 1982, shall continue to serve until the expiration of their respective terms of office. The governor shall appoint one additional member to serve until July 1, 1983, and another additional member to serve until July 1, 1986. Thereafter, members shall be appointed for four-year terms. Any vacancy occurring in the membership of the board shall be filled by the governor by appointment for the unexpired term of such member.

(b) The governor may remove any member of the board for misconduct, incompetence, or neglect of duty.

(4) No major political party shall be represented on the board by more than one member more than the other major political party.

(5) This article is repealed, effective July 1, 2013. Prior to such repeal, the examining board of plumbers shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: **L. 82:** Entire article R&RE, p. 269, § 1, effective July 1. **L. 88:** (2) and (3) amended, p. 584, § 2, effective July 1. **L. 91:** (5) amended, p. 684, § 38, effective April 20. **L. 94:** (2)(a) amended, p. 2730, § 345, effective July 1. **L. 98:** (5) amended, p. 250, § 1, effective April 13. **L. 2003:** (5) amended, p. 1591, § 3, effective May 2.

12-58-104. Powers of board - fees - rules. (1) In addition to all other powers and duties conferred or imposed upon the board by this article, the board is authorized and empowered to:

(a) Elect its own officers and prescribe their duties;

(b) Conduct examinations as required by this article;

(c) Grant the licenses of duly qualified applicants for residential plumbers, journeymen plumbers, and master plumbers as provided in this article and pursuant to the provisions of article 4 of title 24, C.R.S.;

(c.5) Establish fees for the issuance of a new registration and for each renewal of registration, pursuant to section 24-34-105, C.R.S.;

(d) Promulgate, adopt, amend, and repeal such rules, not inconsistent with the laws of this state, as may be necessary for the orderly conduct of its affairs and for the administration of this article, pursuant to the provisions of article 4 of title 24, C.R.S.;

(e) In accordance with the provisions of article 4 of title 24, C.R.S., prescribe, enforce, amend, and repeal rules and regulations governing the plumbing, drainage, sewerage, and plumbing ventilation of all buildings in this state;

(f) Employ inspectors and charge fees for making inspections of plumbing work covered by the Colorado plumbing code in those areas where the local jurisdiction has not adopted its own plumbing code and where that jurisdiction has requested such inspections;

(g) (I) Administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to perform the functions of this paragraph (g) and to take evidence and to make findings and report them to the board.

(II) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in

question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(h) Conduct hearings in accordance with the provisions of section 24-4-105, C.R.S.; except that the board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct such hearings;

(i) Cause the enjoinder, in any court of competent jurisdiction, of all persons violating this article. When seeking an injunction, the board shall not be required to prove that an adequate remedy at law does not exist or that substantial or irreparable damages would result if an injunction is not granted.

(j) Inspect gas piping installations pursuant to the provisions of section 12-58-114.5;

(k) Establish minimum requirements and standards for the inspection of multipurpose residential fire sprinkler systems in one- and two-family dwellings and townhouses that are part of the potable water supply, by requiring inspectors of multipurpose residential fire sprinkler systems in one- and two-family dwellings and townhouses to be certified by the division of fire prevention and control in the department of public safety pursuant to section 24-33.5-1206.4, C.R.S.

(2) Notwithstanding any other provisions to the contrary, the board may, with regard to manufactured housing which is subject to part 7 of article 32 of title 24, C.R.S.:

(a) Promulgate, adopt, amend, and repeal such rules and regulations pursuant to the provisions of article 4 of title 24, C.R.S., as may be necessary for the inspection of manufactured housing water and sewer hookups;

(b) Employ inspectors and charge fees for making inspections of manufactured housing water and sewer hookups.

Source: **L. 82:** Entire article R&RE, p. 269, § 1, effective July 1. **L. 84:** (1)(f) added, p. 444, § 1, effective April 30. **L. 88:** (2) added, p. 595, § 1, effective March 18; IP(1) and (1)(e) amended and (1)(g) to (1)(j) added, p. 585, § 3, effective July 1. **L. 2004:** (1)(g) amended, p. 1855, § 111, effective August 4. **L. 2007:** (1)(d) amended, p. 551, § 1, effective August 3; (1)(c.5) added, p. 947, § 2, effective January 1, 2008. **L. 2010:** (1)(k) added, (HB 10-1241), ch. 354, p. 1644, § 2, effective July 1, 2011. **L. 2012:** (1)(k) amended, (HB 12-1283), ch. 240, p. 1131, § 36, effective July 1.

Cross references: For the legislative declaration in the 2010 act adding subsection (1)(k), see section 1 of chapter 354, Session Laws of Colorado 2010. For the legislative declaration in the 2012 act amending subsection (1)(k), see section 1 of chapter 240, Session Laws of Colorado 2012.

ANNOTATION

The provisions of this article are constitutional and do not violate the natural rights of a person to engage in a lawful occupation. *People v. Rogers*, 74 Colo. 184, 219 P. 1076 (1923).

The plumbing trade is subject to regulation in the interest of public health. *People v. Rogers*, 74 Colo. 184, 219 P. 1076 (1923).

12-58-104.5. Colorado plumbing code - amendments - variances. (1) In accordance with the provisions of article 4 of title 24, C.R.S., the board shall establish a Colorado plumbing code, as defined in section 12-58-102 (4). Such code shall represent the minimum standards for installation, alteration, and repair of plumbing equipment and systems throughout the state.

(2) Local governments shall be permitted to amend the code when adopting a plumbing code for their jurisdictions as long as such amendments are at least equal to the minimum requirements set forth in the Colorado plumbing code.

(3) If petitioned, the board shall annually hold public hearings to consider amendments to the Colorado plumbing code.

(4) The board is authorized to review and approve or disapprove requests for exceptions to the code in unique construction situations where a strict interpretation of the code would result in unreasonable operational conditions or unreasonable economic burdens as long as public safety is not compromised.

Source: L. 88: Entire section added, p. 585, § 4, effective July 1.

12-58-104.6. Program administrator. The director of the division of professions and occupations may appoint a program administrator pursuant to section 13 of article XII of the state constitution to work with the board in carrying out its duties under this article.

Source: L. 88: Entire section added, p. 586, § 4, effective July 1.

12-58-105. Plumber must have license - control and supervision. (1) No person shall engage in or work at the business, trade, or calling of a residential, journeyman, or master plumber in this state until he has received a license from the division of professions and occupations, upon written notice from the board or its authorized agent, or a temporary permit from the board or its authorized agent.

(2) (a) All plumbing apprentices working for plumbing contractors pursuant to this article and all apprentices working under the supervision of any licensed plumber pursuant to section 12-58-117 shall, within thirty days after the date of initial employment, be registered with the board.

(b) The employer of a plumbing apprentice shall be responsible for such apprentice's registration with the board.

(c) No apprentice shall be registered until payment of a registration or registration renewal fee, as determined by the board, has been made.

(3) No person, firm, partnership, corporation, or association shall operate as a plumbing contractor until such contractor has obtained registration from the board. The board shall register a plumbing contractor upon payment of the fee as provided in section 12-58-104 and presentation of evidence that the applicant has complied with the applicable workers' compensation and unemployment compensation laws of this state. In order to act as a plumbing contractor, the person, firm, partnership, corporation, association, or other organization must either be, or employ full-time, a master plumber, who shall be in charge of the supervision of all plumbing work performed by such contractor. A master plumber shall be responsible for no more than one plumbing contractor at a time. The master plumber shall be required to notify the board within fifteen days after his or her termination as a master plumber for that plumbing contractor. The master plumber is responsible for all plumbing work performed by the plumbing contractor. Failure to comply with a notification may lead to suspension or revocation of the master plumber license as provided in section 12-58-110.

Source: L. 82: Entire article R&RE, p. 270, § 1, effective July 1. L. 87: (2) amended, p. 377, § 2, effective May 20. L. 88: (2) amended, p. 586, § 5, effective July 1. L. 2007: (3) added, p. 947, § 3, effective January 1, 2008.

ANNOTATION

Annotator's note. Since § 12-58-105 is similar to § 12-58-104 as it existed prior to the 1982 repeal and reenactment of this article, relevant cases construing that provision and laws antecedent thereto have been included in the annotations to this section.

In the prosecution of one for working as a plumber without a license, the contention that as the ordinance applied to helpers and apprentices as well as master plumbers, it was unconstitutional, is overruled, it appearing that it did not so apply. *Evans v. City and County of Denver*, 79 Colo. 533, 247 P. 173 (1926).

Contracts for services by one who is required by statute to have a license to engage in the particular profession, trade, or calling,

and who does not have such a license are generally unenforceable. *Carter v. Thompkins*, 133 Colo. 279, 294 P.2d 265 (1956).

It is no defense that one charged with the violation of city ordinance concerning the licensing of plumbers was acting as the employee of another. *Evans v. City and County of Denver*, 79 Colo. 533, 247 P. 173 (1926).

Although one convicted of working as a plumber without a license was an apprentice of a licensed plumber, it appeared that he worked so independently of his master as to be acting as a journeyman. *Evans v. City and County of Denver*, 79 Colo. 533, 247 P. 173 (1926).

12-58-106. Unauthorized use of title of plumber. No person shall advertise in any manner or use the title or designation of master plumber, journeyman plumber, or residential plumber unless he is qualified and licensed under this article.

Source: L. 82: Entire article R&RE, p. 270, § 1, effective July 1. **L. 88:** Entire section amended, p. 586, § 6, effective July 1.

12-58-106.5. Unauthorized use of title of plumbing contractor. No person shall advertise in any manner that such person is a plumbing contractor or use the title or designation of plumbing contractor unless such person meets the definition of plumbing contractor set out in section 12-58-102 (7).

Source: L. 92: Entire section added, p. 2012, § 1, effective April 9.

12-58-107. License issuance - examination. (1) (a) The board shall issue licenses to persons who have by examination and experience shown themselves competent and qualified to engage in the business, trade, or calling of a residential plumber, journeyman plumber, or master plumber. The board shall establish the minimum level of experience required for an applicant to receive a residential, journeyman, or master plumber's license. The maximum experience the board may require for an applicant to qualify to receive a residential plumber's license is two years or three thousand four hundred hours of practical experience. The maximum experience the board may require for an applicant to qualify to receive a journeyman plumber's license is four years or six thousand eight hundred hours of practical experience. An applicant for a master plumber's license shall furnish evidence that he has five years of practical experience.

(b) Any applicant for such license shall be permitted to substitute for required practical experience evidence of academic training in the plumbing field, which shall be credited as follows:

(I) If he is a graduate of a community college or trade school plumbing program approved by the board, he shall receive one year of work experience credit.

(II) If he has academic training, including military training, in the plumbing field which is not sufficient to qualify under subparagraph (I) of this paragraph (b), the board shall provide work experience credit for such training according to a uniform ratio established by rule and regulation.

(c) No license shall be issued until the applicant has paid a license fee set by the board pursuant to section 24-34-105, C.R.S.

(2) An applicant for a license under this section shall file an application on forms prepared and furnished by the board, together with the examination fee. The time and place of examination shall be designated in advance by the board, and examinations shall be held at least four times each calendar year and at such other times as, in the opinion of the board, the number of applicants warrants.

(3) The contents of the examinations provided for in this section shall be determined by the board. The examination shall be administered by the board or its authorized agent pursuant to rules prescribed by the board. Each examination shall be designed and given in such a manner as to fairly test the applicant's knowledge of plumbing and rules and regulations governing plumbing. Examinations may include written tests and applied tests of the practices which the license will qualify the applicant to perform and such related studies or subjects as the board may determine are necessary for the proper and efficient performance of such practices. Such examinations shall be consistent with current practical and theoretical requirements of the practice of plumbing and shall be reviewed, revised, and updated on an annual basis by the board. The board shall ensure that the examination passing grade reflects a minimum level of competency.

Source: L. 82: Entire article R&RE, p. 270, § 1, effective July 1. **L. 88:** (1) and (3) amended, p. 586, § 7, effective July 1. **L. 89:** (1)(b) R&RE, p. 652, § 4, effective June 7.

12-58-107.5. Credit for experience not subject to supervision of a licensed plumber. For all applicants seeking work experience credit toward licensure, the board shall give credit for plumbing work that is not required to be performed by or under the supervision of a licensed plumber if the applicant can show that the particular experience received or the supervision under which the work has been performed is adequate. Work experience credit awarded under this section shall not exceed one-half of the applicable experience requirement for a license issued under this article.

Source: **L. 88:** Entire section added, p. 587, § 8, effective July 1. **L. 89:** Entire section R&RE, p. 653, § 5, effective June 7.

12-58-108. License renewal - reinstatement. (1) All license renewal and renewal fees shall be in accordance with the provisions of sections 24-34-102 and 24-34-105, C.R.S.

(2) Any license that has lapsed shall be deemed to have expired. Prior to reinstatement, the board is authorized to require the licensee to demonstrate competency. Licenses shall be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

Source: **L. 82:** Entire article R&RE, p. 271, § 1, effective July 1. **L. 88:** Entire section R&RE, p. 587, § 9, effective July 1. **L. 2004:** (2) amended, p. 1856, § 112, effective August 4.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8).

12-58-109. License reinstatement. (Repealed)

Source: **L. 82:** Entire article R&RE, p. 271, § 1, effective July 1. **L. 88:** Entire section repealed, p. 593, § 21, effective July 1.

12-58-110. Disciplinary action by board - licenses or registrations denied, suspended, or revoked - cease-and-desist orders. (1) The board may deny, suspend, revoke, or refuse to renew any license or registration issued or applied for under the provisions of this article or place a licensee or a registrant on probation for any of the following reasons:

- (a) Violation of any of the provisions of this article;
- (b) Violation of the rules and regulations or orders promulgated by the board in conformity with the provisions of this article or aiding or abetting in such violation;
- (c) Failure or refusal to remove within a reasonable time the cause for disapproval of any plumbing installation as reported on the notice of disapproval, but such reasonable time shall include time for appeal to and a hearing before the board;
- (d) Any cause for which the issuance of the license could have been refused had it then existed and been known to the board;
- (e) Commitment of any act or omission that does not meet generally accepted standards of plumbing practice;
- (f) Conviction of or acceptance of a plea of guilty or nolo contendere by a court to a felony. In considering the disciplinary action, the board shall be governed by the provisions of section 24-5-101, C.R.S.

- (g) Advertising by any licensee or registrant which is false or misleading;
- (h) Deception, misrepresentation, or fraud in obtaining or attempting to obtain a license;
- (i) Failure of any such licensee to adequately supervise an apprentice who is working at the trade pursuant to section 12-58-117;
- (j) Failure of any licensee to report to the board:
 - (I) Known violations of this article;
 - (II) Civil judgments and settlements which arose from such licensee's work performance;
- (k) Employment of any person required by this article to be licensed or to obtain a permit who has not obtained such license or permit;
- (l) Habitual intemperance with respect to or excessive use of any habit-forming drug, any controlled substance as defined in section 18-18-102 (5), C.R.S., or any alcoholic beverage;
- (m) Any use of a schedule I controlled substance, as defined in section 18-18-203, C.R.S.;
- (n) Disciplinary action against a plumber's license in another jurisdiction. Evidence of such disciplinary action shall be prima facie evidence for denial of licensure or other disciplinary action if the violation would be grounds for such disciplinary action in this state.
- (o) Practicing as a residential, journeyman, or master plumber during a period when the person's license has been suspended or revoked;
- (p) Selling or fraudulently obtaining or furnishing a license to practice as a residential, journeyman, or master plumber or aiding or abetting in such activity;
- (q) In connection with a construction or building project requiring the services of a person regulated by this article, willfully disregarding or violating:
 - (I) Any building or construction law of this state or any of its political subdivisions;
 - (II) Any safety or labor law;
 - (III) Any health law;
 - (IV) Any workers' compensation insurance law;
 - (V) Any state or federal law governing withholdings from employee income, including, but not limited to, income taxes, unemployment taxes, or social security taxes; or
 - (VI) Any reporting, notification, or filing law of this state or the federal government.
- (2) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.
- (b) When a letter of admonition is sent by the board, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.
- (c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.
- (2.5) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the licensee or registrant that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee or registrant.
- (3) Any disciplinary action taken by the board and judicial review of such action shall be in accordance with the provisions of article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to said article by the board or an administrative law judge at the board's discretion.
- (4) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(5) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee or registrant is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required license or registration, the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (5), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(6) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed or unregistered practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (6) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (6) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (6). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (6) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (6) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or registration, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or unlicensed or unregistered practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (6), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(7) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed or unregistered act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the board may enter into a stipulation with such person.

(8) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in

which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(9) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-58-110.4.

Source: **L. 82:** Entire article R&RE, p. 271, § 1, effective July 1. **L. 88:** Entire section R&RE, p. 587, § 10, effective July 1. **L. 92:** (1)(m) amended, p. 391, § 15, effective July 1. **L. 2003:** (2) amended, p. 1592, § 4, effective May 2. **L. 2004:** (1)(l) amended, p. 1196, § 45, effective August 4; (2) amended and (4) added, p. 1856, § 113, effective August 4. **L. 2006:** (2.5) and (5) to (9) added, p. 816, § 41, effective July 1; (1)(o) and (1)(p) added with relocated provisions, p. 95, § 59, effective August 7. **L. 2007:** IP(1) amended and (1)(q) added, p. 947, § 4, effective January 1, 2008. **L. 2008:** IP(1)(q) amended, p. 1883, § 18, effective August 5. **L. 2012:** (1)(l) amended, (HB 12-1311), ch. 281, p. 1616, § 32, effective July 1.

Editor's note: Subsections (1)(o) and (1)(p) are similar to former § 12-58-116 (1)(b) and (1)(c) as they existed prior to 2006.

Cross references: For an alternative disciplinary action for persons licensed pursuant to this article, see § 24-34-106.

12-58-110.1. Reapplication after revocation of licensure. No person whose license has been revoked shall be allowed to reapply for licensure earlier than two years from the effective date of the revocation.

Source: **L. 88:** Entire section added, p. 589, § 11, effective July 1.

12-58-110.2. Reconsideration and review of board action. The board, on its own motion or upon application, at any time after the imposition of any discipline as provided for in section 12-58-110, may reconsider its prior action and reinstate or restore such license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any such further action or the holding of a hearing with respect thereto shall rest in the sole discretion of the board.

Source: **L. 88:** Entire section added, p. 589, § 11, effective July 1.

12-58-110.3. Immunity. Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: **L. 88:** Entire section added, p. 589, § 11, effective July 1. **L. 2004:** Entire section amended, p. 1857, § 114, effective August 4.

12-58-110.4. Judicial review. The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review of the board. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

Source: L. 88: Entire section added, p. 589, § 11, effective July 1.

12-58-111. License by endorsement. The board may issue a plumber's license by endorsement in this state to any person who is licensed to practice in another jurisdiction if such person presents proof satisfactory to the board that, at the time of application for a Colorado license by endorsement, the person possesses credentials and qualifications which are substantially equivalent to requirements in Colorado for licensure by examination. The board may specify by rule and regulation what shall constitute substantially equivalent credentials and qualifications and may further require a waiting period of six months after the issuance of a license in another state before issuing a license in Colorado.

Source: L. 82: Entire article R&RE, p. 271, § 1, effective July 1. L. 88: Entire section R&RE, p. 589, § 12, effective July 1. L. 89: Entire section amended, p. 653, § 6, effective June 7.

12-58-112. Temporary permits. (1) The board or its authorized agent may issue a temporary permit to engage in the work of a journeyman plumber or a residential plumber to any applicant who has furnished satisfactory evidence to the board that he has the required experience to qualify for the examination, as provided in the rules and regulations promulgated by the board, and who has applied for an examination to entitle him to such license.

(2) Such permits shall be issued only upon payment of a fee established by the board and may be revoked by the board at any time.

(3) Any permit issued pursuant to this section shall expire no later than thirty days after the date of the examination for which the applicant has applied or upon written notice by the board of the results of the examination, whichever date is earlier. No permit shall be issued pursuant to this section to any person who has twice previously failed an examination or who has received two temporary permits.

(4) Notwithstanding the requirements set forth in section 12-58-107 (1), a temporary master permit may be issued to an existing plumbing contractor who has lost the services of his master plumber for completion of a current project underway as long as he has a journeyman plumber in his full-time employ. This shall only be valid until the next regularly scheduled examination.

Source: L. 82: Entire article R&RE, p. 272, § 1, effective July 1.

12-58-113. Exemptions. (1) Any person selling or dealing in plumbing materials or supplies, but not engaged in the installation, alteration, repairing, or removal of plumbing, shall not be required to employ or have a licensed plumber in charge.

(2) Nothing in this article shall be construed to require any individual to hold a license to perform plumbing work on his own property or residence, nor shall it prevent a person from employing an individual on either a full- or a part-time basis to do routine repair, maintenance, and replacement of sinks, faucets, drains, showers, tubs, toilets, and domestic appliances and equipment equipped with backflow preventers; except that, if such property or residence is intended for sale or resale by a person engaged in the business of constructing or remodeling such facilities or structures or is rental property which is occupied or is to be occupied by tenants for lodging, either transient or permanent, or is a commercial or industrial building, the owner shall be responsible for and the property shall be subject to all of the provisions of this article pertaining to licensing, unless specifically exempted therein.

(3) Nothing in this article shall be construed to apply to the manufacture of housing which is subject to the provisions of part 7 of article 32 of title 24, C.R.S., or the installation of individual residential or temporary construction units of manufactured housing water and sewer hookups inspected pursuant to section 12-58-104.

(4) Persons who are engaged in the business of inspecting, testing, and repairing backflow prevention devices shall be exempt from licensure under this article, except when such persons engage in the installation and removal of such devices.

(5) Nothing in this article shall be construed to require either that employees of the federal government who perform plumbing work on federal property shall be required to be licensed before doing plumbing work on such property or that the plumbing work performed on such property shall be regulated pursuant to this article.

Source: L. 82: Entire article R&RE, p. 272, § 1, effective July 1. L. 88: (3) amended, p. 595, § 2, effective March 13; (4) and (5) added, p. 590, § 13, effective July 1.

12-58-114. Disposition of fees. All fees shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for the expenditures of the board incurred in the performance of its duties under this article, which expenditures shall be made out of such appropriations upon vouchers and warrants drawn pursuant to law.

Source: L. 82: Entire article R&RE, p. 272, § 1, effective July 1.

12-58-114.2. State plumbing inspectors. (1) The director of the division of professions and occupations is authorized to appoint or employ competent persons as state plumbing inspectors.

(2) Such inspectors may be employed either on a full-time or on a part-time basis as the circumstances in each case warrant. State plumbing inspectors have the right of ingress and egress to and from all public and private premises during reasonable working hours where this article applies for the purpose of making plumbing inspections or otherwise determining compliance with the provisions of this article.

Source: L. 88: Entire section added, p. 590, § 14, effective July 1.

12-58-114.5. Inspection - application - standards. (1) Any plumbing or gas piping installation in any new construction or remodeling or repair, other than manufactured units inspected in accordance with the provisions of part 7 of article 32 of title 24, C.R.S., except in any incorporated town or city, any county, or any city and county having its own plumbing code equal to the minimum standards provided in this article, shall be inspected by a state plumbing inspector in those areas where a local jurisdiction has requested such inspections. A state plumbing inspector shall inspect any new construction, remodeling, or repair subject to the provisions of this subsection (1) within three working days after the receipt of the application for inspection. If the inspection is not performed within five working days, work may resume on any such construction, repair, or remodeling. Prior to the commencement of any such plumbing or gas piping installation, the person making such installation shall make application for inspection and pay the required fee therefor. Every mobile home or movable structure owner shall have the plumbing and gas piping hookup for such mobile home or movable structure inspected prior to obtaining new or different plumbing or gas service.

(2) A state plumbing inspector shall inspect the work performed, and, if such work meets the minimum standards set forth in the Colorado plumbing code referred to in section 12-58-104.5, a certificate of approval shall be issued by the inspector. If such installation is disapproved, written notice thereof together with the reasons for such disapproval shall be given by the inspector to the applicant. If such installation is hazardous to life or property, the inspector disapproving it may order the plumbing or gas service thereto discontinued until such installation is rendered safe. The applicant may appeal such disapproval to the board and shall be granted a hearing by the board within seven days after notice of appeal is filed with the board. After removal of the cause of such disapproval, the applicant shall make application for reinspection in the same manner as for the original inspection and pay the required reinspection fee.

(3) (a) All inspection permits issued by the board shall be valid for a period of twelve months, and the board shall cancel the permit and remove it from its files at the end of the twelve-month period, except in the following circumstances:

(I) If an applicant makes a showing at the time of application for a permit that the plumbing or gas piping work is substantial and is likely to take longer than twelve months, the board may issue a permit to be valid for a period longer than twelve months, but not exceeding three years.

(II) If the applicant notifies the board prior to the expiration of the twelve-month period of extenuating circumstances, as determined by the board, during the twelve-month period, the board may extend the validity of the permit for a period not to exceed six months.

(b) If an inspection is requested by an applicant after a permit has expired or has been cancelled, a new permit must be applied for and granted before an inspection is performed.

(4) Each application, certificate of approval, and notice of disapproval shall contain the name of the property owner, if known, the location and a brief description of the installation, the name of the general contractor if any, the name of the plumbing contractor or licensed plumber and state license number in the case of any plumbing installation, the name of the installer in the case of any liquefied petroleum gas piping installation, the state plumbing inspector, and the inspection fee charged for the inspection. The original of a notice of disapproval and written reasons for disapproval and corrective actions to be taken shall be mailed to the board, and a copy of such notice shall be mailed to the plumbing contractor in the case of any plumbing installation or the installer in the case of any liquefied petroleum gas piping installation, within two working days after the date of inspection, and a copy of the notice shall be posted at the installation site. Such forms shall be furnished by the board, and a copy of each application, certificate, and notice made or issued shall be filed with the board.

(5) Notwithstanding the fact that any incorporated town or city, any county, or any city and county in which a public school is located or is to be located has its own plumbing code and inspection authority, any plumbing or gas piping installation in any new construction or remodeling or repair of a public school shall be inspected by a state plumbing inspector.

(6) In the event that any incorporated town or city, any county, or any city and county intends to commence or cease performing plumbing or gas piping inspections in its respective jurisdiction, written notice of such intent shall be given to the board.

(7) (a) Any person claiming to be aggrieved by the failure of a state plumbing inspector to inspect his property after proper application or by notice of disapproval without setting forth the reasons for denying the inspection permit may request the program administrator to review the actions of the plumbing inspector or the manner of the inspection. Such request may be made by his authorized representative and shall be in writing.

(b) Upon the filing of such a request, the program administrator shall cause a copy thereof to be served upon the state plumbing inspector complained of, together with an order requiring such inspector to answer the allegations of said request within a time fixed by the program administrator.

(c) If the request is not granted within ten days after it is filed, it may be treated as rejected. Any person aggrieved by the action of the program administrator in refusing the review requested or in failing or refusing to grant all or part of the relief requested may file a written complaint and request for a hearing with the board, specifying the grounds relied upon.

(d) Any hearing before the board shall be held pursuant to the provisions of section 24-4-105, C.R.S.

Source: L. 88: Entire section added, p. 590, § 14, effective July 1. L. 89: (4) amended, p. 732, § 1, effective June 7.

12-58-115. Municipal and county regulations. (1) Any city, town, county, or city and county of this state may provide for the licensing of plumbing contractors.

(2) No local government agency may promulgate rules or regulations or provide for licenses which would preclude the holder of a valid license issued under this article from practicing his trade.

Source: **L. 82:** Entire article R&RE, p. 273, § 1, effective July 1. **L. 88:** Entire section R&RE, p. 592, § 15, effective July 1.

ANNOTATION

Annotator's note. Since § 12-58-115 is similar to § 12-58-120 as it existed prior to the 1982 repeal and reenactment of this article, a relevant case construing that provision has been included in the annotations to this section.

In the prosecution of one for working as a plumber without a license, the contention that as the ordinance applied to helpers and apprentices as well as master plumbers, it was uncon-

stitutional, is overruled, it appearing that it did not so apply. *Evans v. City and County of Denver*, 79 Colo. 533, 247 P. 173 (1926).

It is no defense that one charged with the violation of city ordinance concerning the licensing of plumbers was acting as the employee of another. *Evans v. City and County of Denver*, 79 Colo. 533, 247 P. 173 (1926).

12-58-116. Unauthorized practice - penalties.

(1) Repealed.

(2) Any person who engages in or works at or offers or attempts to engage in or work at the business, trade, or calling of a residential, journeyman, master, or apprentice plumber without an active license, permit, or registration issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: **L. 82:** Entire article R&RE, p. 273, § 1, effective July 1. **L. 88:** Entire section R&RE, p. 592, § 16, effective July 1. **L. 2002:** (2) amended, p. 1486, § 113, effective October 1. **L. 2006:** IP(1) and (1)(a) to (1)(c) repealed and (2) amended, p. 96, §§ 62, 61, 60, effective August 7.

Editor's note: Subsections (1)(b) and (1)(c) were relocated to § 12-58-110 (1)(o) and (1)(p) in 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-58-116.5. Violation - fines - rules. (1) (a) If the board concludes that any licensee, registrant, or applicant for licensure has violated any provision of section 12-58-110 and that disciplinary action is appropriate, the program administrator or the program administrator's designee may issue a citation in accordance with subsection (2.5) of this section to such licensee, registrant, or applicant.

(b) (I) The licensee, registrant, or applicant to whom a citation has been issued may make a request to negotiate a stipulated settlement agreement with the program administrator or the program administrator's designee, if such request is made in writing within ten working days after issuance of the citation which is the subject of the settlement agreement.

(II) All stipulated settlement agreements shall be conducted pursuant to rules adopted by the board pursuant to section 12-58-104 (1) (d). The board shall adopt a rule to allow any licensee, registrant, or applicant unable, in good faith, to settle with the program administrator to request an administrative hearing pursuant to paragraph (c) of this subsection (1).

(III) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(c) (I) The licensee, registrant, or applicant to whom a citation has been issued may request an administrative hearing to determine the propriety of such citation if such request is made in writing within ten working days after issuance of the citation which is the subject of the hearing or within a reasonable period after negotiations for a stipulated settlement agreement pursuant to paragraph (b) of this subsection (1) have been deemed futile by the program administrator.

(II) For good cause the board may extend the period of time in which a person who has been cited may request a hearing.

(III) All hearings conducted pursuant to subparagraph (I) of this paragraph (c) shall be conducted in compliance with section 24-4-105, C.R.S.

(d) Any action taken by the board pursuant to this section shall be deemed final after the period of time extended to the licensee, registrant, or applicant to contest such action pursuant to this subsection (1) has expired.

(2) (a) The board shall adopt a schedule of fines pursuant to paragraph (b) of this subsection (2) as penalties for violating section 12-58-110. Such fines shall be assessed in conjunction with the issuance of a citation, pursuant to a stipulated settlement agreement, or following an administrative hearing. Such schedule shall be adopted by rule in accordance with section 12-58-104 (1) (d).

(b) In developing the schedule of fines, the board shall:

(I) Provide that a first offense may carry a fine of up to one thousand dollars;

(II) Provide that a second offense may carry a fine of up to two thousand dollars;

(III) Provide that any subsequent offense may carry a fine of up to two thousand dollars for each day that any provision of section 12-58-110 is violated;

(IV) Consider how the violation impacts the public, including any health and safety considerations;

(V) Consider whether to provide for a range of fines for any particular violation or type of violation; and

(VI) Provide uniformity in the fine schedule.

(2.5) (a) (I) Any citation issued pursuant to this section shall be in writing, shall adequately describe the nature of the violation, and shall reference the statutory or regulatory provision or order alleged to have been violated.

(II) Any citation issued pursuant to this section shall clearly state whether a fine is imposed, the amount of such fine, and that payment for such fine must be remitted within the time specified in such citation if such citation is not contested pursuant to subsection (1) of this section.

(III) Any citation issued pursuant to this section shall clearly set forth how such citation may be contested pursuant to subsection (1) of this section, including any time limitations.

(b) A citation or copy of a citation issued pursuant to this section may be served by certified mail or in person by a program administrator or the administrator's designee upon a person or the person's agent in accordance with C.R.C.P. 4.

(c) If the recipient fails to give written notice to the board that the recipient intends to contest such citation or to negotiate a stipulated settlement agreement within ten working days after service of a citation by the board, such citation shall be deemed a final order of the board.

(d) The board may suspend or revoke a license or registration or may refuse to renew any license or registration issued or may place on probation any licensee or registrant if the licensee or registrant fails to comply with the requirements set forth in a citation deemed final pursuant to paragraph (c) of this subsection (2.5).

(e) The failure of an applicant for licensure to comply with a citation deemed final pursuant to paragraph (c) of this subsection (2.5) is grounds for denial of a license.

(f) No citation may be issued under this section unless the citation is issued within the six-month period following the occurrence of the violation.

(3) All fines shall be imposed in accordance with the provisions of section 24-4-105, C.R.S.

(4) (a) Any fine collected pursuant to this section shall be transmitted to the state treasurer, who shall credit one-half of the amount of any such fine to the general fund, and one-half of the amount of any such fine shall be shared with the appropriate city, town, county, or city and county, which amounts shall be transmitted to any such entity on an annual basis.

(b) Any fine assessed in a citation or an administrative hearing or any amount due pursuant to a stipulated settlement agreement that is not paid may be collected by the program administrator through a collection agency or in an action in the district court of the

county in which the person against whom the fine is imposed resides or in the county in which the office of the program administrator is located.

(c) The attorney general shall provide legal assistance and advice to the program administrator in any action to collect an unpaid fine.

(d) In any action brought to enforce this subsection (4), reasonable attorney fees and costs shall be awarded.

Source: **L. 88:** Entire section added, p. 592, § 17, effective July 1. **L. 2004:** (4) added, p. 1857, § 115, effective August 4. **L. 2007:** (1), (2), and (4) amended and (2.5) added, p. 948, § 5, effective January 1, 2008.

12-58-117. Apprentices. (1) Any person may work as a plumbing apprentice for a licensed plumber but shall not do any plumbing work for which a license is required pursuant to this article except under the supervision of a licensed plumber. Supervision requires that the licensed plumber supervise apprentices at the jobsite. One licensed journeyman plumber, master plumber, or residential plumber shall not supervise more than three apprentice plumbers at the same jobsite.

(2) Any master, journeyman, or residential plumber who is the supervisor of any plumbing apprentice shall be responsible for the work performed by such apprentice. The license of any plumber may be revoked, suspended, or denied under the provisions of section 12-58-110 for any improper work performed by a plumbing apprentice while under the supervision of such licensee.

Source: **L. 82:** Entire article R&RE, p. 273, § 1, effective July 1. **L. 2007:** (1) amended, p. 951, § 6, effective January 1, 2008.

ARTICLE 58.5

Private Investigators

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12-58.5-101. Short title. This article shall be known and may be cited as the “Private Investigators Voluntary Licensure Act”.

Source: **L. 2011:** Entire article added, (HB 11-1195), ch. 312, p. 1521, § 1, effective August 10.

12-58.5-102. Legislative declaration. The general assembly hereby finds that in order to protect the citizens of the state and allow private investigators access to public records, it is important to create a licensure program to allow qualified private investigators, at their option, to obtain a state-issued license to conduct private investigations.

Source: **L. 2011:** Entire article added, (HB 11-1195), ch. 312, p. 1521, § 1, effective August 10.

12-58.5-103. Definitions. As used in this article, unless the context otherwise requires: (1) “Applicant” means a private investigator who applies for an initial or renewal license pursuant to this article.

(2) “Director” means the director of the division or the director’s designee.

(3) "Division" means the division of professions and occupations in the department of regulatory agencies.

(4) "Licensed private investigator" means a private investigator licensed by the director pursuant to this article.

(5) "Private investigation" means an investigation for the purpose of obtaining information pertaining to:

(a) A crime, wrongful act, or threat against the United States or any state or territory of the United States;

(b) The identity, reputation, character, habits, conduct, business occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movements, whereabouts, affiliations, associations, or transactions of a person or group of persons;

(c) The credibility of witnesses or other persons;

(d) The whereabouts of missing persons;

(e) The determination of the owners of abandoned property;

(f) The causes and origin of, or responsibility for, a fire, libel, slander, a loss, an accident, damage, or an injury to a person or to real or personal property;

(g) The business of securing evidence to be used before an investigatory committee or board of award or arbitration or in the preparation for or in a civil or criminal trial;

(h) The business of locating persons who have become delinquent in their lawful debts, either when hired by an individual or collection agency or through direct purchase of the debt from a financial institution or entity owning the debt or judgment.

(6) (a) "Private investigator" means a person who, for consideration, engages in business or accepts employment to conduct private investigations.

(b) "Private investigator" does not include:

(I) A collection agency, as defined in section 12-14-103;

(II) A person conducting an investigation on the person's own behalf, or an employee conducting an investigation on behalf of the employer;

(III) An employee or independent contractor of an attorney licensed to practice law in this state;

(IV) A certified peace officer of a law enforcement agency operating in his or her official capacity;

(V) A consumer reporting agency, as defined in section 12-14-103;

(VI) A certified public accountant certified or authorized to provide accounting services in the state pursuant to article 2 of this title and any employee or affiliate of an accounting firm registered pursuant to section 12-2-117;

(VII) An investigator employed by a public or governmental agency;

(VIII) A journalist or genealogist; or

(IX) A person serving process.

Source: L. 2011: Entire article added, (HB 11-1195), ch. 312, p. 1521, § 1, effective August 10.

12-58.5-104. Voluntary license - title protection - penalty. (1) (a) By July 1, 2012, a private investigator conducting private investigations in this state who meets the requirements of section 12-58.5-105 may obtain a license from the director. Only a private investigator who obtains a license pursuant to section 12-58.5-105 shall hold himself or herself out as, or use the title of, a "licensed private investigator".

(b) Nothing in this article requires a private investigator engaging in private investigations in this state to obtain a license under this article, but a private investigator who is not so licensed shall not refer to himself or herself as a "licensed private investigator".

(2) Any person who holds himself or herself out as or uses the title "licensed private investigator" without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and, for the second or any subsequent offense, commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 2011: Entire article added, (HB 11-1195), ch. 312, p. 1523, § 1, effective August 10.

12-58.5-105. Private investigator voluntary license - qualifications - fees - renewal.

(1) Upon application in the form and manner determined by the director, payment of the required fee, submission of business registration documentation as required by subsection (3) of this section, and satisfaction of the requirements of subsection (2) of this section, the director shall issue an initial or renewal license to an applicant who provides evidence satisfactory to the director that he or she:

- (a) Is at least twenty-one years of age;
- (b) Is lawfully present in the United States;
- (c) (I) Has at least four thousand hours of verifiable, applicable experience, as determined by the director within the five years immediately preceding the date of application; or
(II) Has at least two thousand hours of verifiable, applicable experience, as determined by the director, within the five years immediately preceding the date of application plus an amount of postsecondary education determined by the director; and
- (d) Has knowledge and understanding of the statutes and rules affecting the ethics and activities of licensed private investigators in this state.

(2) In addition to the requirements of subsection (1) of this section, each license applicant shall have his or her fingerprints taken by a local law enforcement agency for the purpose of obtaining a fingerprint-based criminal history record check. The applicant is required to submit payment by certified check or money order for the fingerprints and for the actual costs of the record check at the time the fingerprints are submitted to the Colorado bureau of investigation. Upon receipt of fingerprints and receipt of the payment for costs, the Colorado bureau of investigation shall conduct a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation and shall forward the results of the criminal history record check to the director.

(3) If an applicant has registered as a business entity with the secretary of state, at the time of application for a license the applicant shall provide documentation to the director that the applicant's business registration is current and in good standing with the secretary of state.

(4) An applicant for licensure shall pay license, renewal, and reinstatement fees established by the director pursuant to section 24-34-105, C.R.S. All licenses shall be renewed or reinstated pursuant to a schedule established by the director and pursuant to section 24-34-102 (8), C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director, the license expires and the person shall not hold himself or herself out as a licensed private investigator until he or she pays the appropriate fees to reinstate the license.

Source: L. 2011: Entire article added, (HB 11-1195), ch. 312, p. 1523, § 1, effective August 10.

12-58.5-106. Director may promulgate rules. In addition to all other powers and duties conferred or imposed upon the director by this article or by any other law, the director may promulgate rules pursuant to section 24-4-103, C.R.S., to implement this article.

Source: L. 2011: Entire article added, (HB 11-1195), ch. 312, p. 1524, § 1, effective August 10.

12-58.5-107. Disciplinary actions - grounds for discipline. (1) The director may deny, suspend, revoke, or place on probation a private investigator's license if the applicant:

- (a) Violates any order of the director or any provision of this article or of rules established under this article;

(b) Fails to meet the requirements of section 12-58.5-105 or uses fraud, misrepresentation, or deceit in applying for or attempting to apply for a license;

(c) Is convicted of or has entered a plea of guilty or nolo contendere to a felony, to an offense, the underlying factual basis of which has been found by the court to involve unlawful sexual behavior, domestic violence, as defined in section 18-6-800.3 (1), C.R.S., or stalking, as defined in section 18-3-602, C.R.S.; or to violation of a protection order, as defined in section 18-6-803.5, C.R.S. In considering the disciplinary action, the director shall be governed by the provisions of section 24-5-101, C.R.S., in considering the conviction or plea;

(d) Has been subject to discipline related to the practice of private investigations in another jurisdiction. Evidence of disciplinary action in another jurisdiction is prima facie evidence for denial of a license or other disciplinary action if the violation would be grounds for disciplinary action in this state.

(2) The director may adopt rules establishing fines that he or she may impose on a licensee, which rules must include a graduated fine structure, with a maximum allowable fine of not more than three thousand dollars per violation. The director shall transmit any fines he or she collects from a licensee to the state treasurer for deposit in the general fund.

(3) The director need not find that the actions that are grounds for discipline were willful but may consider whether the actions were willful when determining the nature of disciplinary sanctions to be imposed.

(4) (a) The director may commence a proceeding to discipline a licensee when the director has reasonable grounds to believe that the licensee has committed an act enumerated in this section.

(b) In any proceeding held under this section, the director may accept as evidence of grounds for disciplinary action any disciplinary action taken against a licensee in another jurisdiction if the violation that prompted the disciplinary action in the other jurisdiction would be grounds for disciplinary action under this article.

(5) The director shall conduct disciplinary proceedings in accordance with article 4 of title 24, C.R.S., and the director or administrative law judge appointed by the director pursuant to paragraph (c) of subsection (6) of this section shall conduct the hearing and opportunity for review pursuant to that article. The director has the authority to exercise all powers and duties conferred by this article during the disciplinary proceedings.

(6) (a) The director may request the attorney general to seek an injunction, in any court of competent jurisdiction, to enjoin a person from committing an act prohibited by this article. When seeking an injunction under this paragraph (a), the attorney general is not required to allege or prove the inadequacy of any remedy at law or that substantial or irreparable damage is likely to result from a continued violation of this article.

(b) (I) The director may investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the director.

(II) In order to aid the director in any hearing or investigation instituted pursuant to this section, the director or an administrative law judge appointed pursuant to paragraph (c) of this subsection (6) may administer oaths, take affirmations of witnesses, and issue subpoenas compelling the attendance of witnesses and the production of all relevant records, papers, books, documentary evidence, and materials in any hearing, investigation, accusation, or other matter before the director or an administrative law judge.

(III) Upon failure of any witness or licensee to comply with a subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring the person or licensee to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. If the person or licensee fails to obey the order of the court, the court may hold the person or licensee in contempt of court.

(c) The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings, take evidence, make findings, and report such findings to the director.

(7) (a) The director, the director's staff, a person acting as a witness or consultant to the director, a witness testifying in a proceeding authorized under this article, or a person who lodges a complaint pursuant to this article is immune from liability in a civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if the individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts.

(b) A person participating in good faith in making a complaint or report or in an investigative or administrative proceeding pursuant to this section is immune from any civil or criminal liability that otherwise might result by reason of the participation.

(8) A final action of the director is subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S. The director may institute a judicial proceeding in accordance with section 24-4-106, C.R.S., to enforce an order of the director.

(9) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the director shall not resolve the complaint by a deferred settlement, action, judgment, or prosecution.

(10) (a) If it appears to the director, based upon credible evidence as presented in a written complaint, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public, or a person is holding himself or herself out as or is using the title "licensed private investigator" without having obtained a license, the director may issue an order to cease and desist the activity. The director shall set forth in the order the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unregistered practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (10), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. The director or administrative law judge, as applicable, shall conduct the hearing pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(11) (a) If it appears to the director, based upon credible evidence as presented in a written complaint, that a person has violated any other portion of this article, in addition to any specific powers granted pursuant to this article, the director may issue to the person an order to show cause as to why the director should not issue a final order directing the person to cease and desist from the unlawful act or unregistered practice.

(b) The director shall promptly notify the person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (11) of the issuance of the order and shall include in the notice a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. The director may serve the notice on the person against whom the order has been issued by personal service, by first-class, postage-prepaid United States mail, or in another manner as may be practicable. Personal service or mailing of an order or document pursuant to this paragraph (b) constitutes notice of the order to the person.

(c) (I) The director shall hold the hearing on an order to show cause no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (11). The director may continue the hearing by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the director hold the hearing later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (11) does not appear at the hearing, the director may present evidence that notification was properly sent or served on the person pursuant to paragraph (b) of this subsection (11) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order

becomes final as to that person by operation of law. The hearing must be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the director reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required registration, or has or is about to engage in acts or practices constituting violations of this article, the director may issue a final cease-and-desist order directing the person to cease and desist from further unlawful acts or practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (11), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) is effective when issued and is a final order for purposes of judicial review.

(12) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged or is about to engage in an act or practice constituting a violation of this article, a rule promulgated pursuant to this article, or an order issued pursuant to this article; or an act or practice constituting grounds for administrative sanction pursuant to this article, the director may enter into a stipulation with the person.

(13) If a person fails to comply with a final cease-and-desist order or a stipulation, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested the attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(14) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order as provided in subsection (8) of this section.

(15) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensed private investigator.

(b) When the director sends a letter of admonition to a licensed private investigator, the director shall advise the private investigator that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the licensed private investigator timely requests adjudication, the director shall vacate the letter of admonition and process the matter by means of formal disciplinary proceedings.

(16) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, the complaint should be dismissed, but the director has noticed indications of possible errant conduct by the licensed private investigator that could lead to serious consequences if not corrected, the director may send the licensed private investigator a confidential letter of concern.

Source: L. 2011: Entire article added, (HB 11-1195), ch. 312, p. 1524, § 1, effective August 10.

12-58.5-108. Revocation. A person whose license is revoked is ineligible to apply for a license under this article for at least two years after the date of revocation of the license. The director shall treat a subsequent application for licensure from a person whose license was revoked as an application for a new license under this article.

Source: L. 2011: Entire article added, (HB 11-1195), ch. 312, p. 1529, § 1, effective August 10.

12-58.5-109. Fees - cash fund. The division shall transmit all fees collected pursuant to this article to the state treasurer, who shall credit the fees to the division of professions

and occupations cash fund created pursuant to section 24-34-105 (2) (b), C.R.S. The general assembly shall make annual appropriations from the division of professions and occupations cash fund for expenditures of the division incurred in the performance of its duties under this article.

Source: L. 2011: Entire article added, (HB 11-1195), ch. 312, p. 1529, § 1, effective August 10.

12-58.5-110. Repeal of article - review of functions. This article is repealed, effective September 1, 2016. Prior to its repeal, the powers, duties, and functions of the director regarding the licensure of private investigators as specified in this article shall be reviewed as provided in section 24-34-104, C.R.S.

Source: L. 2011: Entire article added, (HB 11-1195), ch. 312, p. 1529, § 1, effective August 10.

ARTICLE 59

Private Occupational Schools

Editor’s note: This article was numbered as article 3 of chapter 146, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1975, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1975, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For state assistance for vocational education, compare article 8 of title 23.

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12-59-104.	Exemptions.		
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12-59-105.4.	Duties of private occupational schools.	12-59-117.	Deceptive trade or sales practices.
12-59-105.5.	Occupational credentials for instructors of barbering and cosmetology.	12-59-118.	Complaints of deceptive trade or sales practices.
12-59-105.7.	Submittal of fingerprints for persons teaching at designated schools - criminal history record check - prerequisite for commencing or continuing employment.	12-59-119.	Preservation of records.
		12-59-120.	Enforceability of notes, contracts, and other evidence of indebtedness.
12-59-105.9.	Duties and powers of the division subject to approval of the executive director.	12-59-121.	Violations - civil - penalty.
		12-59-122.	Violations - criminal - penalty.
12-59-106.	Minimum standards.	12-59-123.	State administrative procedure act.
12-59-107.	Prohibitions.	12-59-124.	Jurisdiction of courts - service of process.
12-59-108.	Application for certificate of approval.	12-59-125.	Enforcement - injunction - fines.
12-59-109.	Issuance of certificate of approval.	12-59-126.	Advisory committee - sunset review. (Repealed)

12-59-127.	Transfer of governance of private occupational schools - provisions for transition -	12-59-128.	rules. Repeal of article - review of functions.
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12-59-101. Short title. This article shall be known and may be cited as the “Private Occupational Education Act of 1981”.

Source: **L. 75:** Entire article R&RE, p. 491, § 1, effective January 1, 1976. **L. 81:** Entire section amended, p. 840, § 1, effective July 1.

12-59-102. Legislative declaration. (1) It is the purpose of this article to provide standards for and to foster and improve private occupational schools and their educational services and to protect the citizens of this state against fraudulent or substandard private occupational schools by:

- (a) Prohibiting the use of false or misleading literature, advertising, or representations by private occupational schools or their agents;
 - (b) Establishing accountability for private occupational schools and their agents through the setting of standards relative to the quality of educational services, fiscal responsibility, and ethical business practices;
 - (c) Providing for the preservation of essential records;
 - (d) Providing certain rights and remedies to the private occupational school division, the private occupational school board created in section 12-59-105.1, and the consuming public necessary to effectuate the purposes of this article;
 - (e) Providing for the authorization of appropriate educational credentials by approved schools including, but not limited to, certificates, diplomas, and associate degrees; and
 - (f) Providing train-out for students of private occupational schools ceasing operation.
- (2) To these ends, this article shall be liberally construed.

Source: **L. 75:** Entire article R&RE, p. 491, § 1, effective January 1, 1976. **L. 81:** (1) amended, p. 840, § 2, effective July 1. **L. 90:** (1)(d) amended, p. 1161, § 9, effective July 1. **L. 91:** (1)(f) added, p. 1593, § 1, effective March 27. **L. 98:** (1)(d) amended, p. 36, § 6, effective March 17. **L. 2008:** (1)(d) amended, p. 1480, § 23, effective May 28.

12-59-103. Definitions. As used in this article, unless the context otherwise requires:

(1) “Administrative law judge” means a person, appointed by the authority from a list provided by the attorney general, who shall conduct hearings on any matter which is within the jurisdiction of the division and which is referred to such administrative law judge by the division.

(1.5) “Agent” means any person owning any interest in, employed by, or representing for remuneration or other consideration a private occupational school located within or without this state who enrolls or who, in places other than the principal school premises, offers or attempts to secure the enrollment of any person within this state for education in a school.

(2) “Agent’s permit” means a nontransferable written authorization issued to an agent pursuant to the provisions of this article by the division upon approval by the executive director.

(2.5) “Associate degree” means a degree offered by a school on the successful completion of the degree requirements as established by the division.

(2.6) “Board” means the private occupational school board created in section 12-59-105.1.

(2.7) “Ceasing operation” means the voluntary discontinuation of operation by a private occupational school or the discontinuation of operation by a private occupational school due to the denial, expiration, revocation, or suspension of such school’s certificate of approval by the division.

(2.8) “Certificate” means an award for the successful completion of a specific course or program objective.

(3) "Certificate of approval" means a written authorization issued by the division, upon approval by the executive director, to the principal owners of a school in the name of such school, pursuant to the provisions of this article, to operate a school in this state.

(3.5) "Diploma" means an award for the successful completion of an approved prescribed program of study in a particular field of endeavor.

(3.6) "Director" means the director of the private occupational school division created pursuant to section 12-59-104.1.

(3.7) "Division" means the private occupational school division created pursuant to section 12-59-104.1.

(4) "Educational credentials" means certificates, diplomas, associate degrees, transcripts, reports, numbers, or words which signify or are generally taken to signify enrollment, attendance, progress, or satisfactory completion of the requirements for education at a school.

(5) "Educational services" or "education" includes, but is not limited to, any class, course, or program of training, instruction, or study which is designed or is purported to meet all or part of the requirements for employment in an agricultural, trade, industrial, technical, business, office, sales, service, or health occupation and which constitutes occupational education.

(6) "Entity" includes, but is not limited to, any person, society, association, partnership, corporation, or trust.

(7) "Executive director" means the executive director of the department of higher education appointed pursuant to section 23-1-110 (2), C.R.S.

(8) "New school" means a private occupational school that does not hold an existing certificate of approval as of June 30, 1981, or a school holding an existing certificate of approval as of June 30, 1981, which subsequently expires pursuant to the provisions of section 12-59-108 (4) or is revoked or denied pursuant to the provisions of this article.

(8.5) "Occupational education" means any education designed to facilitate the vocational, technical, or occupational development of individual persons including, but not limited to, vocational or technical training or retraining which is given in schools or classes, including field or laboratory work incident thereto, which is conducted as a part of a program designed to fit individuals for gainful employment as semiskilled or skilled workers or technicians in recognized occupations requiring less than a four-year baccalaureate degree. The term also includes instruction related to the occupation for which the person is being trained or which is necessary for him to benefit from such training.

(9) "Offer" or "offering" includes, in addition to its usual meaning, advertising, publicizing, soliciting, or encouraging any person in any manner to perform the act described.

(10) "Operate" or "operating", when used with respect to a school, means to establish, keep, or maintain any facility or location in this state where, from, or through which educational services are offered or educational credentials are offered or granted.

(11) "Private occupational school" or "school" means any entity or institution for profit or not for profit located within or without this state which offers educational credentials or educational services that constitute occupational education in this state and which is not specifically exempt from the provisions of this article.

(12) Repealed.

(13) "Train-out" means the opportunity for a student of a private occupational school ceasing operation to meet such student's educational objectives through training provided by another approved private occupational school, a community college, an area vocational school, or any other training arrangement acceptable to the division.

Source: **L. 75:** Entire article R&RE, p. 492, § 1, effective January 1, 1976. **L. 81:** (1), (4), (5), (8), and (11) amended and (2.5), (2.8), (3.5), and (8.5) added, p. 841, § 3, effective July 1. **L. 87:** (7) amended, p. 951, § 49, effective March 13. **L. 90:** (1) and (7) R&RE, (1.5), (3.6), and (3.7) added, (2), (2.5), and (3) amended, and (12) repealed, pp. 1161, 1172, §§ 10, 11, 33, effective July 1. **L. 91:** (2.7) and (13) added, p. 1593, § 2, effective March 27. **L. 98:** (2.6) added, p. 36, § 7, effective March 17. **L. 2008:** (2.6), (3.6), and (3.7) amended, p. 1480, § 24, effective May 28.

12-59-104. Exemptions. (1) The following educational institutions and educational services are exempt from the provisions of this article:

(a) A public school or public educational institution funded wholly or in part by a local school district or school districts or by direct appropriation from the state to a school, public educational institution, or board;

(b) A nonprofit school owned, controlled, operated, and maintained by a bona fide parochial or denominational institution exempt from general property taxation under the laws of this state;

(c) A school offering education solely avocational, supplementary, or ancillary in nature;

(d) A college or university which:

(I) Confers four-year baccalaureate or higher degrees; and

(II) Offers programs or courses in this state, the majority of which are not occupational in nature, as defined by the division, or are at the graduate level;

(e) Repealed.

(f) A private school providing a basic academic education comparable to that provided in public elementary and secondary schools of this state;

(g) A school offering only educational services for which no money or other consideration is paid;

(h) A school offering only educational services to an employer for the training of its employees;

(i) Education offered by a bona fide trade, business, professional, or fraternal organization solely for that organization's membership;

(j) Educational services offered by an employer for the training of its own employees;

(k) Apprenticeship training registered pursuant to state or federal law;

(l) Educational services offered by an approved school which:

(I) Do not require the payment of money or other consideration;

(II) Are avocational, supplementary, or ancillary in nature; or

(III) Are offered only to an employer for the training and preparation of his employees;

(m) Nurse aide training programs approved pursuant to section 12-38.1-108 (1);

(n) Flight schools that are approved and regulated by the federal aviation administration;

(o) (Deleted by amendment, L. 2009, (HB 09-1033), ch. 17, p. 93, § 1, effective August 5, 2009.)

(p) Educational programs, continuing education programs, and training programs offered or conducted by an organization which is listed as an exempt organization in 26 U.S.C. sec. 501 (c) of the federal "Internal Revenue Code of 1986", as amended. Any such program, in order to qualify for the exemption created in this paragraph (p), shall be consistent with the purposes or requirements of the organization offering or conducting the program.

(q) A private educational institution that is accredited by an agency recognized by the United States department of education, that confers post-graduate degrees, and that offers programs or courses that are not defined as occupational education pursuant to section 12-59-103 (8.5).

Source: L. 75: Entire article R&RE, p. 493, § 1, effective January 1, 1976. L. 81: Entire section R&RE, p. 842, § 4, effective July 1. L. 87: (1)(d)(II) amended and (1)(e) repealed, pp. 529, 530, §§ 1, 4, effective July 1. L. 89, 1st Ex. Sess.: (1)(m) added, p. 13, § 2, effective July 7. L. 90: (1)(d)(II) amended, p. 1162, § 12, effective July 1. L. 95: (1)(n) and (1)(o) added, p. 43, § 1, effective March 17. L. 2000: (1)(p) added, p. 275, § 1, effective March 31. L. 2005: (1)(q) added, p. 308, § 1, effective August 8. L. 2009: (1)(n) and (1)(o) amended, (HB 09-1033), ch. 17, p. 93, § 1, effective August 5.

12-59-104.1. Private occupational school division - creation. There is hereby created the private occupational school division in the department of higher education and the office of director of the division. The division and the director shall exercise their powers and perform their duties and functions specified in this article under the department of higher

education and the executive director thereof as if the same were transferred to the department by a **type 2** transfer as such transfer is defined in the “Administrative Organization Act of 1968”, article 1 of title 24, C.R.S. The director shall be appointed by the executive director. The director, with the approval of the executive director, shall employ such professional and clerical personnel as deemed necessary to carry out the duties and function of the division. The director and professional personnel are declared to hold educational offices and to be exempt from the state personnel system.

Source: L. 2008: Entire section added, p. 1481, § 25, effective May 28.

Editor’s note: This section is similar to former § 23-60-703 as it existed prior to 2008.

12-59-105. Powers and duties of division. (1) The division shall have, in addition to the powers and duties now vested therein by law, the following powers and duties:

(a) to (c) (Deleted by amendment, L. 98, p. 36, § 8, effective March 17, 1998.)

(d) To publish a list of schools and maintain a list of agents authorized to operate in this state under the provisions of this article;

(e) To receive or cause to be maintained as a permanent file, in conformity with section 12-59-119, copies of educational, financial, and other records;

(f) to (j) (Deleted by amendment, L. 98, p. 36, § 8, effective March 17, 1998.)

(k) To negotiate and enter into interstate reciprocity agreements with similar agencies in other states whenever, in the judgment of the division and the board, such agreements are or will be helpful in effectuating the purposes of this article; except that nothing contained in any such reciprocity agreement shall be construed as limiting the division’s powers, duties, and responsibilities with respect to investigating or acting upon any application for a certificate of approval for a private occupational school or an application for issuance of or renewal of any agent’s permit or with respect to the enforcement of any provision of this article or any of the rules promulgated under this article.

(l) to (n) (Deleted by amendment, L. 98, p. 36, § 8, effective March 17, 1998.)

Source: L. 75: Entire article R&RE, p. 493, § 1, effective January 1, 1976. **L. 81:** (1)(g), (1)(j), and (1)(k) amended and (1)(n) added, p. 843, § 5, effective July 1. **L. 87:** (1)(i) amended, p. 951, § 50, effective March 13. **L. 90:** IP(1), (1)(g), (1)(i), (1)(j), (1)(k), (1)(m), and (1)(n) amended, p. 1162, § 13, effective July 1. **L. 98:** Entire section amended, p. 36, § 8, effective March 17.

12-59-105.1. Proprietary postsecondary education board - established - membership. (1) Effective June 30, 1998, the private occupational school policy advisory committee is abolished, and the terms of members of the advisory committee serving as such immediately prior to June 30, 1998, are terminated.

(2) Effective July 1, 1998, there is established, in the private occupational school division, the private occupational school board that shall advise the director on the administration of this article and shall have the powers and duties specified in section 12-59-105.3. The board shall exercise its powers and perform its duties and functions specified in this article as if the same were transferred to the department of higher education by a **type 1** transfer, as such transfer is defined in the “Administrative Organization Act of 1968”, article 1 of title 24, C.R.S.

(3) The board shall consist of seven members appointed by the governor, with the consent of the senate, as follows:

(a) Three members shall be owners or operators of private occupational schools that receive Title IV funds;

(b) Four members shall be representatives of the general public, at least one of whom is employed by a lending institution located in Colorado and is familiar with the Colorado student loan program and at least two of whom are owners or operators of businesses within Colorado that employ students who are enrolled in schools that are subject to administration by the division.

(4) No appointed member shall be an employee of any junior college, community or technical college, school district, or public agency that receives vocational funds allocated by any state agency.

(5) (a) The board members shall serve four-year terms; except that, of the members first appointed to the board, three members to be selected by the governor shall serve two-year terms. A member shall not serve more than two consecutive four-year terms.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (5), of the three members appointed to replace persons whose terms expire on June 30, 2012, one member selected by the governor shall serve a two-year term, one member selected by the governor shall serve a three-year term, and one member selected by the governor shall serve a four-year term. Subsequent appointments to the positions identified in this paragraph (b) shall serve four-year terms.

(c) Notwithstanding the provisions of paragraph (a) of this subsection (5), of the four members appointed to replace persons whose terms expire on June 30, 2014, one member selected by the governor shall serve a one-year term, one member selected by the governor shall serve a two-year term, one member selected by the governor shall serve a three-year term, and one member selected by the governor shall serve a four-year term. Subsequent appointments to the positions identified in this paragraph (c) shall serve four-year terms.

(6) The board shall hold regular meetings at such times as it may deem appropriate, but it shall not meet less than four times per year.

(7) Board members shall be paid a per diem of thirty-five dollars for each day on which the board meets and their actual and necessary expenses incurred in the conduct of official business.

(8) The division shall provide any necessary staff assistance for the board.

Source: L. 2008: Entire section added, p. 1481, § 25, effective May 28. **L. 2012:** (5) amended, (HB 12-1155), ch. 255, p. 1299, § 19, effective August 8.

Editor's note: This section is similar to former § 23-60-704 as it existed prior to 2008.

12-59-105.3. Powers and duties of board. (1) The board shall have the following powers and duties:

(a) To establish minimum criteria in conformity with section 12-59-106, including quality of education, ethical business practices, and fiscal responsibility, which an applicant for a certificate of approval shall meet before such certificate of approval may be issued and continued in effect. The criteria to be developed under this section shall be such as will effectuate the purposes of this article.

(b) To establish minimum criteria in conformity with section 12-59-106 which an applicant for an agent's permit shall meet before such agent's permit may be issued and continued in effect. The criteria to be developed under this section shall be such as will effectuate the purposes of this article.

(c) To consult with the division regarding interstate reciprocity agreements;

(d) To receive, investigate, and evaluate, as it deems necessary, and act upon applications for certificates of approval, agents' permits, and changes of ownership;

(e) To require the posting of appropriate notices on the school premises notifying students of any school closure by operation of law or otherwise;

(f) To investigate, as it deems necessary, any entity subject to, or reasonably believed by the board to be subject to, the jurisdiction of this article and, in connection therewith, to subpoena any persons, books, records, or documents pertaining to such investigation, to require answers in writing, under oath, to questions propounded by the board, and to administer an oath or affirmation to any person in connection with any such investigation. Such investigation may include the physical inspection of school facilities and records. Said subpoena shall be enforceable by any court of record of this state.

(g) To deny or revoke the agent's permit of an agent of an out-of-state school determined not to be in compliance with this article;

(h) To appoint administrative law judges to conduct hearings on any matter within the jurisdiction of the board, which shall include the conduct of hearings in aid of any investigation or inquiry pursuant to paragraph (f) of this subsection (1);

(i) To grant accreditation to schools that make application and that meet the standards of accreditation established by the board, which shall include at least the standards of accreditation required for recognition of an accrediting authority for private occupational schools by the United States office of education. Accreditation shall be voluntary and shall not affect, in any manner, a certificate of approval issued by the board as provided in this article. A school making application for accreditation shall pay all reasonable expenses incurred by the board, including any payments to evaluators, in the performance of the accreditation evaluation or in connection with the continuation of any accreditation received under this paragraph (i).

(j) To promulgate rules and to adopt procedures necessary or appropriate for the conduct of its work and the implementation of this article;

(k) To establish educational standards and requirements for the awarding of appropriate educational credentials by private occupational schools;

(l) To exercise other powers and duties implied, but not enumerated, in this section which, in the judgment of the board, are necessary in order to carry out the provisions of this article;

(m) To designate, by category of instruction, those schools that teach students under sixteen years of age for which instructional staff and prospective instructional staff, as defined by board rule, shall be required to submit a complete set of fingerprints pursuant to section 12-59-105.7;

(n) To prescribe uniform academic reporting policies and procedures to which a private occupational school shall adhere.

Source: L. 98: Entire section added, p. 38, § 9, effective March 17. L. 2006: (1)(m) and (1)(n) added, p. 940, § 1, effective May 17.

12-59-105.4. Duties of private occupational schools. A private occupational school shall provide the division with such data as the board deems necessary upon written request of the board. Data pertaining to individual students or personnel shall not be divulged or made known in any way by a member of the board, by the director, or by any division or school employee, except in accordance with judicial order or as otherwise provided by law. A person who violates this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. In addition, such person shall be subject to removal or dismissal from public service on grounds of malfeasance in office.

Source: L. 2006: Entire section added, p. 940, § 2, effective May 17.

12-59-105.5. Occupational credentials for instructors of barbering and cosmetology. The holder of a valid current Colorado license to practice as an instructor of barbering or cosmetology prior to November 1, 1990, shall be awarded a current occupational credential by the board as prescribed by the rules concerning private occupational schools promulgated pursuant to section 12-59-105.3 (1) (j). All persons awarded such occupational credential pursuant to this section shall meet the requirements of the board for renewal of the credential.

Source: L. 90: Entire section added, p. 770, § 28, effective July 1. L. 98: Entire section amended, p. 39, § 10, effective March 17.

12-59-105.7. Submittal of fingerprints for persons teaching at designated schools - criminal history record check - prerequisite for commencing or continuing employment. (1) (a) Instructional staff or prospective instructional staff who may be teaching students in a school designated by the board pursuant to section 12-59-105.3 (1) (m) shall, beginning July 1, 2006, in order to commence or continue employment at a designated

school, submit a set of his or her fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. Nothing in this section shall preclude the board from making further inquiries into the background of instructional staff or prospective instructional staff. Instructional staff or prospective instructional staff shall pay the fee established by the Colorado bureau of investigation for conducting the fingerprint-based criminal history record check. Upon completion of the criminal history record check, the bureau shall forward the results to the board. The board shall conduct a review of the results of the criminal history record check forwarded by the bureau and consider the results in assessing whether instructional staff or prospective instructional staff meet minimum standards of qualification, as established by the board pursuant to section 12-59-106, necessary to commence or continue employment at the designated school.

(b) Instructional staff or prospective instructional staff shall be required to resubmit a set of his or her fingerprints pursuant to paragraph (a) of this subsection (1) even if he or she previously submitted his or her fingerprints pursuant to paragraph (a) of this subsection (1).

(2) In addition to any other requirements established by the board for the necessary qualifications of instructional staff or prospective instructional staff, the submittal of fingerprints pursuant to subsection (1) of this section and results consistent with the minimum standards of qualification established by the board pursuant to section 12-59-106 shall be a prerequisite to commencing or continuing employment as instructional staff who may be teaching students in a school designated by the board pursuant to section 12-59-105.3 (1) (m).

Source: L. 2006: Entire section added, p. 940, § 2, effective May 17.

12-59-105.9. Duties and powers of the division subject to approval of the executive director. The division shall exercise all of the powers and duties set forth in section 12-59-105. The executive director shall review and approve, consistent with the institutional role and statewide needs, any action taken by the division pursuant to the powers and duties set forth in section 12-59-105; except that the participation of the executive director shall not be required in any action taken by the board.

Source: L. 2008: Entire section added, p. 1481, § 25, effective May 28.

Editor's note: This section is similar to former § 23-60-705 as it existed prior to 2008.

12-59-106. Minimum standards. (1) In establishing the criteria required by section 12-59-105.3 (1) (a), (1) (b), and (1) (k), the board shall observe and require compliance with at least the following minimum standards for all schools:

- (a) That the school can demonstrate that it has sufficient financial resources to:
 - (I) Fulfill its commitments to students;
 - (II) Make refunds of tuition and fees to the extent and in the manner set forth in this article; and
 - (III) Meet the school's financial obligations;
- (b) That the school shall furnish and maintain surety bonds as required by this article;
- (c) That the educational services are such as will adequately achieve the stated objectives for which the educational services are offered;
 - (I) to (V) (Deleted by amendment, L. 81, p. 844, § 6, effective July 1, 1981.)
- (d) That the school has adequate facilities, equipment, instructional materials, instructional staff, and other personnel to provide educational services necessary to meet the stated objectives for which the educational services are offered;
- (e) That the education and experience qualifications of administrators, instructional staff, and other personnel are such as will adequately ensure that the students will receive

educational services consistent with the stated objectives for which the educational services are offered;

(f) That the school provides each prospective student with a school catalog and other printed information describing the educational services offered and describing entrance requirements, program objectives, length of programs, schedule of tuitions, fees, all other charges and expenses necessary for the completion of the program of study, cancellation and refund policies, and such other material facts concerning the school and the program of instruction that are likely to affect the decision of a student to enroll therein as required by the board and that such information is provided to a prospective student prior to the commencement of classes and the execution of any enrollment agreement or contract;

(g) That, upon satisfactory completion of training, the student is given appropriate educational credentials by said school; except that the school may require the payment of all tuition and fees due at the time of completion;

(h) That adequate educational, financial, and other records are maintained by the school;

(i) That the school adheres to procedures, standards, and policies set forth in the school catalog and other printed materials;

(j) That the school is maintained and operated in compliance with all pertinent ordinances and laws, including rules and regulations adopted pursuant thereto, relative to the health and safety of all persons upon the premises;

(k) That neither the school nor its agents have violated the prohibitions as set forth in section 12-59-107 or have engaged in deceptive trade or sales practices as set forth in section 12-59-117;

(l) That the principal owners, officers, agents, administrators, and instructors are of good reputation and free from moral turpitude;

(m) That the school provides the student with a copy of the executed enrollment agreement or contract, at the time of enrollment, which complies with this article;

(n) That the school adheres to a policy for the cancellation, settlement, and refund of tuition and fees which complies with this article;

(o) That an out-of-state school shall maintain records which include, but are not limited to, a list of the name and address of each student enrolled from within this state and that such records shall be made available to the board upon request;

(p) That the school shall submit to the board the name and Colorado address of a designated agent upon whom any process, notice, or demand may be served and that such agent shall be maintained continuously. Nothing contained in this section shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

(q) That the school or agent shall have paid any restitution required by section 12-59-118 and any civil penalties assessed pursuant to section 12-59-121;

(r) That an agent shall represent only a school that meets the minimum standards set forth in this section and the criteria established pursuant to section 12-59-105.3;

(s) That the school shall not deny enrollment of a student or make any distinction or classification of students on account of race, color, creed, religion, national origin, ancestry, sex, sexual orientation, or marital status.

(2) A school that is accredited by an accrediting association officially recognized by the United States education department or by the board may fulfill the requirements of paragraphs (c) to (o) and (s) of subsection (1) of this section by maintaining its accreditation with its appropriate accrediting association as long as the accrediting standards meet or exceed the minimum standards set forth in this article.

Source: L. 75: Entire article R&RE, p. 495, § 1, effective January 1, 1976. L. 81: IP(1), (1)(c), and (1)(l), amended and (2) added, p. 843, § 6, effective July 1. L. 90: IP(1), (1)(f), (1)(o), (1)(p), and (2) amended, p. 1163, § 14, effective July 1. L. 98: IP(1), (1)(f), (1)(o), (1)(p), (1)(r), and (2) amended, p. 40, § 11, effective March 17. L. 2008: (1)(s) amended, p. 1600, § 19, effective May 29.

Cross references: For the legislative declaration contained in the 2008 act amending subsection (1)(s), see section 1 of chapter 341, Session Laws of Colorado 2008.

ANNOTATION

There is no claim for relief based upon educational malpractice. Tolman v. Cencore Career Colls., Inc., 851 P.2d 203 (Colo. App. 1992).

12-59-107. Prohibitions. (1) No entity of whatever kind, alone or in concert with others, shall:

(a) Operate in this state a school not exempt from the provisions of this article unless said school holds a valid certificate of approval issued pursuant to the provisions of this article;

(b) Offer educational services in or grant educational credentials from a school located within or without this state unless said agent holds a valid agent's permit issued pursuant to the provisions of this article; except that the board may promulgate rules to permit the rendering of legitimate public information services without such permit;

(c) Accept contracts or enrollment agreements from an agent who does not hold a valid agent's permit issued pursuant to the provisions of this article;

(d) Award educational credentials without requiring the completion of any education.

(e) (Deleted by amendment, L. 98, p. 41, § 12, effective March 17, 1998.)

Source: L. 75: Entire article R&RE, p. 497, § 1, effective January 1, 1976. L. 90: (1)(b) amended and (1)(e) added, p. 1164, § 15, effective July 1. L. 98: (1)(b) and (1)(e) amended, p. 41, § 12, effective March 17.

12-59-108. Application for certificate of approval. (1) Any entity desiring to operate a private occupational school in this state shall make application for a certificate of approval to the board upon forms to be provided by the board. Said application shall include at least the following:

(a) A catalog published or proposed to be published by the school containing the information specified in the criteria promulgated by the board;

(b) A description of the school's placement assistance, if any;

(c) A current balance sheet, income and expense statement, and other supportive financial documentation incidental thereto, prepared by an independent public accountant or certified public accountant using a format which reflects accepted accounting principles and procedures;

(d) Copies of media advertising and promotional literature;

(e) Copies of all student enrollment agreement or contract forms and instruments evidencing indebtedness;

(f) A surety bond as required by this article;

(g) A fee as required by this article;

(h) The name and Colorado address of a designated agent upon whom any process, notice, or demand may be served.

(2) Each application shall be signed and certified to under oath by the owner or his authorized designee.

(3) The board shall not be required to act upon an application until such time as an application is submitted as set forth in this section.

(4) An application submitted by a school which holds a valid certificate of approval shall be submitted on or before February 15 immediately prior to the expiration of said certificate of approval. If such application as set forth in subsection (1) of this section is not submitted as set forth in this section, the school's existing certificate of approval shall expire on June 30 by operation of law, and any such application submitted after February 15 shall be treated as an application submitted by a new school.

(5) The board shall not be required to act upon an application submitted by a school whose certificate of approval has been revoked or denied by a final nonappealable order of the board for a period of twelve months subsequent to said revocation or denial. Notwith-

standing that an order of revocation or denial may be subject to judicial review, said school shall otherwise comply with and be subject to the provisions of this article; except that said school shall not be required to submit an application as required by this section.

Source: L. 75: Entire article R&RE, p. 497, § 1, effective January 1, 1976. L. 81: IP(1) amended, p. 844, § 7, effective July 1. L. 90: IP(1), (1)(a), (3), and (5) amended, p. 1164, § 16, effective July 1. L. 98: IP(1), (1)(a), (3), and (5) amended, p. 41, § 13, effective March 17.

ANNOTATION

No opportunity for a hearing prior to the expiration of private occupational school's certificate of approval was required by a plain reading of the statute where school's

financial documents remained inadequate. Nat'l Camera, Inc. v. Sanchez, 832 P.2d 960 (Colo. App. 1991).

12-59-109. Issuance of certificate of approval. (1) Following the review and evaluation of an application for a certificate of approval and any further information required by the board to be submitted by the applicant and such investigation and appraisal of the applicant as the board deems necessary or appropriate, the board shall either grant or deny a certificate of approval to the applicant. A certificate of approval shall be issued to the applicant in the name of the school and shall state in clear and conspicuous language the name and address of the school, the date of issuance, and the term of approval.

(2) The term for which a certificate of approval is issued shall be for three years commencing on July 1 and expiring on June 30 of the third year thereafter or upon the cessation of operation of the school. New schools shall be issued a provisional certificate of approval which shall expire on June 30 of the second year following the date of issuance or upon the cessation of operation of the school.

(3) At any time within the period of a certificate of approval, the board may require the school to submit supplementary documentation or information deemed necessary to enable the board to determine whether said school is continuing to be operated in compliance with the provisions of this article.

Source: L. 75: Entire article R&RE, p. 498, § 1, effective January 1, 1976. L. 90: (1) and (3) amended, p. 1164, § 17, effective July 1. L. 98: (1) and (3) amended, p. 41, § 14, effective March 17.

12-59-110. Application for change of ownership. (1) In the event of a change of ownership of a school, the seller, prior to the effective date of the change of ownership, shall notify the board in writing, and the buyer, prior to or within thirty days after the change of ownership, shall make application for approval of the change of ownership upon forms to be provided and in a manner prescribed by the board. In the event of a failure to do so, the school's certificate of approval shall be suspended by operation of law until such application has been received and approved by the board as provided in this section.

(2) Following the review and evaluation of an application and any further information required by the board to be submitted by the applicant and such investigation and appraisal of an applicant as the board deems necessary or appropriate, the board shall either grant or deny the application. Denial of an application shall be in the same manner as set forth in section 12-59-112 for a denial of an application for a certificate of approval; except that the board shall not be required to submit a notice of noncompliance.

(3) "Ownership", for the purpose of this section, means ownership of a controlling interest in the school or, in the event the school is owned or controlled by a corporation or other legal entity other than a natural person, ownership of a controlling interest in the legal entity owning or controlling such school.

Source: L. 75: Entire article R&RE, p. 498, § 1, effective January 1, 1976. **L. 81:** (1) amended, p. 844, § 8, effective July 1. **L. 90:** (1) and (2) amended, p. 1165, § 18, effective July 1. **L. 98:** (1) and (2) amended, p. 42, § 15, effective March 17.

12-59-111. Agent's permits. (1) **In-state schools.** (a) Any person desiring to engage in the performance of the duties of an agent for a school located within this state shall be registered by the school upon forms to be provided by the division. Said registration shall include the following:

(I) A statement signed by said applicant that he has read the provisions of the "Private Occupational Education Act of 1981" and the rules and regulations promulgated pursuant thereto;

(II) A fee as required by this article.

(b) An agent representing more than one school must obtain a separate agent's permit for each school represented; except that an agent holding a valid agent's permit to represent a school shall not be required to obtain a separate permit to represent another school owned by the same entity to the same extent and having the same name as the first school.

(c) An agent's permit shall be issued to the agent and shall state in a clear and conspicuous manner the name of the agent, the name and location of the school he represents, and the date of issuance and term of such permit.

(d) An agent's permit shall expire on the same date as the certificate of approval for the school which such agent represents expires.

(2) **Out-of-state schools.** (a) Any person desiring to engage in the performance of the duties as an agent within this state, for a school located outside this state, shall make application through the school to the board upon forms to be provided by the division. Said application shall include the following:

(I) A statement signed by said applicant that he has read the provisions of the "Private Occupational Education Act of 1981" and the rules and regulations promulgated pursuant thereto;

(II) A surety bond as required in this article;

(III) A fee as required by this article.

(b) An application submitted by an applicant who intends to represent a school located outside this state shall not be acted upon until any information regarding said school which is required to be submitted by the board, including the name and Colorado address of a designated agent upon whom any process, notice, or demand may be served, has been received.

(c) An agent representing more than one school must obtain a separate agent's permit for each school represented; except that an agent holding a valid agent's permit to represent a school shall not be required to obtain a separate permit to represent another school owned by the same entity to the same extent and having the same name as the first school.

(d) Following the review and evaluation of an application and any further information required by the board to be submitted by the applicant and such investigation and appraisal of an applicant as the board deems necessary or appropriate, the board shall recommend to the executive director either a grant or denial of an agent's permit to the applicant.

(e) An agent's permit shall be issued to the agent and shall state in a clear and conspicuous manner the name of the agent, the name and location of the school he represents, and the date of issuance and term of such permit.

(f) An agent's permit shall expire annually on June 30. An agent's permit shall also expire upon termination of his employment with the school named on said permit.

(g) An agent's permit issued for the purpose of representing a school located outside this state shall be suspended by operation of law when said school fails to maintain in this state an agent upon whom any process, notice, or demand may be served.

(h) At least sixty days prior to the expiration of an agent's permit, the agent shall complete and file with the board an application form and fee for renewal of said permit. Said application shall be reviewed and acted upon as provided in this article. If such application is not submitted as set forth in this section, the agent's existing permit shall expire on July 1.

(i) The board shall not be required to act upon an application submitted by an agent whose permit has been revoked or denied by a final nonappealable order of the board for

a period of twelve months subsequent to said revocation or denial. Notwithstanding that an order of revocation or denial shall be subject to judicial review, said agent shall otherwise comply with and be subject to the provisions of this article; except that said agent shall not be required to submit an application as required by this section.

Source: L. 75: Entire article R&RE, p. 499, § 1, effective January 1, 1976. L. 81: Entire section R&RE, p. 844, § 9, effective July 1. L. 90: IP(1)(a), IP(2)(a), (2)(b), (2)(d), (2)(h), and (2)(i) amended, p. 1165, § 19, effective July 1. L. 98: IP(2)(a), (2)(b), (2)(d), (2)(h), and (2)(i) amended, p. 42, § 16, effective March 17.

12-59-112. Denial of application for certificate of approval or agent's permit.

(1) If the board, upon review of an application for a certificate of approval or for an agent's permit, determines upon reasonable belief that the applicant fails to meet any one or more of the criteria established pursuant to this article, the board shall submit to the applicant a notice of noncompliance setting forth the reasons therefor in writing. The notice shall set forth a period of time within which the applicant may submit written data, arguments, views, or information with respect to the reasons set forth in the notice and during which time the applicant shall also be afforded the opportunity to eliminate the reason for said notice.

(2) The board shall consider such written data, arguments, views, or information submitted and the steps taken by the applicant to comply and shall thereafter determine upon reasonable belief whether a hearing shall be conducted for the purpose of denying said application.

(3) An application for a certificate of approval or an agent's permit may also be denied by the board if the applicant has furnished false or misleading written or oral statements, documents, or other representations to the board with the intent to mislead or conceal the truth of any matter to be considered by the board as a factor in approving the application.

(4) Notwithstanding the provisions of subsections (1), (2), and (3) of this section, the provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., shall apply to the denial of an application for a certificate of approval submitted by a new school and to the denial of an initial application for an agent's permit.

Source: L. 75: Entire article R&RE, p. 500, § 1, effective January 1, 1976. L. 90: (1) to (3) amended, p. 1166, § 20, effective July 1. L. 98: (1) to (3) amended, p. 43, § 17, effective March 17.

12-59-113. Revocation of certificate of approval and agent's permit. (1) If the board determines upon reasonable belief that the holder of a certificate of approval or an agent's permit has violated or is violating any one or more of the criteria established pursuant to this article, the board or its authorized designee shall submit to such holder or a school's designated agent for service of process a notice of noncompliance setting forth the reasons therefor in writing. The notice shall set forth a period of time within which the applicant may submit written data, views, arguments, or information with respect to the reasons set forth in the notice and during which time such holder shall also be afforded the opportunity to eliminate the reason for said notice.

(2) The board shall consider such written data, arguments, views, or information submitted and the steps taken by such holder to comply and shall thereafter determine upon reasonable belief whether a hearing shall be conducted for the purpose of revoking the certificate of approval or an agent's permit.

(3) If the board has reasonable grounds to believe and finds that such holder has willfully and deliberately violated the criteria established pursuant to this article or that the public health, safety, or welfare imperatively requires emergency action and incorporates such findings in its order, it may summarily suspend the certificate of approval or agent's permit pending a hearing, which shall be promptly instituted and determined.

(4) A certificate of approval or an agent's permit may also be revoked by the board if the holder thereof has furnished false or misleading written or oral statements, documents,

or other representations to the board with the intent to mislead or conceal the truth of any matter considered by the board as a factor in approving the application for a certificate of approval or an agent's permit or for continuing in effect the certificate of approval or an agent's permit.

(5) A certificate of approval may be revoked by the board if the holder thereof has had its surety bond cancelled and has not replaced it within fifteen days prior to the effective date of such bond termination.

Source: **L. 75:** Entire article R&RE, p. 500, § 1, effective January 1, 1976. **L. 81:** (5) added, p. 846, § 10, effective July 1. **L. 90:** Entire section amended, p. 1166, § 21, effective July 1. **L. 98:** Entire section amended, p. 43, § 18, effective March 17.

12-59-114. Refund policy. (1) As a condition for granting a certificate of approval or an agent's permit to represent a school located outside this state, a school shall maintain a policy for the refund of tuition and fees in the event, and within thirty days of the date, a student fails to enter the course, withdraws, or has been discontinued therefrom at any time prior to completion, and such policy shall provide for at least the following:

(a) A full refund of all moneys paid if the applicant is not accepted by the school;

(b) A full refund of tuition and fees paid if the applicant withdraws within three days after signing the contract or making an initial payment if the applicant has not commenced training;

(c) A full refund of tuition and fees paid in the event that the school discontinues a course or program of education during a period of time within which a student could have reasonably completed the same; except that this provision shall not apply in the event that the school ceases operation;

(d) That the school use a method of determining the official termination date of the student which complies with the established criteria of the state board for community colleges and occupational education;

(e) That except for retention of a cancellation charge not to exceed one hundred fifty dollars or twenty-five percent of the contract price, whichever is less, the policy for cancellation, settlement, and refund of tuition and fees provides for at least the following:

(I) For a student terminating his training within the first ten percent of his program, the student shall be entitled to a refund of ninety percent of the contract price of the program exclusive of books, tools, and supplies.

(II) For a student terminating his training after ten percent but within the first twenty-five percent of his program, the student shall be entitled to a refund of seventy-five percent of the contract price of the program exclusive of books, tools, and supplies.

(III) For a student terminating his training after twenty-five percent but within the first fifty percent of his program, the student shall be entitled to a refund of fifty percent of the contract price of the program exclusive of books, tools, and supplies.

(IV) For a student terminating his training after fifty percent but within the first seventy-five percent of his program, the student shall be entitled to a refund of twenty-five percent of the contract price of the program exclusive of books, tools, and supplies.

(V) (Deleted by amendment, L. 81, p. 846, § 11, effective July 1, 1981.)

(VI) A student who has completed seventy-five percent of his program and has entered the final twenty-five percent shall not be entitled to any refund and shall be obligated for the full price of the program, which constitutes the maximum obligation.

(2) (a) A school offering education using an individualized instruction method shall:

(I) Establish a time period during which a student should complete the training;

(II) Outline school policies relative to satisfactory progress including an average rate of assignment completion;

(III) Establish a policy for termination in the event that a student does not maintain said rate of assignment completion.

(b) Under these conditions, a refund of tuition and fees required by this section may be computed based on said time period or on assignments completed in accordance with the policy previously adopted by the school.

(3) The board may require a school to submit to the board a notice of each tuition refund paid or contract cancelled in the manner and to the extent determined by the board.

Source: L. 75: Entire article R&RE, p. 501, § 1, effective January 1, 1976. L. 81: (1)(e) amended, p. 846, § 11, effective July 1. L. 90: (3) amended, p. 1167, § 22, effective July 1. L. 98: (1)(d) and (3) amended, p. 44, § 19, effective March 17.

12-59-115. Bonds. (1) Schools located within this state shall file as a part of their application for a certificate of approval evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or one bond as set forth in this section covering said school and its agents. Schools located outside this state shall file evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or bonds as set forth in this section covering said school's agents.

(2) At the time application is made for a certificate of approval, the board shall require an applicant to file with the division a surety bond in such sum as determined pursuant to subsection (3) of this section. Said bond shall be executed by the applicant as principal and by a surety company authorized to do business in this state. The bond shall be conditioned to provide indemnification to any student or enrollee or to any parent or guardian of such student or enrollee determined by the board to have suffered loss of tuition or any fees as a result of any act or practice that is a violation of any minimum standard as set forth in this article or any criterion established pursuant thereto by a school or its agents and to provide train-out for students enrolled in an approved school ceasing operation as provided in subsection (7) of this section. The bond shall be continuous unless said surety is released as set forth in this section.

(3) The amount of the bond to be submitted with an application for a certificate of approval shall be equal to a reasonable estimate of the maximum prepaid, unearned tuition and fees of the school for a period or term during the applicable school training year for which programs of instruction are offered including, but not limited to, on a semester, quarter, monthly, or class basis; except that the period or term of greatest duration and expense shall be utilized for this computation where a school's training year consists of one or more such periods or terms. Following the initial filing of the surety bond with the division, the amount of the bond shall be recalculated annually based upon a reasonable estimate of the maximum prepaid, unearned tuition and fees received by the school for such period or term. In no case shall the amount of the bond be less than five thousand dollars.

(4) (Deleted by amendment, L. 91, p. 1594, § 3, effective March 27, 1991.)

(5) Repealed.

(6) (a) A student, enrollee, or parent or guardian of the student or enrollee claiming loss of tuition or fees may file a claim with the board if the claim results from an act or practice that violates a minimum standard or criterion established pursuant to section 12-59-106. Such claims that are filed with the board shall constitute public records and are subject to the provisions of article 72 of title 24, C.R.S.; except that no such claims records shall be made public if such release would violate any federal privacy law.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (6), the board shall not consider any claim that is filed more than two years after the date the student discontinues his or her training at the school.

(7) (a) In the event that a private occupational school ceases operation, the board shall be authorized to make demand on the surety of such school upon the demand for a refund by a student or the implementation of a train-out for the students of such school, and the surety shall pay the claim due in a timely manner. To the extent practicable, the board shall use the amount of the bond to provide train-out for students of the private occupational school ceasing operation through a contract with another approved private occupational school, a community college, an area vocational school, or any other training arrangement acceptable to the board. The train-out provided to a student shall replace the original enrollment agreement or contract between the student and the private occupational school ceasing operation; except that tuition and fee payments shall be made by the student as required by the original enrollment agreement or contract.

(b) Any student enrolled in a private occupational school ceasing operation who declines the train-out required to be offered pursuant to paragraph (a) of this subsection (7) may file a claim with the board for the student's prorated share of the prepaid, unearned tuition and fees paid by such student subject to the limitations of paragraph (c) of this subsection (7). No subsequent payment shall be made to a student, unless proof of satisfaction of any prior debt to a financial institution is submitted in accordance with the board rules concerning the administration of this section.

(c) If the amount of the bond is less than the total prepaid, unearned tuition and fees which have been paid by students at the time the private occupational school ceased operation, the amount of the bond shall be prorated among such students.

(d) The provisions of this subsection (7) shall be applicable only to those students enrolled in the private occupational school at the time it ceases operation, and, once a school ceases operation, no new students shall be enrolled therein.

(e) The board shall be designated as the trustee for all prepaid, unearned tuition and fees, student loans, Pell grants, and other student financial aid assistance in the event that an approved private occupational school ceases operation.

(f) The board shall determine whether the offering of a train-out for students enrolled in an approved private occupational school ceasing operation is practicable without federal government designation of the board as trustee for student loans, Pell grants, and other student financial aid assistance pursuant to paragraph (e) of this subsection (7).

(8) At the time that application is made for an agent's permit to represent a school located outside this state, said application shall be accompanied by a surety bond in the sum of fifty thousand dollars. Said bond shall be executed by the applicant as principal and by a surety company authorized to do business in this state. The bond shall be conditioned to provide indemnification to any student or enrollee or his or her parent or guardian determined by the board to have suffered loss of tuition or any fees as a result of any act or practice that is a violation of any deceptive trade or sales practice as set forth in this article or any criteria established pursuant thereto by said agent. Regardless of the number of years that said bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum of the bond. The bond shall be continuous, unless said surety is released as set forth in this section, and may be blanket in form. Any student or enrollee or his or her parent or guardian claiming loss of tuition or any fees as a result of any deceptive trade or sales practice shall file a notarized claim with the board. In no event, however, shall the board consider any such complaint filed one hundred eighty days after the date the student discontinued his or her training at said school.

(9) Except with respect to a claim for tuition and fees made by a student enrolled in an approved private occupational school ceasing operation, the board shall conduct a hearing for the purpose of determining any loss of tuition or fees, and, if any claim is found to be correct and due the claimant, the board shall make demand upon the principal and the surety on the bond. If the principal or surety fails or refuses to pay the claim due, the board shall commence an action on such bond in any court of competent jurisdiction; except that no such action may be filed more than six years subsequent to the date of any violation that gives rise to the right to file a claim pursuant to this section. A claim for tuition and fees made by a student enrolled in an approved private occupational school ceasing operation shall be handled in the manner provided in subsection (7) of this section.

(10) A certificate of approval or an agent's permit shall be suspended by operation of law when said school or agent is no longer covered by a surety bond as required by this section. The board shall give written notice to said school or agent, or both, at the last-known address, at least forty-five days prior to the release of said surety, to the effect that said certificate of approval or agent's permit shall be suspended by operation of law until another surety bond is filed in the same manner and like amount as the bond being released.

(11) A surety on any bond filed under the provisions of this section shall be released therefrom after such surety serves written notice thereof to the board at least sixty days prior to such release. Said release shall not discharge or otherwise affect any claim filed by any student or enrollee or his or her parent or guardian for loss of tuition or any fees that occurred while said bond was in effect or which occurred under any note or contract

executed during any period of time when said bond was in effect, except when another bond is filed in a like amount and provides indemnification for any such loss.

(12) (a) The board shall allow, at a reasonable price, alternate surety methods in lieu of the bonding requirements of this section. The alternate sureties shall be conditioned to provide indemnification to any student or enrollee or to any parent or guardian of such student or enrollee for any loss of tuition or any fees as a result of any act or practice that is a violation of this article and to provide train-out for students enrolled in an approved school ceasing operation as provided in subsection (7) of this section. In the event that a school covered by an alternate surety ceases operation, the board shall act in the manner provided in subsection (7) of this section.

(b) Prior to September 1, 1991, and each year thereafter, any alternate surety allowed by the board shall be required to contract for an independent financial audit. Such audit shall be included in a report to the board due by January 1 of the following year. The board may disapprove an alternate surety if it deems that such surety is not able to provide students with the indemnification and train-out required by this section.

(13) For the purposes of this section, "school" and "private occupational school" shall include a for-profit private college or university, as defined in section 23-2-102 (11), C.R.S., in which the majority of students are enrolled in courses and programs that are occupational in nature, as defined by the board.

Source: L. 75: Entire article R&RE, p. 502, § 1, effective January 1, 1976. L. 79: (1) amended, p. 423, § 11, effective July 1. L. 81: IP(3) and (8) amended and (12) added, p. 847, § 12, and (5) repealed, p. 853, § 30, effective July 1. L. 90: (2), (6), (7), (9) to (12) amended, p. 1167, § 23, effective July 1. L. 91: (2) to (4), (7), (9), and (12) amended and (13) added, p. 1594, § 3, effective March 27; (7)(b) amended, p. 1911, § 19, effective June 1. L. 94: (6) amended, p. 490, § 1, effective March 31. L. 98: (2), (6), (7)(a), (7)(b), (7)(e), (7)(f), and (8) to (13) amended, p. 44, § 20, effective March 17. L. 2012: (13) amended, (HB 12-1155), ch. 255, p. 1300, § 22, effective August 8.

12-59-116. Fees - private occupational schools fund - annual adjustment. (1) The board by rule shall establish fees for the direct and indirect costs of the administration of this article, which fees shall accompany any application for a certificate of approval for a new school or for a school other than a new school, for an in-state or out-of-state agent's permit, or for a change of ownership. All fees collected shall be transmitted to the state treasurer, who shall credit the same to the private occupational schools fund, which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of the administration of this article. All moneys credited to the fund shall be used for the direct and indirect costs of the administration of this article and shall not be deposited in or transferred to the general fund of this state or to any other fund.

(2) In addition to the fees specified in subsection (1) of this section, the board by rule shall establish and receive fees for reviewing the qualifications of and for issuing appropriate credentials to instructors and administrators pursuant to section 12-59-106 (1) (e). Such fees shall be collected and administered in the same manner as the fees specified in subsection (1) of this section.

(3) (a) The board shall propose, as part of the division's annual budget request, an adjustment in the amount of the fees that it is authorized to collect pursuant to this section. The budget request and the adjusted fees shall reflect the direct and indirect costs of administering this article.

(b) Based upon the appropriation made and subject to the approval of the Colorado commission on higher education, the board shall adjust its fees so that the revenue generated from said fees approximates the direct and indirect costs of administering this article. The adjusted fees shall remain in effect for the fiscal year for which the budget request applies.

(c) Beginning July 1, 1995, and each July 1 thereafter, whenever moneys appropriated to the division for its activities for the prior fiscal year are unexpended, said moneys shall be made a part of the appropriation to the division for the next fiscal year, and such amount shall not be raised from fees collected by the division. If a supplemental appropriation is

made to the division for its activities, the division's fees shall be adjusted in the following fiscal year by an additional amount that is sufficient to compensate for the supplemental appropriation. Funds appropriated to the division in the annual general appropriations bill shall be designated as cash funds and shall not exceed the amount anticipated to be raised from fees collected by the division.

Source: **L. 75:** Entire article R&RE, p. 505, § 1, effective January 1, 1976. **L. 81:** IP(1) and (1)(c) amended and (1)(d), (1)(e), and (2) added, p. 848, §§ 13, 14, effective July 1. **L. 87:** (1) R&RE and (2) amended, pp. 529, 530, §§ 2, 3, effective July 1. **L. 90:** Entire section amended, p. 1169, § 24, effective July 1. **L. 95:** (1) amended and (3) added, p. 541, § 1, effective May 22. **L. 98:** (1), (2), (3)(a), and (3)(b) amended, p. 47, § 21, effective March 17.

12-59-117. Deceptive trade or sales practices. (1) It is a deceptive trade or sales practice for:

(a) A school or agent to make or cause to be made any statement or representation, oral, written, or visual, in connection with the offering of educational services if such school or agent knows or reasonably should have known the statement or representation to be false, substantially inaccurate, or misleading;

(b) A school or agent to represent falsely, directly or by implication, through the use of a trade or business name or in any other manner, including the use of "help wanted" or other employment columns in a newspaper or other publication, that it is an employment agency or agent or authorized training facility for another industry or member of such industry or to otherwise deceptively conceal the fact that it is a school;

(c) A school or agent to represent falsely, directly or by implication, that any of its educational services have been approved by a particular industry or that successful completion thereof qualifies a student for admission to a labor union or similar organization or for the receipt of a state license to perform certain functions;

(d) A school or agent to represent falsely, directly or by implication, that the lack of a high school education, prior training, or experience is not a handicap or impediment to completing successfully a course or program of study or for gaining employment in the field for which the educational services were designed;

(e) A school or agent to adopt a name, trade name, or trademark which represents falsely, directly or by implication, the quality, scope, nature, size, or integrity of the school or its educational services;

(f) A school or agent to represent falsely, directly or by implication, that students completing a course or program of instruction successfully may transfer credit therefor to any institution of higher education;

(g) A school or agent to represent falsely, directly or by implication, in its advertising or promotional materials or in any other manner, the size, location, facilities, or equipment of the school, the number or educational experience qualifications of its faculty, the extent or nature of any approval received from any state agency, or the extent or nature of any accreditation received from any accrediting agency or association;

(h) A school or agent to provide prospective students with any testimonials, endorsements, or other information which has the tendency to mislead or deceive prospective students or the public regarding current practices of the school, current conditions for employment opportunities, or probable earnings in the industry or occupation for which the educational services were designed or as a result of the completion of any such educational service;

(i) A school or agent to enroll a student when it is reasonably obvious that the student is unlikely to complete successfully a program of study or is unlikely to qualify for employment in the field for which the education is designed, unless this fact is affirmatively disclosed to the student;

(j) An agent representing an out-of-state school to represent directly or by implication that said school is approved or accredited by the state of Colorado;

(k) A school or agent to designate or refer to its sales representatives as “counselors” or “advisors” or to use words of similar import which have the tendency to mislead or deceive prospective students or the public regarding the authority or qualifications of such sales representatives or agents.

Source: L. 75: Entire article R&RE, p. 505, § 1, effective January 1, 1976.

ANNOTATION

There is no claim for relief based upon educational malpractice. Tolman v. Cencore Career Colls., Inc., 851 P.2d 203 (Colo. App. 1992).

12-59-118. Complaints of deceptive trade or sales practices. (1) A person claiming pecuniary loss as a result of a deceptive trade or sales practice, pursuant to section 12-59-117, by a school or agent shall first exhaust all complaint and appeals processes available at the school. If the person’s complaint is not resolved to the person’s satisfaction, the person may file with the board a written complaint against the school or agent. The complaint shall set forth the alleged violation and such other relevant information as may be required by the board. A complaint filed under this section is a public record subject to the provisions of article 72 of title 24, C.R.S., and shall be filed within two years after the student discontinues his or her training at the school or at any time prior to the commencement of training.

(2) The board shall investigate any such complaint and thereafter may consider such complaint at a hearing. If, upon all the evidence at a hearing, the board finds that a school or agent has engaged in or is engaging in any deceptive trade or sales practice, the board may issue and cause to be served upon such school, such agent, or the designated agent for service of process, notice, or demand an order requiring such school or agent to cease and desist from such practice. The board may obtain an order for enforcement of its order in the district court pursuant to section 24-4-106, C.R.S.

(3) If the board finds that the complainant or class of complainants has suffered pecuniary loss as a result of such practice, the board, at its discretion, may award the complainant or class of complainants full restitution for such loss. The board may also commence a civil action against a school or agent believed by the board to have caused a complainant or class of complainants to suffer pecuniary loss as a result of any deceptive trade or sales practice. Upon a finding that such complainant or class of complainants has suffered pecuniary loss as a result of any deceptive trade or sales practice, the court shall order the school or agent to pay to the complainant or class of complainants full restitution for such loss.

(4) Any person filing a complaint alleging a deceptive trade or sales practice pursuant to this section shall exhaust the remedies provided in this section prior to filing a complaint with the district court alleging a deceptive trade or sales practice.

Source: L. 75: Entire article R&RE, p. 506, § 1, effective January 1, 1976. **L. 90:** Entire section amended, p. 1170, § 25, effective July 1. **L. 94:** Entire section amended, p. 490, § 2, effective March 31. **L. 98:** Entire section amended, p. 48, § 22, effective March 17. **L. 2012:** (1) amended, (HB 12-1155), ch. 255, p. 1299, § 20, effective August 8.

ANNOTATION

There is no claim for relief based upon educational malpractice. Tolman v. Cencore Career Colls., Inc., 851 P.2d 203 (Colo. App. 1992).

12-59-119. Preservation of records. (1) In the event that a school located within this state ceases operation, the owner or such owner’s authorized designee shall deposit with the department of personnel the original or legible true copies of all educational, financial, or other records of said school.

(2) In the event that it appears to the board that any such records of a school ceasing operation are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the board, the board may seize and take possession of such records upon making application to any court of competent jurisdiction for an appropriate order. The board shall maintain or cause to be maintained in the department of personnel a permanent file of any such records.

(3) Any person desiring copies of any such records shall pay a fee as may be established by the board.

Source: L. 75: Entire article R&RE, p. 506, § 1, effective January 1, 1976. L. 81: (1) and (2) amended, p. 848, § 15, effective July 1. L. 90: (2) amended, p. 1170, § 26, effective July 1. L. 91: (1) and (2) amended, p. 1597, § 4, effective March 27. L. 96: (1) and (2) amended, p. 1513, § 41, effective June 1. L. 98: (2) and (3) amended, p. 48, § 23, effective March 17.

12-59-120. Enforceability of notes, contracts, and other evidence of indebtedness.

(1) No note, other instrument of indebtedness, or contract relating to payment for educational services shall be enforceable in the courts of this state by any school located within this state unless said school, at the time of execution of such note, other instrument of indebtedness, or contract, holds a valid certificate of approval nor by any school having an agent in this state unless such agent, who enrolled persons to whom educational services were to be rendered or to whom educational credentials were to be granted, held a valid agent's permit at the time of the execution of the note, other instrument of indebtedness, or contract.

(2) and (3) Repealed.

(4) The enforceability of notes, contracts, and other evidence of indebtedness relating to payment for educational services shall be in compliance with applicable state and federal laws and regulations, as amended.

Source: L. 75: Entire article R&RE, p. 507, § 1, effective January 1, 1976. L. 81: (2) and (3) repealed and (4) added, pp. 853, 849, §§ 30, 16, effective July 1.

12-59-121. Violations - civil - penalty. The board may commence a civil action against any entity believed by the board to have violated the provisions of section 12-59-107 or who fails or refuses to deposit with the department of personnel the records required by section 12-59-119. Upon a finding that such entity has violated the provisions of section 12-59-107 or has failed or refused to deposit with the department of personnel the records required by section 12-59-119, the court shall order such entity to pay to the division a civil penalty not to exceed one hundred dollars for each violation. Each day's failure by an entity to comply with the provisions of said section shall be a separate violation.

Source: L. 75: Entire article R&RE, p. 507, § 1, effective January 1, 1976. L. 81: Entire section amended, p. 849, § 17, effective July 1. L. 90: Entire section amended, p. 1171, § 27, effective July 1. L. 96: Entire section amended, p. 1513, § 42, effective June 1. L. 98: Entire section amended, p. 49, § 24, effective March 17.

12-59-122. Violations - criminal - penalty. Any person, group, or entity, or any owner, officer, agent, or employee thereof, who willfully violates the provisions of section 12-59-107 or who willfully fails or refuses to deposit with the department of personnel the records required by section 12-59-119 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. It is the duty of the district attorney to prosecute all violations of this section occurring within his or her district.

Source: L. 75: Entire article R&RE, p. 508, § 1, effective January 1, 1976. L. 81: Entire section amended, p. 849, § 18, effective July 1. L. 96: Entire section amended, p. 1514, § 43, effective June 1.

12-59-123. State administrative procedure act. Unless otherwise provided in this article, the provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., shall govern the giving of notices for and the conducting of any hearings on any matter within the authority of the board as set forth in this article.

Source: **L. 75:** Entire article R&RE, p. 508, § 1, effective January 1, 1976. **L. 90:** Entire section amended, p. 1171, § 28, effective July 1. **L. 98:** Entire section amended, p. 49, § 25, effective March 17.

ANNOTATION

**It is less than certain that the APA requires the state board for community colleges and occupational education to conduct a predep-
rivation hearing** since it is not clear that a revocation results when an existing certificate merely expires because the renewal application

is not sufficient in form or substance as prescribed by section 12-59-108, C.R.S. Nat'l Camera, Inc. v. Sanchez, 832 P.2d 960 (Colo. App. 1991) (decided under law in effect prior to 1990 amendment).

12-59-124. Jurisdiction of courts - service of process. Any school located within or without this state which offers to provide educational services to any person in this state, whether such educational services are provided in person or by correspondence, or which offers to award any educational credentials to any person in this state submits such school to the jurisdiction of the courts of this state concerning any cause of action arising therefrom and for the purpose of enforcement of this article by injunction pursuant to section 12-59-125. Service of process upon any such school subject to the jurisdiction of the courts of this state may be made by personally serving the summons upon the defendant within or without this state in the manner prescribed by the Colorado rules of civil procedure, which shall have the same force and effect as if the summons had been personally served within this state. Nothing contained in this section shall limit or affect the right to serve any process as prescribed by the Colorado rules of civil procedure.

Source: **L. 75:** Entire article R&RE, p. 508, § 1, effective January 1, 1976.

Cross references: For the Colorado rule of civil procedure concerning service of process, see C.R.C.P. 4.

12-59-125. Enforcement - injunction - fines. (1) Whenever it appears to the board that any entity is or has been violating any of the provisions of this article or any of the lawful rules or orders of the board, the board, on its own motion or on the written complaint of any person, may apply for and obtain a temporary restraining order or injunction, or both, in the name of the board in any district court in this state against said entity for the purpose of restraining or enjoining such violation or for an order directing compliance with the provisions of this article and all rules and orders issued pursuant to this article. It shall not be necessary that the board allege or prove that it has no adequate remedy at law. The right of injunction provided in this section shall be in addition to any other legal remedy which the board has and shall be in addition to any right of criminal prosecution provided by law. The existence of board action with respect to alleged violations of this article shall not operate as a bar to any action for injunctive relief pursuant to this section.

(2) The board shall have the authority to promulgate rules and adopt procedures to establish, impose, and collect fines from an entity that is in violation of the provisions of this article or the lawful rules or orders of the board. The board may impose a fine, pursuant to said rules, in addition to or in lieu of seeking a temporary restraining order or an injunction pursuant to subsection (1) of this section. All fines collected pursuant to this subsection (2) shall be transferred to the state treasurer, who shall credit the same to the state general fund.

(3) In determining whether to impose a fine or to seek a temporary restraining order or an injunction, the board shall consider whether the entity has engaged in a pattern of noncompliance.

Source: **L. 75:** Entire article R&RE, p. 508, § 1, effective January 1, 1976. **L. 90:** Entire section amended, p. 1171, § 29, effective July 1. **L. 98:** Entire section amended, p. 49, § 26, effective March 17. **L. 2006:** Entire section amended, p. 941, § 3, effective May 17.

12-59-126. Advisory committee - sunset review. (Repealed)

Source: **L. 75:** Entire article R&RE, p. 508, § 1, effective January 1, 1976. **L. 81:** (1)(a), (1)(c), and (2) amended, p. 849, § 19, effective July 1. **L. 86:** (3) added, p. 410, § 9, effective May 16. **L. 90:** Entire section repealed, p. 1172, § 33, effective July 1.

12-59-127. Transfer of governance of private occupational schools - provisions for transition - rules. (1) (a) Any powers, duties, and functions relating to the governance, jurisdiction, and control of private occupational schools that were previously vested in the state board for community colleges and occupational education prior to July 1, 1990, are specifically transferred to the division on July 1, 1990.

(b) The powers, duties, and functions specified in section 12-59-105.3 relating to the governance, jurisdiction, and control of private occupational schools that were previously vested in the division prior to July 1, 1998, are specifically transferred to the board on July 1, 1998.

(2) and (3) Repealed.

(4) The board shall establish minimum criteria, promulgate other rules, and adopt procedures necessary for the conduct of its work and the implementation of this article pursuant to section 12-59-105.3.

Source: **L. 75:** Entire article R&RE, p. 509, § 1, effective January 1, 1976. **L. 78:** (1) and (2) repealed, p. 260, § 34, effective May 23. **L. 81:** Entire section R&RE, p. 850, § 20, effective July 1. **L. 90:** Entire section R&RE, p. 1160, § 4, effective July 1. **L. 98:** Entire section amended, p. 49, § 27, effective March 17. **L. 2004:** (2) and (3) repealed, p. 191, § 2, effective August 4.

12-59-128. Repeal of article - review of functions. This article is repealed, effective September 1, 2015. Prior to such repeal, the department of regulatory agencies shall review the regulation of private occupational schools and their agents under this article, including the functions of the division and the board, in accordance with section 24-34-104, C.R.S.

Source: **L. 2011:** Entire section added, (SB 11-240), ch. 281, p. 1254, § 1, effective August 10.

ARTICLE 60

Racing

Editor's note: This article was numbered as article 2 of chapter 129, C.R.S. 1963. The provisions of this article were amended with relocations in 1993, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1993, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

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PART 1

GENERAL PROVISIONS

12-60-101. Legislative declaration. The general assembly declares that the provisions of this article are enacted in the exercise of the police powers of this state for the protection of the health, peace, safety, and general welfare of the people of this state; for the purpose of promoting racing and the recreational, entertainment, and commercial benefits to be derived therefrom; to raise revenue for the general fund; to establish high standards of sport and fair play; for the promotion of the health and safety of the animals involved in racing events; and to foster honesty and fair dealing in the racing industry. To these ends, this article shall be liberally construed.

Source: L. 93: Entire article amended with relocations, p. 1200, § 1, effective July 1.

Editor's note: This section is similar to former § 12-60-100.2 as it existed prior to 1993, and the former § 12-60-101 was relocated to § 12-60-102.

12-60-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Breakage" means the odd cents by which the amount payable on each dollar wagered in a pari-mutuel pool exceeds a multiple of ten cents.

(2) (Deleted by amendment, L. 2009, (SB 09-174), ch. 296, p. 1583, § 1, effective May 21, 2009.)

(3) (a) "Class A track" means a track, located within the state of Colorado, at which a race meet of horses is conducted and which is not a class B track.

(b) "Class A track" includes a reopening class A track that has not run a meet within the past three years. Such class A track may begin to operate as a simulcast facility after the commission has approved its application for simulcasting and its application for race dates to hold a race meet within the following twelve months. Applications submitted to the commission shall include a provision for the establishment of a purse fund that complies with this article and the rules of the commission.

(4) (a) (I) "Class B track" means a track, located within the state of Colorado, at which a race meet of horses, consisting of thirty or more race days, is being conducted or was being conducted during the immediately preceding twelve months.

(II) (Deleted by amendment, L. 2009, (SB 09-174), ch. 296, p. 1583, § 1, effective May 21, 2009.)

(b) (Deleted by amendment, L. 2009, (SB 09-174), ch. 296, p. 1583, § 1, effective May 21, 2009.)

(5) "Commission" means the Colorado racing commission created in part 3 of this article.

(6) "Cross simulcasting" means either the receipt of a simulcast race of horses by a simulcast facility which is located on the premises of a track which is licensed to race greyhounds or the receipt of a simulcast race of greyhounds by a simulcast facility which is located on the premises of a track which is licensed to race horses.

(7) "Director" means the director of the division of racing events.

(8) "Division" means the division of racing events created in part 2 of this article.

(9) "Executive director" means the executive director of the department of revenue organized as provided in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(10) "Greyhound track" means a track, located within the state of Colorado, at which a race meet of greyhounds is conducted.

(11) "Horse track" means either a class A track or a class B track.

(12) "Host track" means either an in-state host track or an out-of-state host track.

(13) "In-state host track" means a track, located within the state of Colorado, at which a race meet of either horses or greyhounds is conducted.

(14) (a) "In-state simulcast facility" means:

(I) A class A or class B horse track at which a licensee has held within the preceding twelve months or is licensed and scheduled to hold within the following twelve months a race meet of at least the duration required of a class A or class B track;

(II) A greyhound track at which a licensee has held within the preceding twelve months or is licensed and scheduled to hold within the following twelve months a greyhound race meet of at least sixty race days;

(III) (Deleted by amendment, L. 2009, (SB 09-174), ch. 296, p. 1583, § 1, effective May 21, 2009.)

(IV) An additional facility that is operated by and is the responsibility of the licensee of a class B horse track or greyhound track, located in Colorado, and used for the handling of wagers placed on simulcast races received by such track or facility. The number of such additional facilities shall not exceed the total number of facilities licensed to hold a race meet in 2003 plus one additional facility per licensee as authorized under this article. Such additional facilities shall be licensed in accordance with section 12-60-504 and shall not be located within fifty miles of any class B horse track or greyhound track operated by another licensee without the written consent of such other licensee. The commission shall establish by rule the means of obtaining such consent.

(b) If an additional facility is jointly owned or operated as a simulcast facility by two or more licensees, such additional facility shall be deemed to be one of the additional simulcast facilities of only one of such licensees, as designated in writing to the commission.

(c) The commission, for good cause, may grant a licensed class A horse track permission to receive simulcast races at an alternate location within five miles of its track during the times when the track is not in operation.

(15) "Interstate common pool" means a pari-mutuel pool established at one location, usually but not necessarily at a host track, within which pool are combined comparable pari-mutuel pools of one or more simulcast facilities upon a race run at the host track for purposes of establishing payoff prices in the various states. There may be simulcast facilities in more than one state simultaneously combining pari-mutuel pools into the common pool of the host track. Where permitted by the laws and rules of the states in which the host track and the simulcast facilities are located and with the concurrence of the host track, the combined pari-mutuel pool may be established on a regional or other basis between two or more simulcast facilities and need not involve a merger into the host track's pari-mutuel pool. In such instances, one of the simulcast facilities shall serve as if it were the host track for the purposes of holding the common pool and calculating payoffs. The interstate common pool shall be as specified in the written simulcast racing agreement between the host track and the person operating the simulcast facility receiving such simulcast races.

(16) "Intrastate common pool" means a pari-mutuel pool, established for an in-state host track, which includes wagers made at the in-state host track as well as wagers made at in-state simulcast facilities on simulcast races of live races run at the in-state host track.

(17) "Licensee" means any person holding a current, valid race meet license issued pursuant to section 12-60-505 and any person holding a current, valid license or registration issued by the commission pursuant to section 12-60-503 and section 12-60-504. The commission, by rule, shall determine which occupational categories shall be licensed and which shall be registered. Except in connection with the licensing of race meets, the term "license" includes a registration and "applicant" includes an applicant for a registration.

(18) "Out-of-state host track" means a track, located within a state other than Colorado, which is licensed or otherwise properly authorized under the laws of such state to conduct live races of horses or greyhounds and to broadcast such races as simulcast races and which broadcasts such simulcast races to an in-state simulcast facility.

(19) "Out-of-state simulcast facility" means a track or other facility, located within a jurisdiction other than Colorado, at which pari-mutuel wagers are placed or accepted, either in person or electronically, on simulcast races pursuant to proper authorization under the laws of such jurisdiction.

(20) "Pari-mutuel pool" means a wagering pool into which pari-mutuel wagers on a live race or on a simulcast race are taken.

(20.5) “Pari-mutuel wagering” means a form of wagering on the outcome of horse and greyhound races in which those who wager purchase tickets of various denominations on one or more horses or greyhounds from one or more pools and all like wagers from each race are pooled and the winning ticket holders are paid prizes from such pool in amounts proportional to the total receipts in the pool minus deductions authorized by statute.

(21) “Person” means any individual, partnership, firm, corporation, or association.

(22) “Race meet” means any live exhibition of racing involving horses registered within their breed or greyhounds, conducted at a track located within the state of Colorado and operated by a licensee under a license granted pursuant to section 12-60-505, where the pari-mutuel system of wagering is used.

(23) “Simulcast facility” means either an in-state simulcast facility or an out-of-state simulcast facility.

(24) “Simulcast race” means a live, audio-visual broadcast, transmitted simultaneously with the performance of a live race of horses or greyhounds by either an out-of-state host track or an in-state host track, which is received by a simulcast facility.

(25) Repealed.

(25.5) “Source market fee” means a licensing fee, assessed by the director pursuant to section 12-60-202 (3) (h), in lieu of taxes and fees otherwise payable under this article, payable by persons outside of Colorado who conduct pari-mutuel wagering on simulcast races and who accept wagers from Colorado residents at out-of-state simulcast facilities.

(26) “Track” or “racetrack” means a track which is located within the state of Colorado and at which a race meet of either horses or greyhounds is conducted under a license granted pursuant to section 12-60-505.

Source: **L. 93:** Entire article amended with relocations, p. 1200, § 1, effective July 1. **L. 96:** (4) amended, p. 443, § 1, effective April 23; (20.5) added, p. 1001, § 1, effective May 23. **L. 98:** (4)(a)(II), (4)(b)(II), and (4)(b)(III) amended, p. 30, § 1, effective March 16. **L. 99:** (14)(a) amended, p. 1250, § 1, effective June 2. **L. 2002:** (3) and (14)(a) amended and (14)(c) added, p. 508, § 1, effective July 1; (4)(a), (4)(b)(II), and (4)(b)(III) amended, p. 1077, § 1, effective August 7. **L. 2003:** (25) repealed, p. 1382, § 2, effective June 1. **L. 2006:** (14)(a) amended, p. 1287, § 2, effective May 26. **L. 2008:** (4) amended, p. 526, § 1, effective April 17. **L. 2009:** (2), (4), (14)(a)(III), and (14)(a)(IV) amended, (SB 09-174), ch. 296, p. 1583, § 1, effective May 21. **L. 2010:** (19) amended and (25.5) added, (HB 10-1134), ch. 74, p. 251, § 1, effective August 11.

Editor’s note: This section is similar to former § 12-60-101 as it existed prior to 1993, and the former § 12-60-102 was relocated to §§ 12-60-201 and 12-60-301.

ANNOTATION

Annotator’s note. Since § 12-60-102 is similar to § 12-60-101 as it existed prior to the 1993 amendment of this article, relevant cases construing that provision have been included in the annotations to this section.

Colorado’s racing act as a whole is not a revenue measure, but such portions thereof as provide for the collection of revenue to be paid into the general fund of the state are revenue

measures. *Centennial Turf Club, Inc. v. Colo. Racing Comm’n*, 129 Colo. 529, 271 P.2d 1046 (1954).

Because the Colorado statute is almost word for word the same as the Oregon statute, it would appear that the general assembly followed the Oregon statute in preparing the act. *Centennial Turf Club, Inc. v. Colo. Racing Comm’n*, 129 Colo. 529, 271 P.2d 1046 (1954).

12-60-103. Division and commission subject to termination. The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the division of racing events created by section 12-60-201 and the Colorado racing commission created by section 12-60-301.

Source: **L. 93:** Entire article amended with relocations, p. 1203, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 12-60-102.5 as it existed prior to 1993, and the former § 12-60-103 was relocated to § 12-60-302.

(2) For the repeal date of this article, see § 12-60-901.

PART 2

DIVISION OF RACING EVENTS

12-60-201. Division of racing events - creation - representation. (1) There is hereby created, within the department of revenue, the division of racing events, the head of which shall be the director of the division of racing events. The director shall be appointed by, and shall be subject to removal by, the executive director of the department of revenue. The division of racing events, the Colorado racing commission created in section 12-60-301, and the director of the division of racing events shall exercise their respective powers and perform their respective duties and functions as specified in this article under the department of revenue as if the same were transferred to the department by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.; except that the commission shall have full and exclusive authority to promulgate rules related to racing without any approval by, or delegation of authority from, the department of revenue.

(2) The division shall make investigations and shall request the commission or the district attorney of any district, as appropriate, to prosecute, on behalf of and in the name of the division, suits and proceedings for any of the purposes necessary and proper for carrying out the functions of the division.

Source: L. 93: Entire article amended with relocations, p. 1204, § 1, effective July 1.

Editor's note: This section is similar to former § 12-60-102 (1) as it existed prior to 1993.

12-60-202. Director - qualifications - powers and duties. (1) The director shall be qualified by training and experience to direct the work of the division; and, notwithstanding the provisions of section 24-5-101, C.R.S., shall be of good character and shall not have been convicted of any felony or gambling-related offense.

(2) The director shall not engage in any other profession or occupation that could present a conflict of interest with the director's duties as director of the division.

(3) The director, as administrative head of the division, shall direct and supervise all administrative and technical activities of the division. In addition to the duties imposed upon the director elsewhere in this article, it shall be the director's duty:

(a) To investigate, supervise, and administer the conduct of racing in accordance with the provisions of this article and the rules of the commission;

(b) To attend meetings of the commission or to appoint a designee to attend in the director's place;

(c) To employ and direct such personnel as may be necessary to carry out the purposes of this article, but no person shall be employed who has been convicted of a felony or gambling-related offense, notwithstanding the provisions of section 24-5-101, C.R.S. The director by agreement may secure and provide payment for such services as the director may deem necessary from any department, agency, or unit of the state government and may employ and compensate such consultants and technical assistants as may be required and as otherwise permitted by law. Personnel employed by the director shall include but shall not be limited to a sufficient number of veterinarians, as defined in the "Colorado Veterinary Practice Act", article 64 of this title, so that at least one veterinarian employed by the director, or by the operator, as provided in section 12-60-705 (1), shall be present at every racetrack during weighing in of animals and at all times that racing is being conducted; and the director shall by rule authorize any such veterinarian to conduct physical examinations of animals, including without limitation blood and urine tests and other tests for the presence of prohibited drugs or medications, to ensure that the animals are in proper physical condition to race, to prohibit any animal from racing if it is not in proper physical

condition to race, and to take other necessary and proper action to ensure the health and safety of racing animals and the fairness of races.

(d) To confer, as necessary or desirable and not less than once each quarter, with the commission on the conduct of racing;

(e) To make available for inspection by the commission or any member of the commission, upon request, all books, records, files, and other information and documents of the director's office;

(f) To advise the commission and recommend such rules and such other matters as the director deems necessary and advisable to improve the conduct of racing;

(g) To make a continuous study and investigation of the operation and the administration of similar laws which may be in effect in other states or countries, any literature on the subject which from time to time may be published or available, any federal laws which may affect the conduct of racing, and the reaction of Colorado citizens to existing and potential features of racing events in Colorado with a view to recommending or effecting changes that will tend to serve the purposes of this article;

(h) To establish and adjust fees for all licenses and registrations issued pursuant to this article in an amount sufficient to generate revenue that approximates the direct and indirect cost of administering this article; except that an increase of more than ten percent in the fee for an occupational license or registration shall be subject to ratification by the commission. Such fees shall be credited to the racing cash fund created in section 12-60-205.

(i) To perform any other lawful acts which the director and the commission may consider necessary or desirable to carry out the purposes and provisions of this article.

(4) Repealed.

(5) If so directed by the commission, the director may, on behalf of this state:

(a) Negotiate, enter into, and participate in one or more interstate compacts that enable party states to act jointly and cooperatively to create more uniform, effective, and efficient practices, programs, and rules relating to:

(I) Live horse and greyhound racing; and

(II) Pari-mutuel wagering activities, both on-track and off-track, that occur in or affect a party state;

(b) Serve as this state's authorized representative on a commission to negotiate one or more interstate compacts as described in paragraph (a) of this subsection (5). If the compact commission undertakes to promulgate rules to be adopted by party states, the director shall endeavor to ensure that the process by which the rules are promulgated conforms substantially to the model state administrative procedure act of 1981, as amended, insofar as the terms of the model act are appropriate to the actions and operations of the compact commission.

Source: L. 93: Entire article amended with relocations, p. 1204, § 1, effective July 1. **L. 99:** (2) amended, p. 1251, § 2, effective June 2. **L. 2002:** (3)(c) amended, p. 193, § 2, effective August 7. **L. 2009:** (3)(d) and (3)(h) amended and (4) added, (SB 09-174), ch. 296, p. 1584, § 2, effective May 21. **L. 2010:** (5) added, (HB 10-1134), ch. 74, p. 251, § 2, effective August 11.

Editor's note: (1) This section is similar to former § 12-60-102.3 as it existed prior to 1993.

(2) Subsection (4)(b) provided for the repeal of subsection (4), effective July 1, 2012. (See L. 2009, p. 1584.)

12-60-203. Investigators - peace officers. (1) All investigators of the division of racing events, including the director and the executive director, shall for purposes of enforcement of this article be considered peace officers as described in sections 16-2.5-101 and 16-2.5-126, C.R.S.

(2) Nothing in this section shall be construed to prohibit local sheriffs, police departments, and other local law enforcement agencies or the Colorado bureau of investigation from enforcing the provisions of this article or rules promulgated pursuant to this article, or from performing their other duties to the full extent permitted by law. All such sheriffs,

police officers, district attorneys, other local law enforcement agencies, or the Colorado bureau of investigation shall have all the powers set forth in subsection (1) of this section.

Source: L. 93: Entire article amended with relocations, p. 1205, § 1, effective July 1. **L. 96:** (1) amended, p. 1001, § 2, effective May 23. **L. 2003:** (1) amended, p. 1626, § 54, effective August 6.

12-60-204. Board of stewards or judges. The division shall establish a board of three stewards or judges to assist in supervising the conduct of any race meet. Two members of the board of stewards or judges shall be employees of the division. The remaining member shall be an employee of the track at which the race meet is held, shall be subject to the approval of the commission, and may be removed by the commission at any time for any reason which the commission deems good and sufficient.

Source: L. 93: Entire article amended with relocations, p. 1206, § 1, effective July 1.

12-60-205. Racing cash fund. (1) The racing cash fund is hereby established in the state treasury. Subject to appropriation by the general assembly, the division shall use the moneys in the racing cash fund for the direct and indirect costs of administering this article.

(2) Moneys in the racing cash fund at the end of any fiscal year shall remain in the racing cash fund and shall not revert to the general fund or any other fund. The racing cash fund shall be maintained in accordance with section 24-75-402, C.R.S.

Source: L. 2003: Entire section added, p. 2153, § 2, effective July 1.

PART 3

COLORADO RACING COMMISSION

12-60-301. Racing commission - creation. (1) There is hereby created, within the division of racing events, the Colorado racing commission. The commission shall consist of five members, all of whom shall be citizens of the United States and shall have been residents of this state for the past five years. The members shall be appointed by the governor, with the consent and approval of the senate. No member shall have been convicted of a felony or gambling-related offense, notwithstanding the provisions of section 24-5-101, C.R.S. No more than three of the five members shall be members of the same political party. At the first meeting of each fiscal year, a chair and vice-chair of the commission shall be chosen from the membership by a majority of the members. Membership and operation of the commission shall additionally meet the following requirements:

(a) Two members of the commission shall have been previously engaged in the racing industry for at least five years; one member shall be a practicing veterinarian who is currently licensed in Colorado and has been so licensed for not less than five years; one member shall have been engaged in business in a management-level capacity for at least five years; and one member shall be a registered elector of the state who is not employed in any profession or industry otherwise described in this paragraph (a); however, no more than two members of the commission shall be from the same congressional district, and one member of the commission shall be from west of the continental divide.

(b) Initial members shall be appointed to the commission by the governor as follows: One member to serve until July 1, 1993, one member to serve until July 1, 1994, one member to serve until July 1, 1995, and two members to serve until July 1, 1996. All subsequent appointments shall be for terms of four years. No member of the commission shall be eligible to serve more than two consecutive terms.

(c) Any vacancy on the commission shall be filled for the unexpired term in the same manner as the original appointment. The member appointed to fill such vacancy shall be

from the same category described in paragraph (a) of this subsection (1) as the member vacating the position.

(d) Any member of the commission may be removed by the governor at any time.

(e) The term of any member of the commission who misses more than two consecutive regular commission meetings without good cause shall be terminated and such member's successor shall be appointed in the manner provided for appointments under this section.

(f) Commission members shall be reimbursed for necessary travel and other reasonable expenses incurred in the performance of their official duties.

(g) Prior to confirmation by the senate, each member shall file with the secretary of state a financial disclosure statement in the form required and prescribed by the executive director. Such statement shall be renewed as of each January 1 during the member's term of office.

(h) The commission shall hold at least one meeting each quarter and such additional meetings as may be prescribed by rules of the commission. In addition, special meetings may be called by the chair, any two commission members, or the director, if written notification of such meeting is delivered to each member at least seventy-two hours prior to such meeting. Notwithstanding section 24-6-402, C.R.S., in emergency situations in which a majority of the commission certifies that exigencies of time require that the commission meet without delay, the requirements of public notice and of seventy-two hours' actual advance written notice to members may be dispensed with, and commission members as well as the public shall receive such notice as is reasonable under the circumstances. Any action by the commission during such emergency meetings shall be limited to those issues relating to the emergency situation for which the meeting was called.

(i) A majority of the commission shall constitute a quorum, but the concurrence of a majority of the members appointed to the commission shall be required for any final determination by the commission.

Source: L. 93: Entire article amended with relocations, p. 1206, § 1, effective July 1. L. 2009: (1)(h) amended, (SB 09-174), ch. 296, p. 1585, § 3, effective May 21.

Editor's note: This section is similar to former § 12-60-102 (2) and (3) as they existed prior to 1993.

12-60-302. Organization and officers - duties - representation. (1) All moneys payable to and collected by the department of revenue through the division shall be transmitted to the state treasurer. The state treasurer shall credit the same to the general fund except for those moneys required by this article to be deposited in the racing commission cash fund.

(2) The commission shall maintain an office within the state and shall keep detailed records of all its meetings and of all the business transacted and of all the collections and disbursements. Publications of the commission circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

(3) The attorney general shall provide legal services for the division and the commission at the request of the executive director, the director, or the commission. The attorney general shall make reasonable efforts to ensure that there is continuity in the legal services provided and that the attorneys providing legal services to the division and the commission have expertise in such field.

Source: L. 93: Entire article amended with relocations, p. 1208, § 1, effective July 1. L. 97: (2) amended, p. 1481, § 36, effective June 3. L. 2000: (1) amended, p. 273, § 5, effective March 31.

Editor's note: This section is similar to former § 12-60-103 as it existed prior to 1993.

PART 4

CONFLICT OF INTEREST

12-60-401. Director and commission members - position of trust - conflicts of interest. (1) Appointment to the commission or to the position of director or employment in the division of racing events is declared to be a position of public trust, and therefore, in order to ensure the confidence of the people of the state in the integrity of the division and the commission, the director and members of the commission and the employees of the division shall be subject to this section. While serving as director or as a member of the commission or while employed by the division, no person nor any member of such person's immediate family shall:

(a) Hold any pecuniary interest in any racetrack operating within the state of Colorado nor in any kennel, stable, compound, or farm that houses animals licensed or registered to race within the state of Colorado;

(b) Wager money or any other chattel of value on the result of any race or race meet or sweepstakes conducted within the state of Colorado or conducted outside the state and simulcast into the state;

(c) Hold any pecuniary interest in any out-of-state host track or derive any pecuniary benefit from the racing of any animal at such track;

(d) Hold more than a five percent interest in any entity doing business with a track; or

(e) Have any interest of any kind in a license issued pursuant to this article, nor have any interest, direct or indirect, including employment, in any licensee, licensed premises, establishment, or business involved in or with pari-mutuel wagering.

(2) Failure to comply with the provisions of this section shall be grounds for removal from office.

(3) For purposes of this section, "immediate family" means a person's spouse and any children actually living with the person.

Source: L. 93: Entire article amended with relocations, p. 1208, § 1, effective July 1.
L. 96: Entire section amended, p. 1001, § 3, effective May 23.

Editor's note: This section is similar to former § 12-60-102.6 as it existed prior to 1993.

PART 5

LICENSING AND REGISTRATION

12-60-501. Regulation of race meets and racing-related businesses. (1) (a) The commission shall license and regulate all race meets with pari-mutuel wagering held in this state at which horses or greyhounds participate, and shall cause the places where such race meets are held to be visited and inspected at least once a year by its members or employees, and shall require all such places to be constructed, maintained, and operated in accordance with the laws of this state and the rules of the commission.

(b) The commission shall license and regulate all kennels and stables housing racing animals in connection with a race meet, shall cause such kennels and stables to be visited and inspected at least once a year by its members or employees, and shall require all such places to be constructed, maintained, and operated in accordance with the laws of this state and the rules of the commission.

(2) (a) In particular, the commission shall, at its own expense, regulate the operations of pari-mutuel machines and equipment, the operations of all money rooms, accounting rooms, and sellers' and cashiers' windows, and the weighing of jockeys and of greyhounds, and shall take or cause to be taken saliva, urine, blood, or other body fluid samples or biopsy or necropsy specimens from horses and greyhounds selected by the commission or its employees at race meets provided for under this article or when concerns are raised as to a particular animal, including but not limited to the winner of a race, and shall test and determine such samples or specimens or cause such samples or specimens to be tested and

determined. For such purposes, the commission, at its expense and in addition to other employees, shall employ or contract with competent veterinary doctors, accountants, chemists, and other persons necessary to supervise the conduct of race meets and to ascertain that this article and the rules of the commission are strictly complied with. The commission shall also seek innovative and efficient methods of testing animals for prohibited drugs and medication, while ensuring animal safety and maintaining the integrity of racing. Through its bidding process, the commission shall invite laboratories to include proposals for testing procedures and methods that would maintain or improve the effectiveness of test results and minimize testing cost incurred by the state or the racing industry.

(b) The commission shall establish and require compliance with internal control procedures for licensees, including accounting and reporting procedures.

(c) The commission shall license and regulate persons who manufacture or operate totalisators and shall require all totalisators to be manufactured, maintained, and operated in accordance with the laws of this state and rules of the commission.

(d) The commission may license and regulate persons outside of Colorado who conduct pari-mutuel wagering on simulcast races and who accept wagers from Colorado residents at out-of-state simulcast facilities, and shall require out-of-state simulcast facilities to be maintained and operated in accordance with the laws of this state and rules of the commission. Source market fees imposed on persons licensed under this paragraph (d) shall not exceed ten percent of the gross receipts of all pari-mutuel wagering by Colorado residents conducted by such persons at out-of-state simulcast facilities.

(3) The commission shall license and regulate all in-state simulcast facilities conducting pari-mutuel wagering and shall require all such in-state simulcast facilities to be maintained and operated in accordance with the laws of this state and rules of the commission.

(4) The commission shall, at its own expense, specifically regulate the operation by in-state simulcast facilities of pari-mutuel machines and equipment, the operation of all money and accounting facilities, and the operation of sellers' and cashiers' windows and ensure that the in-state simulcast facility is handling wagering as part of the pari-mutuel system of the appropriate track or simulcast facility and as part of the appropriate pari-mutuel pool, as designated in section 12-60-703. For such purposes, the commission, at its own expense, and in addition to other employees, shall employ the competent personnel necessary to supervise the wagering through in-state simulcast facilities and to ascertain that this article and the rules of the commission are strictly complied with.

(5) A licensed track or its additional facility may be used for nonracing events upon advance notice to the commission, subject to the authority of the commission and the division to take all measures reasonably necessary to ensure that such nonracing events do not interfere with the safe and proper conduct of racing or the suitability of the track for racing.

Source: **L. 93:** Entire article amended with relocations, p. 1209, § 1, effective July 1. **L. 98:** (2)(a) amended, p. 57, § 1, effective August 5. **L. 99:** (2)(a) amended and (5) added, p. 1251, § 3, effective June 2. **L. 2010:** (2)(d) added, (HB 10-1134), ch. 74, p. 252, § 3, effective August 11.

Editor's note: This section is similar to former § 12-60-104 as it existed prior to 1993.

ANNOTATION

Annotator's note. Since § 12-60-501 is similar to § 12-60-104 as it existed prior to the 1993 amendment of this article, relevant cases construing that provision have been included in the annotations to this section.

Regardless of any reference to, or discussion of, the subject of racing being what formerly had been a prohibited and unlawful undertaking, the people by their vote adopted a

public policy to the effect that racing such as is here involved within this state is legal. *Cloverleaf Kennel Club v. Racing Comm'n*, 130 Colo. 505, 277 P.2d 226 (1954).

It is evident that the people in legalizing racing did so as a means of obtaining revenue for the general fund and the commission has no power or authority to interfere with this clearly intended purpose. *Cloverleaf Kennel*

Club v. Racing Comm'n, 130 Colo. 505, 277 P.2d 226 (1954).

This section requires the racing commission to maintain and operate all race tracks in accordance with the laws of the state and the rules of the commission. Colo. Racing Comm'n v. Conner, 30 Colo. App. 72, 490 P.2d 75 (1971).

Under the provisions of subsection (1), the racing commission is charged with the duty of regulating and supervising all race meets involving pari-mutuel wagering that are held in the state of Colo.. Colo. Racing Comm'n v. Conner, 30 Colo. App. 72, 490 P.2d 75 (1971).

Rule of the racing commission that requires race tracks to install and maintain, at their own expense, video surveillance systems in pari-mutual wagering areas is authorized by subsection (1)(a). The costs of doing business and complying with licensing rules, which include the cost of equipment necessary for the collection of information used by the commission to regulate, are the race tracks' responsibility under subsection (1)(a). Mile High Greyhound Park v. Racing Comm'n, 12 P.3d 351 (Colo. App. 2000).

Effect of "shall" in subsection (1). The general assembly, by the employment of the word "shall" in connection with the issuance of a license, unquestionably intended that such was to be put beyond the pale of permissive action on the part of the commission in cases where the applicant has met every requirement of the act in connection with its application and does not fall within the specific prohibitions of the act. Cloverleaf Kennel Club v. Racing Comm'n, 130 Colo. 505, 277 P.2d 226 (1954).

Concerning the matter of determining that it was not to the best interest of racing or to the public's interest to grant the license applied for, this was definitely beyond the function or authority of the commission, because the matter of declaration of public policy such as was here undertaken is a legislative matter, or sometimes to be found in the expression of the people by their vote on certain issues. Cloverleaf Kennel Club v. Racing Comm'n, 130 Colo. 505, 277 P.2d 226 (1954).

It is not for the commission to say what is or is not the needs of certain localities, or what is to the interest of racing. Cloverleaf Kennel Club v. Racing Comm'n, 130 Colo. 505, 277 P.2d 226 (1954).

So far as the interest of racing is concerned that is an economic factor which takes care of itself, and the act provides the lines of proximity within which the commission cannot encroach in granting a license. Cloverleaf Kennel Club v. Racing Comm'n, 130 Colo. 505, 277 P.2d 226 (1954).

Under the guise of "best interest of racing or the public interest", the commission would have complete control of all future racing within the state according to its own peculiar notions or grounds. Cloverleaf Kennel Club v. Racing Comm'n, 130 Colo. 505, 277 P.2d 226 (1954).

Other duties. Besides the racing commission being charged with the duty to license, regulate, and supervise all race meets, it specifically takes saliva or urine samples from the horses. Harbour v. Colo. State Racing Comm'n, 32 Colo. App. 1, 505 P.2d 22 (1973).

It is the supreme court's duty to give full respect to the findings of a commission and the discretion exercised if the discretion was exercised on matters it could lawfully consider. Cloverleaf Kennel Club v. Racing Comm'n, 130 Colo. 505, 277 P.2d 226 (1954).

The appointment of race track stewards and the delegation to them of certain supervisory functions constitutes only an exercise by the racing commission of its right to employ supervisory personnel in accordance with the provisions of this section. Colo. Racing Comm'n v. Conner, 30 Colo. App. 72, 490 P.2d 75 (1971).

The commission, by the exercise of the right to employ race track stewards, does not and cannot totally foreclose itself from discharging its duties of investigating, determining, and redressing possible acts of impropriety occurring in connection with races committed to its jurisdiction, because such duties are quasi-judicial in nature, and must remain ultimately the responsibility of the commission. Colo. Racing Comm'n v. Conner, 30 Colo. App. 72, 490 P.2d 75 (1971).

Where no complaint or objection concerning the running of a race was ever made to the race track stewards by the owner, trainer, or jockey of a horse allegedly fouled, but the owner did request the racing commission to investigate the race after the results of that race were officially announced, the substantive question concerned the propriety of the manner in which a race was run and the propriety of conduct on the part of persons subject to the commission's supervision, because it was the statutory duty of the commission to investigate and resolve such question, and, if necessary, the commission could have proceeded by ordering a hearing solely on its own motion, as it has authorized itself to do in the rules governing horse racing, and since the determination of the question involved was always within the scope of its jurisdiction, any questions concerning the necessity of a prior determination by the stewards or concerning the owner's standing to object became immaterial. Colo. Racing Comm'n v. Conner, 30 Colo. App. 72, 490 P.2d 75 (1971).

12-60-502. Delegation of authority to issue certain licenses and registrations. The commission shall delegate to the division the authority to issue all business and occupa-

tional licenses and registrations contemplated in this article, and shall promulgate rules containing standards for such delegation. The commission shall not delegate its duty to issue or renew race meet licenses.

Source: L. 93: Entire article amended with relocations, p. 1210, § 1, effective July 1.

12-60-503. Rules of the commission - licensing. (1) (a) The commission shall make reasonable rules for the control, supervision, fingerprinting, identification, and direction of applicants, registrants, and licensees, including rules providing for the supervising, disciplining, suspending, fining, and barring from racing of all persons required to be licensed or registered by this article and for the holding, conducting, and operating of all races, race meets, racetracks, in-state simulcast facilities, and out-of-state wagering on simulcast races conducted pursuant to this article. It shall announce the place, time, number of races per day, duration of race meets, as provided in section 12-60-603, and types of race meets.

(b) The commission may issue a temporary license or registration for up to a maximum of ninety days for any license or registration authorized under this article.

(2) (a) Every person holding a license or registration under this article, every person operating an in-state simulcast facility, and every owner or trainer of any horse or greyhound licensed to enter any racing contest under this article shall comply with all rules and orders issued by the commission. It is unlawful for any person to work upon the premises of a racetrack without first obtaining from the commission a license or registration for such activity. The commission may waive this licensing or registration requirement for such occupational categories as the commission, in its discretion, deems unnecessary to be licensed or registered. This licensing or registration requirement does not apply to the members of the commission or its employees or to persons whose only participation is individually as spectator or bettor. It is unlawful for any person who owns or leases a racing animal to allow such animal to race in this state without first obtaining an owner's license or registration from the commission, as prescribed by the rules of the commission. The commission in its discretion may extend the validity of any license issued for a period not to exceed three years, and the fee for such license shall be increased proportionately; except that no temporary license or registration shall be issued for a period longer than ninety days. It is unlawful for any person to hold any race meet with pari-mutuel wagering without obtaining a license therefor. It is unlawful for any person to operate an in-state simulcast facility unless that person is a licensee that has been licensed within the year to hold a race meet or is a licensee that has a written simulcast racing agreement with the in-state host track or out-of-state host track from which the simulcast race is broadcast and has filed a copy of the written simulcast racing agreement with the commission prior to operation as an in-state simulcast facility.

(b) (Deleted by amendment, L. 93, p. 1210, § 1, effective July 1, 1993.)

(3) No person holding a license under this article shall extend credit to another person for participation in pari-mutuel wagering.

(4) With the submission of an application for a license granted pursuant to this article, each applicant shall submit a set of fingerprints to the commission. The commission shall forward such fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. Only the actual costs of such record check shall be borne by the applicant. Nothing in this subsection (4) shall preclude the commission from making further inquiries into the background of the applicant.

Source: L. 93: Entire article amended with relocations, p. 1210, § 1, effective July 1. **L. 96:** (3) added, p. 1002, § 4, effective May 23. **L. 98:** (1) and (2)(a) amended, p. 58, § 2, effective August 5. **L. 2002:** (4) added, p. 973, § 6, effective June 1. **L. 2009:** (1)(b) and (2)(a) amended, (SB 09-174), ch. 296, p. 1585, § 4, effective May 21. **L. 2010:** (1)(a) amended, (HB 10-1134), ch. 74, p. 252, § 4, effective August 11.

Editor's note: This section is similar to former § 12-60-105 as it existed prior to 1993.

ANNOTATION

Annotator's note. Since § 12-60-503 is similar to § 12-60-105 as it existed prior to the 1993 amendment of this article, relevant cases construing that provision have been included in the annotations to this section.

The racing commission is authorized to make reasonable rules and regulations for the control, supervision, and direction of licensees, including regulations providing for suspending such licensees. *Harbour v. Colo. State Racing Comm'n*, 32 Colo. App. 1, 505 P.2d 22 (1973).

In view of difficulty in controlling business of horse racing and of importance of doing so in the interest of the public, state racing commission rules creating a presumption that drug found in horse was administered either by holder of owner and trainer license or with his knowledge and consent were not so arbitrary and unreasonable as to constitute a deprivation of due process. *Harbour v. Colo. State Racing Comm'n*, 32 Colo. App. 1, 505 P.2d 22 (1973).

The commission is required to determine the length of time allowed for race meets, and

how many, and what kind are to be held in any one county. *Cloverleaf Kennel Club v. Racing Comm'n*, 130 Colo. 505, 277 P.2d 226 (1954).

This section is not a grant of discretion to the commission as to the number of licenses. *Cloverleaf Kennel Club v. Racing Comm'n*, 130 Colo. 505, 277 P.2d 226 (1954).

In consideration of the other provisions of the act, this is a reference to the matter of the racing season and is not, and cannot be, in anywise interpreted as being the power to limit licenses other than is authorized by provisions of the act. *Cloverleaf Kennel Club v. Racing Comm'n*, 130 Colo. 505, 277 P.2d 226 (1954).

Racing commission was not precluded from making financial irresponsibility grounds for discipline, even though such grounds were not enumerated in § 12-60-507 since the rule was in the interests of the public and reasonable and was fully consistent with the commission's authority to promulgate rules. *Partridge v. State*, 895 P.2d 1183 (Colo. App. 1995).

12-60-504. Business licenses. (1) Every application for a business license, excluding applications for initial or renewal race meet licenses pursuant to sections 12-60-505 and 12-60-511, shall be made under oath and filed with the commission and shall set forth such information as the rules of the commission may require in connection with the application.

(2) To determine whether a license shall be granted, the commission shall have the right to examine the financial and other records of the applicant and to compel the production of records and documents.

(3) The commission has discretion to grant or deny a business license if it finds that any applicant or any of the directors, officers, or original stockholders of a corporate applicant have violated any of the provisions of this article or any rules of the commission, or failed to pay any of the sums required under this article, or as it determines, from such application, the character, financial ability, and experience of each individual applicant or the officers and director of each corporate applicant to be for the best interests of the state and the racing industry.

(4) When conducting investigations pursuant to this section, to the extent possible, the commission shall utilize investigative information of other state racing jurisdictions. The commission may investigate an existing licensee who is seeking to acquire ownership of another existing license.

(5) Any unexpired license held by any person who has been convicted by the commission of violating any of the provisions of this article or any rule of the commission, or who has willfully or fraudulently made any false statement in any application for a license, or who fails to pay to the commission any and all sums required under the provisions of this article is subject to cancellation or revocation by the commission.

(6) The commission shall have the power to issue subpoenas for the appearance of persons and the production of documents and other things in connection with applications before the commission or in the conduct of investigations.

Source: L. 93: Entire article amended with relocations, p. 1212, § 1, effective July 1.

Editor's note: Section 12-60-103 (6), enacted by House Bill 93-1034, was superseded by House Bill 93-1268 and relocated to subsection (6) of this section. The provisions are identical. (See L. 93, p. 1026.)

12-60-505. Meet licenses. (1) Every initial application for a license to hold race meets under this article shall be made under oath and shall be filed with the commission on or before a day fixed by the commission and shall set forth the time, the place, and the number of days such meet shall continue; the kind of racing proposed to be conducted; the full name and address of the applicant and, if a corporation, the names and addresses of all of its officers and directors and all of the holders of each class of its stock and the amount of stock of each class so owned by each stockholder; the location of the racetrack and whether the same is owned or leased; the names and residences of the owners of all property leased by such applicant; a statement of the assets and liabilities of such applicant; a description of the qualifications and experience of the applicant if an individual or of its officers and directors if a corporation; a full disclosure of all holding or intermediary companies associated with the applicant, as well as their shareholders, all contracts that relate to the race meet, audited balance sheets of corporate applicants, excluding nonprofit associations, and the terms and conditions of all contracts by which the applicant has received credit; a description of the land uses within a radius of two miles of the establishment in which such race meet is proposed to be conducted; and such incidental information as the rules of the commission may require in connection with the application.

(2) Upon the filing of such application, the commission shall fix a date for a hearing on the application, and said applicant shall give public notice of the time and place of such hearing by publication in one issue of a daily or weekly newspaper of general circulation in the area in which it is proposed to conduct such race meet and by posting on the site of such proposed race meet a notice, in form and size to be determined by the commission, that such application has been filed and the date and place of the hearing thereon. At the time and place mentioned in said notice, the commission shall conduct a public hearing at which evidence for and against the granting of the application may be presented.

(3) Except as otherwise limited by the provisions of this article, in considering an application for a license under this section, the commission may give consideration to the number of licenses already granted, and to the location of tracks previously licensed, and to the sentiments and character of the community in which the proposed race meets are to be conducted, and to the ability, character, and experience of each individual applicant or the officers and directors of each corporate applicant. The commission may require of every applicant for a license to hold a race meet, except a public nonprofit association, nonprofit corporation, or nonprofit fair, including the Colorado state fair and all county fairs, who has not, within five years prior to making an application for a license to hold a race meet, operated a race meet in the county, city, or city and county in which it is proposed to hold such race meet, a recommendation in writing of the board of county commissioners of said county in the event the race meet is to be held in unincorporated areas of said county or of the governing board of a city or city and county if the proposed race meet is to be held within a city or city and county. The commission may take such recommendation into consideration before granting or refusing such licenses. The commission may deny a license to operate a new racetrack to a person who is already licensed to operate a racetrack within this or any other state if, in the opinion of the commission, the granting of such license would discourage legitimate competition from other qualified applicants. The commission shall investigate any applicant and shall require the applicant to pay the actual cost of investigating the application as part of the fees and costs imposed pursuant to section 12-60-506. The applicant shall advance the moneys necessary for the investigation to the commission, and the commission shall return any unused portion of such moneys to the applicant at the conclusion of the commission's investigation. The advance of such moneys may either be made directly to the commission or the moneys may be deposited into escrow in a manner approved by the commission.

(4) The commission may grant or refuse licenses to conduct race meets under this article as it determines, from such application, the character, financial ability, and experience of each individual applicant or the officers and directors of each corporate applicant,

the sentiments of the community and the character of the area wherein it is proposed to conduct such race meets, and the evidence presented at such hearing, to be for the best interests of the state, the racing industry, and the area in which it is proposed to conduct such race meets.

(5) The commission has discretion to grant or deny a race meet license if it finds that any applicant has, or any of the directors, officers, or original stockholders of a corporate applicant have, violated any of the provisions of this article or any rules of the commission or failed to pay any of the sums required under this article.

(6) Every license issued under this article shall specify the number of days said licensed race meet shall continue and the number of races per day. No license shall be granted to any individual who is not a bona fide resident of Colorado nor to any foreign corporation. Every applicant shall agree that, if granted a license under this article, such applicant will not thereafter sell, mortgage, or otherwise pledge or dispose of any of the assets listed and described on the application for a license or a renewal license without thirty days' prior notice to the commission, which may approve or disapprove the disposition of assets upon good cause shown. The charter of all corporate applicants shall contain a provision that, when a cumulative ten percent or more of the voting stock of such corporation is to be sold, mortgaged, or otherwise pledged or transferred, thirty days' prior notice shall be given to the commission. The corporation shall pay an investigation fee to the commission as part of the fees and costs imposed pursuant to section 12-60-506. The commission shall approve or disapprove of the disposition of such stock, upon good cause shown, within ninety days of such filing of a completed application for transfer. The commission has the power to ascertain if any capital stock of any corporate applicant or licensee is held with the intent to mislead or deceive the commission for an undisclosed principal. The involvement of an undisclosed principal shall be grounds for the denial, suspension, or revocation of a license.

(7) Upon petition by the licensee and a finding by the commission that it is impossible or impractical for a licensee, because of fire or act of God or other unforeseeable emergency not caused or participated in by the licensee, to conduct a race meet upon the dates allocated or upon a racetrack designated by the commission to the licensee, other dates and locations may be substituted and granted to the licensee. A licensee so petitioning may be granted the right to lease and utilize any other licensee's facilities for the term of the petitioning licensee's annual permit or any portion thereof, but said grant shall not be construed to allow any licensee more days of racing in any year than are prescribed by this article.

(8) When conducting investigations pursuant to subsections (3) and (6) of this section, to the extent possible, the commission shall utilize investigative information of other state racing jurisdictions. The commission may investigate an existing licensee who is seeking to acquire ownership of another existing license to conduct race meets.

Source: L. 93: Entire article amended with relocations, p. 1213, § 1, effective July 1.
L. 96: (1) amended, p. 1002, § 5, effective May 23.

Editor's note: This section is similar to former § 12-60-106 as it existed prior to 1993.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8); for race meets at the Colorado state fair and industrial exposition, see § 35-65-116.

ANNOTATION

Annotator's note. Since § 12-60-505 is similar to § 12-60-106 as it existed prior to the 1993 amendment of this article, relevant cases construing that provision have been included in the annotations to this section.

Legislative intent. The general assembly did not intend to grant licensees as a class a roving

commission to police the legality of commission actions. *Cloverleaf Kennel Club, Inc. v. Colo. Racing Comm'n*, 620 P.2d 1051 (Colo. 1980).

Subsection (8) is intended to benefit licensees who, without fault, have been unable to utilize the full number of racing days allotted to them by their licenses. *Cloverleaf Kennel Club, Inc. v.*

Colo. Racing Comm'n, 620 P.2d 1051 (Colo. 1980).

It does not appear reasonable or logical that the general assembly intended to grant the commission the authority to limit licenses or to consider any other matter in connection with applications therefor, other than as set out in the act. *Cloverleaf Kennel Club v. Racing Comm'n*, 130 Colo. 505, 277 P.2d 226 (1954).

The former provision, "and such application shall contain such other information as the commission may require", was an open door to a nonuniform requirement of applicants for licenses. *Cloverleaf Kennel Club v. Racing Comm'n*, 130 Colo. 505, 277 P.2d 226 (1954).

Licensee, not suffering direct and palpable harm from commission action, lacks standing. A licensee who has neither been denied an allotment of additional days pursuant to subsection (8) nor suffered direct and palpable economic harm as a result of the commission action, allotting additional days to another licensee under subsection (8), lacks standing to challenge the commission's action as an invasion of an interest impliedly protected by this article. *Cloverleaf Kennel Club, Inc. v. Colo. Racing Comm'n*, 620 P.2d 1051 (Colo. 1980).

12-60-506. Application - fee - waiver of confidentiality. (1) In connection with the issuance of licenses or registrations, the commission shall establish investigation and application fees.

(2) The application form created by the commission shall include a waiver of any right of confidentiality and a provision which allows the information contained in the application to be accessible to law enforcement agents of this or any other state or the government of the United States. The waiver of confidentiality shall extend to any financial or personnel record, wherever maintained.

Source: L. 93: Entire article amended with relocations, p. 1215, § 1, effective July 1. **L. 98:** (1) amended, p. 58, § 3, effective August 5.

12-60-507. Investigation - denial, suspension, and revocation actions against licensees - unlawful acts. (1) The commission upon its own motion may, and upon complaint in writing of any person shall, investigate the activities of any licensee or applicant within the state or any person upon the premises of any facility licensed pursuant to this article. In addition to its authority under any other provision of this article, the commission may issue a letter of admonition to a licensee, fine a licensee, suspend a license, deny an application for a license, or revoke a license, if such person has committed any of the following violations:

(a) Disregarding or violating any provision of this article or any rule promulgated by the commission in the interests of the public and in conformance with the provisions of this article;

(b) Been convicted of, or entered a plea of guilty or nolo contendere to, a criminal charge under the laws of this or any other state or of the United States, or entered into a plea bargain for acts or omissions that, if committed in Colorado, would have been grounds for discipline in this state. A certified copy of the judgment of the court in which any such conviction occurred shall be presumptive evidence of such conviction in any hearing under this article. This paragraph (b) shall be applied in accordance with section 24-5-101, C.R.S.

(c) Current prosecution or pending charges in any jurisdiction against the applicant, or any of its officers or directors, or any of its general partners, or any stockholders, limited partners, or other persons having a financial or equity interest of five percent or greater in the applicant, for any felony; except that, at the request of the applicant or the person charged, the commission shall defer decision upon such application during the pendency of such charge;

(d) Fraud, willful misrepresentation, or deceit in racing;

(e) Failure to disclose to the commission complete ownership or beneficial interest in a racing animal entered to be raced;

(f) Misrepresentation or attempted misrepresentation in connection with the sale of a racing animal or other matter pertaining to racing or registration of racing animals;

(g) Failure to comply with any order or rulings of the commission, the stewards, the judges, or a racing official pertaining to a racing matter;

(h) Ownership of any interest in or participation by any manner in any bookmaking, pool-selling, touting, bet solicitation, or illegal enterprise;

(i) Employing or harboring unlicensed persons on the premises of a racetrack;

(j) Being a person, employing a person, or being assisted by any person who is not of good record or good moral character;

(k) Discontinuance of or ineligibility for the activity for which the license was issued;

(l) Being currently under suspension or revocation of a racing license in another racing jurisdiction, or having been subject to disciplinary action by the racing commission or equivalent agency of another jurisdiction for acts or omissions that, if committed in Colorado, would have been grounds for discipline in this state; except that this paragraph (l) shall not furnish the basis for the imposition of fines;

(m) Possession on the premises of a racetrack of:

(I) Firearms; or

(II) A battery, buzzer, electrical device, or other appliance other than a whip which could be used to alter the speed of a racing animal in a race or while working out or schooling;

(n) Possession, on the premises of a racetrack, by a person other than a licensed veterinarian of:

(I) A hypodermic needle, hypodermic syringe, or other similar device;

(II) Any substance, compound items, or combination thereof of any medicine, narcotic, stimulant, depressant, or anesthetic which could alter the normal performance of a racing animal unless specifically authorized by the commission veterinarian;

(o) Cruelty to or neglect of a racing animal;

(p) Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of such act immediately to the stewards, the judges, or the commission;

(q) Causing, attempting to cause, or participating in any way in any attempt to cause the prearrangement of a race result, or failure to report knowledge of such act immediately to the stewards, the judges, or the commission;

(r) Entering, or aiding and abetting the entry of, a racing animal ineligible or unqualified for the race entered;

(s) Willfully or unjustifiably entering or racing of any animal in any race under any name or designation other than the name or designation assigned to such animal by and registered with the official recognized registry for that breed of animal, or willfully soliciting, instigating, engaging in or in any way furthering any act by which any racing animal is entered or raced in any race under any name or designation other than the name or designation duly assigned by and registered with the official recognized registry for that breed of animal;

(t) Aiding or abetting any person in the violation of any rule of the commission;

(u) Racing at a racetrack without having a racing animal registered to race at that racetrack;

(v) Being on the premises of a racetrack for which the licensee is required to be licensed without being able to show proof of gainful employment at that racetrack;

(w) (I) Failing to comply with the requirements of part 6 of article 35 of title 24, C.R.S., or any rule promulgated by the executive director of part of the department of revenue pursuant to section 24-35-607 (3), C.R.S.

(II) Repealed.

(1.5) The director may summarily suspend the license of any person pending a hearing concerning violation of paragraph (o) of subsection (1) of this section.

(2) Any person who fails to pay within the time period established by rule a fine imposed pursuant to this article shall pay, in addition to the fine due, a penalty amount equal to the fine. Any person who submits to the department of revenue through the division a check in payment of a fine or license fee requirement imposed pursuant to this article, which check is not honored by the financial institution upon which it is drawn, shall pay, in addition to the fine or fee due, a penalty amount equal to the fine or fee. All moneys received pursuant to a penalty amount imposed by this subsection (2) shall be credited to the general fund of the state.

(3) Any person aggrieved by a final action or order of the commission may appeal such action to the Colorado court of appeals.

Source: **L. 93:** Entire article amended with relocations, p. 1215, § 1, effective July 1. **L. 96:** (1)(j) amended, p. 1003, § 6, effective May 23. **L. 99:** (1.5) added, p. 1252, § 4, effective June 2. **L. 2000:** IP(1) amended, p. 453, § 7, effective April 24. **L. 2007:** (1)(w) added, p. 1665, § 24, effective January 1, 2008. **L. 2009:** (1)(w)(II) repealed, (HB 09-1137), ch. 308, p. 1657, § 2, effective September 1.

Editor's note: This section is similar to former § 12-60-105.6 as it existed prior to 1993.

ANNOTATION

No denial of due process. Section does not violate due process when commission does not promulgate rules to safeguard against arbitrary applications of powers in suspending licenses because the statute itself prescribes the range of penalties which can be imposed by the commission. *Petersen v. Colo. Racing Comm'n*, 677 P.2d 412 (Colo. App. 1983).

Racing commission was not precluded from making financial irresponsibility

grounds for discipline, even though such grounds were not enumerated in this section, since the rule was in the interests of the public and reasonable and was fully consistent with the commission's authority to promulgate rules. *Partridge v. State*, 895 P.2d 1183 (Colo. App. 1995).

12-60-507.5. License - mandatory disqualification - criteria. (1) The commission shall deny a license to any applicant on the basis of any of the following criteria:

(a) Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this article;

(b) Failure of the applicant to provide information, documentation, and assurances required by this article or requested by the commission, failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria;

(c) Conviction of the applicant, or any of its officers or directors, or any of its general partners, or any stockholders, limited partners, or other persons having a financial or equity interest of five percent or greater in the applicant, of any of the following:

(I) Any gambling-related offense or theft by deception;

(II) Any crime involving fraud or misrepresentation committed within ten years prior to the date of the application, notwithstanding the provisions of section 24-5-101, C.R.S.;

(d) Current prosecution or pending charges in any jurisdiction against the applicant, or against any person listed in paragraph (c) of this subsection (1), for any of the offenses enumerated in said paragraph (c); except that, at the request of the applicant or the person charged, the commission shall defer decision upon such application during the pendency of such charge.

Source: **L. 93:** Entire article amended with relocations, p. 1218, § 1, effective July 1. **L. 96:** (1)(c) amended, p. 1003, § 7, effective May 23.

12-60-508. Hearings - review. (1) Except as otherwise provided in this section, all proceedings before the commission with respect to the denial, suspension, or revocation of licenses or the imposition of fines shall be conducted pursuant to the provisions of sections 24-4-104 and 24-4-105, C.R.S.

(2) Such proceedings shall be held in the county where the commission has its office or in such other place as the commission may designate. The commission shall notify the applicant or licensee by mailing by first-class mail a copy of the written notice required to the last address furnished by the applicant or licensee to the commission.

(3) (a) The commission may delegate its authority to conduct hearings and impose discipline with respect to the denial or suspension of licenses or the imposition of a fine to

the division, through its board of stewards or judges, or a hearing officer. Proceedings before the division, through its board of stewards or judges, or a hearing officer shall not be governed by the procedural or other requirements of sections 24-4-104 and 24-4-105, C.R.S., but rather shall be conducted in accordance with rules adopted by the commission.

(b) The commission may direct that any hearing be conducted before an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S.

(4) The commission, the division, through its board of stewards or judges, and any hearing officer shall have the authority to administer oaths and affirmations, sign and issue subpoenas and order the production of documents and other evidence, and regulate the course of the hearing, pursuant to rules adopted by the commission.

(5) Any party aggrieved by a final order or ruling issued by the division, through its board of stewards or judges, or a hearing officer shall have a right to appeal such order or ruling to the commission, pursuant to procedural rules which shall be adopted by the commission. The aggrieved party may petition the commission for a stay of execution pending appeal to the commission.

Source: L. 93: Entire article amended with relocations, p. 1219, § 1, effective July 1.

Editor's note: This section is similar to former § 12-60-105.5 as it existed prior to 1993.

12-60-509. Liability insurance - bond for race meets. (1) For the protection of the public and the exhibitors, contestants, and visitors, every person licensed to conduct a race meet under the provisions of this article shall carry public liability insurance in the form of a contract and with a company to be approved by the commission.

(2) An organization representing the majority of the owners of racing animals participating in any race meet may require the licensee conducting such race meet to provide and deliver to the commission evidence of a bond signed by a surety company authorized to do business in this state, in an amount sufficient to cover all awards and purses due to the contestants at such race meet and conditioned that said licensee will pay and discharge all obligations to said contestants in connection with the race meet.

(2.5) (a) Notwithstanding the provisions of subsection (2) of this section, every person licensed to conduct a race meet other than a horse race meet who has been licensed in this state for five consecutive years and who, during this period, has not had any actions on the bond or other evidence demonstrating a lack of financial responsibility required in subsection (2) of this section may be exempted from the requirement to file such bond or other evidence of financial responsibility.

(b) If any actions are subsequently brought against the licensee, the commission may reinstate the requirement of a bond or any other evidence of financial responsibility meeting the requirements of section 11-35-101, C.R.S.

Source: L. 93: Entire article amended with relocations, p. 1220, § 1, effective July 1.

Editor's note: This section is similar to former § 12-60-112 as it existed prior to 1993.

12-60-510. Racing of standardbred harness horses. (1) Notwithstanding any other provision of this article to the contrary, the commission shall grant licenses to conduct the racing of standardbred harness horses pursuant to the provisions of this article and in accordance with subsections (2) and (3) of this section.

(2) The licenses granted may be issued to conduct not more than three race meets in any one year at a racetrack specifically designed and used for the racing of no animals other than standardbred harness horses, but such race meets may not be held on the same dates as race meets authorized by the commission for animals other than standardbred harness horses that are held within forty miles of the track licensed for the racing of standardbred harness horses. In addition, licenses may be issued by the commission to conduct three race meets for the racing of standardbred harness horses in any one year at any racetrack at which horse

race meets are held and which is not within forty miles of any other racetrack licensed for the racing of horses or the racing of standardbred harness horses.

(3) No tracks licensed for the racing of standardbred harness horses may be located within forty miles of one another, but such tracks may be located within forty miles of any track licensed for the racing of animals other than standardbred harness horses subject to the limitations in subsection (2) of this section.

(4) The provisions of subsection (3) of this section shall not restrict the right of a county to conduct extended standardbred harness horse race meets, upon being licensed by the state racing commission, at a county fairground if such race meets are not within fifteen miles of any race track licensed in Colorado for the racing of horses.

Source: L. 93: Entire article amended with relocations, p. 1221, § 1, effective July 1.

Editor's note: This section is similar to former § 12-60-114 as it existed prior to 1993.

12-60-511. Eligibility to operate race meets - renewal or revocation. (1) (a) No person shall be eligible to operate a race meet under a license issued under the provisions of this article unless such person is the owner or controls the possession of a properly constructed racetrack suitable for the conduct of racing and improved with safe and suitable grandstands, equipped with reasonably sanitary accommodations and also such accommodations, including track conditions, as the commission may require for the care and control of the animals racing at such meet, and also such other improvements as, in the opinion of the commission, may be required for the protection of the public, human and animal participants, and others likely to be present at such race meet. In consideration of the location of the track and other structures and erections and the probable capacity requirements to accommodate the crowd and the number of people that will reasonably be expected to occupy such grandstands and attend such race meets, a major racing operation license shall not be issued for the racing of horses at a class A track which is within forty miles of any other major racing operation licensed under this article for the racing of horses at a class A track; nor shall a major racing operation license be issued for the racing of horses at a class B track which is within forty miles of any other major racing operation licensed under this article for the racing of horses at a class B track. In no event shall any racing operation licensed under this article for the racing of horses at a horse track located within forty miles of the Colorado state fair and industrial exposition conduct race meets of horses on the same dates as the race meets of horses at the state fair.

(b) As used in paragraph (a) of this subsection (1), "major racing operation" means nonprofit corporations and commercial tracks conducting race meets which exceed fifteen racing days.

(2) A license shall not be issued for the racing of greyhounds within forty miles of any other racing operation licensed under this article for the racing of greyhounds. This provision shall not apply to races conducted by any state, county, or other fair association holding not more than one race meet annually for a period not exceeding six days.

(3) Applications for renewal of such license shall be filed with the commission on or before a day fixed by the commission and shall set forth the name of the applicant and if a corporation the names and addresses of its officers and directors with a list attached thereto of the names and addresses of all the holders of its stock, as of a date not more than thirty days prior to the filing of such application, and the amount of voting stock held by each stockholder. If any of its voting stock is known by any applicant to be registered in the name of a person not the actual owner thereof, such list shall also show the name and address of such actual owner.

(4) Said application shall set forth the proposed dates of race meets, the dates within such race meets on which the applicant intends to conduct racing at such meetings and the number of races intended to be run on such dates, and the address of the establishment where such meets are to be held and shall have attached thereto the most recent financial statement of the applicant as of a date not more than twelve months prior to the date of the application for renewal of such license. Such application shall also contain such other information as the rules of the commission may provide to ensure that such licensee is

conducting race meets in accordance with the provisions of this article and the rules of the commission. To determine whether an application for renewal of such license to conduct race meets shall be granted, the commission shall have the right to examine the financial and other records of the licensee, to compel the production of records and documents, to conduct hearings, to summon witnesses, and to administer oaths.

(5) (a) As soon as is practicable after the date fixed for the filing of applications for renewal, the commission shall meet and determine the granting or denial thereof. If the commission finds that the applicant has fully complied with the requirements and conditions for renewal, the application for renewal shall be granted, and the commission shall allot and assign to the respective applicants, in the manner stated in this subsection (5), dates for race meets and dates for racing within the race meet and the number of races on such dates.

(b) Except as otherwise provided in this article, in its sound discretion, the commission may allot different dates for race meets, different dates for racing within a race meet, and a different number of races on such dates from those requested in the application for renewal. In making such allotment of dates, the commission shall do so in its sound discretion and shall endeavor to allot to each applicant the dates requested in the respective applications so filed by the applicants, after giving due consideration to all factors involved, including the interests of the respective applicants and the public and the best interests of racing, and avoiding, whenever possible, conflicts in live greyhound race dates between greyhound tracks or a conflict in live horse race dates between class A tracks or between class B tracks located within fifty miles of each other; except that the commission may allot dates to a state, county, or other fair commission or association holding not more than one race meet annually for a period not exceeding six days, notwithstanding that such dates conflict with the dates allotted to another applicant conducting live racing of the same type animals. When the granting of requested initial or renewal race dates would result in a conflict, the commission, in its discretion, may grant race dates so as to avoid such conflict to the extent possible, giving preference to requests for race dates from license applicants whose licensed race meet in the previous year included such race dates.

(6) In the event the commission finds that any applicant for a renewal of a license to conduct race meets under this article has violated any of the provisions of this article or any rule of the commission, or has willfully or fraudulently made any false statement in an original application for a license to hold race meets or for the renewal of such license, or has failed to pay the commission any sums required by this article, or lacks the ability, experience, or finances to conduct race meets, the commission may refuse to grant a renewal of such license.

(7) Any unexpired license held by any person who has been convicted by the commission of violating any of the provisions of this article or any rule of the commission, or who has willfully or fraudulently made any false statement in any application for a license to hold a race meet or for the renewal of such license, or who fails to pay to the commission any and all sums required under the provisions of this article is subject to cancellation or revocation by the commission. Such cancellation shall be made only after a summary hearing before the commission, of which three days' notice in writing shall be given the licensee specifying the grounds for the proposed cancellation and at which hearing the licensee shall be given an opportunity to be heard in person and by counsel in opposition to the proposed cancellation. No license shall be granted or continued to any licensee for any race meet licensed under this article who has made default in any payment of any premium or prizes on any race meets held under this article or who has failed to meet any monetary obligations in connection with any race meet held in this state.

Source: L. 93: Entire article amended with relocations, p. 1221, § 1, effective July 1.
L. 2009: (5)(b) amended, (SB 09-174), ch. 296, p. 1586, § 5, effective May 21.

Editor's note: This section is similar to former § 12-60-108 as it existed prior to 1993.

ANNOTATION

Annotator's note. Since § 12-60-511 is similar to § 12-60-108 as it existed prior to the 1993 amendment of this article, relevant cases construing that provision have been included in the annotations to this section.

The primary purpose of the extensive changes made in this article was to confer upon the racing commission a broad discretionary power in granting or denying applications for race meets. *Colo. Racing Comm'n v. Columbine Kennel Club, Inc.*, 141 Colo. 497, 348 P.2d 954 (1960).

It seems a wise intendment on the part of the general assembly to forestall or prevent the commission from exercising favoritism among applicants and making it impossible for the commission to issue licenses only to such applicants as might be in the favor of the commission, and reject others for no given reason. *Cloverleaf Kennel Club v. Racing Comm'n*, 130 Colo. 505, 277 P.2d 226 (1954).

By the act, the commission is told what applications to reject, and there is no room within the provisions of the act that allows an arbitrary or capricious action of the commission. *Cloverleaf Kennel Club v. Racing Comm'n*, 130 Colo. 505, 277 P.2d 226 (1954).

The general assembly by the employment of the word "shall" in connection with the issuance of a license, unquestionably intended that such was to be put beyond the pale of permissive action on the part of the commission in cases where the applicant has met every requirement of the act in connection with its application, and does not fall within the specific prohibitions. *Cloverleaf Kennel Club v. Racing Comm'n*, 130 Colo. 505, 277 P.2d 226 (1954).

The prohibitions specifically contained in the act are that no license shall be issued for the racing of horses or other animals within 40 miles of any other racing operation licensed under this law, and further, that the number and kind of race meets to be held in any one county in any one year shall be determined by the commission, provided that not more than two race meets for animals other than horses shall be licensed in any county in any one year, nor held for a duration longer than 30 days, and no race meets shall be conducted on any Sunday. *Cloverleaf Kennel Club v. Racing Comm'n*, 130 Colo. 505, 277 P.2d 226 (1954).

The act provides not only the eligibility for applicants for a license, but distinctly sets out what may be considered ineligible applicants, and therefore, the use of the word "shall" is a clear indication that, in the consideration of applications that meet every requirement when a third person as well as the state of Colorado has an interest in the exercise of the duty of the commission, the exercise of the power is then imperative. *Cloverleaf Kennel Club v. Racing Comm'n*, 130 Colo. 505, 277 P.2d 226 (1954).

So far as the commission is concerned the act provides that it is legal to have as many tracks as the 40-mile limit will not prevent, so long as there is not more than one in each county. *Cloverleaf Kennel Club v. Racing Comm'n*, 130 Colo. 505, 277 P.2d 226 (1954).

If the commission can say that an application for license should be rejected because it is 45 miles from another track when it is provided in the act, not within 40 miles of another track, then there are no bounds to the discretion of the commission, and it could refuse a license on the basis of 50, 75, or 100 miles, or any other distance it might see fit to state. *Cloverleaf Kennel Club v. Racing Comm'n*, 130 Colo. 505, 277 P.2d 226 (1954).

Where the commission considered the "best interests" of racing, and of the state, would not be served by granting the license, there being sufficient evidence to support this finding, it should have been upheld by the trial court. *Colo. Racing Comm'n v. Columbine Kennel Club, Inc.*, 141 Colo. 497, 348 P.2d 954 (1960).

In this section it is provided that after the first year of the operation of a track, and there have been no violations committed by the operator, the commission shall renew the particular license upon application and grant the same time it had in the preceding year. *Cloverleaf Kennel Club v. Racing Comm'n*, 130 Colo. 505, 277 P.2d 226 (1954).

Licensees possess no unqualified right to allotment of equal number of racing days. *Cloverleaf Kennel Club, Inc. v. Colo. Racing Comm'n*, 620 P.2d 1051 (Colo. 1980).

Applied in Greyhound Racing Ass'n v. Colo. Racing Comm'n, 41 Colo. App. 319, 589 P.2d 70 (1978).

12-60-512. Division of racing events - access to records. The division, for purposes of this article, shall have full authority to procure, at the expense of the division, any records furnished to or maintained by any law enforcement agency in the United States, including state and local law enforcement agencies in Colorado and other states for the purposes of carrying out its responsibilities. Upon request from the Colorado bureau of investigation, the division shall provide copies of any and all information obtained pursuant to this part 5.

Source: L. 93: Entire article amended with relocations, p. 1224, § 1, effective July 1.

Editor's note: This section is similar to former § 12-60-105.7 as it existed prior to 1993.

12-60-513. Payments of winnings - intercept. (1) Before making a payment of cash winnings from pari-mutuel wagering on horse or greyhound racing for which the licensee is required to file form W-2G, or a substantially equivalent form, with the United States internal revenue service, the licensee shall comply with the requirements of part 6 of article 35 of title 24, C.R.S.

(2) Repealed.

Source: L. 2007: Entire section added, p. 1666, § 25, effective January 1, 2008.
L. 2009: (2) repealed, (HB 09-1137), ch. 308, p. 1657, § 3, effective September 1.

PART 6

UNLAWFUL ACTS

12-60-601. Underage wagering. (1) No person under the age of eighteen years shall purchase, redeem, or attempt to purchase or redeem any pari-mutuel ticket.

(2) No person shall sell any pari-mutuel ticket to a person under the age of eighteen years.

(3) Any person who violates this section commits a class 2 petty offense, and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars.

Source: L. 93: Entire article amended with relocations, p. 1224, § 1, effective July 1.

12-60-602. Simulcast facilities and simulcast races - unlawful act - repeal. (1) It is unlawful for any person to accept or place wagers on any simulcast race within the state of Colorado except under the provisions of this article. It is lawful to conduct pari-mutuel wagering on simulcast races of horses or greyhounds which are received by an in-state simulcast facility authorized and operated pursuant to this article.

(2) Cross simulcasting between an in-state host track or an out-of-state host track and an in-state simulcast facility, or between an in-state host track and an out-of-state simulcast facility, is permissible.

(3) A race meet of greyhounds which is conducted at an in-state host track may be received as a simulcast race by any simulcast facility; except that, notwithstanding any consent granted pursuant to the provisions of section 12-60-102 (14), an in-state simulcast facility which is located within fifty miles of a greyhound track may not receive simulcast races of greyhounds on any day on which such greyhound track is running live greyhound races, unless the licensee of such greyhound track consents thereto.

(4) (a) (I) A race meet of horses that is conducted at an in-state host track may be received as a simulcast race by any simulcast facility; except that, notwithstanding any consent granted pursuant to section 12-60-102 (14), an in-state simulcast facility that is located within fifty miles of a horse track that has held, within the previous twelve months, or is licensed and scheduled to hold within the next twelve months, a horse race meet of no less than thirty race days, may not receive simulcast races of horses on any day on which such horse track is running live horse races unless the licensee of such horse track consents thereto.

(II) (Deleted by amendment, L. 2009, (SB 09-174), ch. 296, p. 1586, § 6, effective May 21, 2009.)

(b) (Deleted by amendment, L. 2009, (SB 09-174), ch. 296, p. 1586, § 6, effective May 21, 2009.)

(5) (a) (I) (A) Except as otherwise provided in sub-subparagraph (B) of this subparagraph (I), an in-state simulcast facility that is located on the premises of a greyhound track that is currently conducting a live race meet may receive up to seven days of simulcast

greyhound races from out-of-state host tracks during any week in which a total of five days of live greyhound racing of at least ten races each day are conducted in Colorado by one or more licensees. Such total includes, and is not in addition to, the days on which live racing is held. Any live race day that is canceled by the division due to weather or other unusual conditions shall be credited toward the five-day minimum if at least ten races were scheduled on that day. Thanksgiving day and Christmas day shall be credited toward the five-day minimum.

(B) The commission may grant an exception to any of the requirements set forth in sub-paragraph (A) of this subparagraph (I) upon the request of a licensee authorized to conduct live greyhound racing and with the consent of the organization representing the majority of the kennel operators at that licensed greyhound track if such organization exists at the time, or the group representing the majority of greyhound operators as of January 1, 2008.

(II) On any day on which an in-state simulcast facility receives greyhound simulcast races from an out-of-state host track and on which one or more in-state host tracks are running live greyhound races, such in-state simulcast facility shall receive and conduct pari-mutuel wagering on the broadcast signal of simulcast greyhound races conducted at the in-state host tracks, if such broadcast signal is made available to it on usual and customary terms and conditions, including price.

(III) An in-state simulcast facility that is not located on the premises of a greyhound track conducting a live race meet may receive a broadcast signal of simulcast greyhound races and conduct pari-mutuel wagering on the broadcast signal of such greyhound races conducted at an out-of-state host track only through an in-state simulcast facility that is located on the premises of a greyhound track conducting a live race meet. If there is no greyhound track conducting a live race meet, an in-state simulcast facility may, to and including June 30, 2014, and subject to the commission's approval, receive the broadcast signal of greyhounds from an out-of-state host track and conduct pari-mutuel wagering on such signal through an in-state simulcast facility located on the premises of a class B track that has conducted, or is scheduled to conduct during the next twelve months, a live race meet of horses of at least the duration required for a class B track.

(IV) Five percent of the gross receipts from pari-mutuel wagers placed at an in-state simulcast facility on simulcast greyhound races shall be deposited into the purse fund at the track hosting the current live greyhound meet through which the in-state simulcast facility receives the broadcast signal and distributed consistently with section 12-60-702 (1) (d.5), (1) (e) (I), and (1) (e) (II); except that, if a signal is received through a class B track, gross receipts shall be distributed in accordance with section 12-60-701 (2).

(b) (I) (A) An in-state simulcast facility that is located on the premises of a class B track may receive simulcast horse races from an out-of-state host track as authorized by the commission. Such total includes, and is not in addition to, the days on which live racing is held.

(B) A facility which is reopening as a track pursuant to section 12-60-503 (2) (b) may receive three days of simulcast horse races from an out-of-state host track for each day of live horse racing for which the commission has granted it a race date for the subsequent year. A day of simulcast horse races, for the purposes of this paragraph (b), shall not include a day on which live horse races are conducted at the horse track at which the simulcast facility is located or a day on which the simulcast facility receives only simulcast races of horses from a race meet conducted at an in-state host track.

(I.5) (Deleted by amendment, L. 2009, (SB 09-174), ch. 296, p. 1586, § 6, effective May 21, 2009.)

(II) (A) An in-state simulcast facility that is not located on the premises of a horse track that runs a horse race meet of at least thirty live race days may receive a broadcast signal of a simulcast horse race conducted at an out-of-state host track only through an in-state simulcast facility that is located on the premises of a horse track that runs a horse race meet of at least thirty live race days.

(B) (Deleted by amendment, L. 2009, (SB 09-174), ch. 296, p. 1586, § 6, effective May 21, 2009.)

(II.5) (Deleted by amendment, L. 2009, (SB 09-174), ch. 296, p. 1586, § 6, effective May 21, 2009.)

(III) On any day on which an in-state simulcast facility receives simulcast horse races, either directly from an out-of-state host track or through another in-state simulcast facility or facility which is reopening as a track, and on which one or more in-state host tracks are running live horse races, such in-state simulcast facility shall receive and conduct pari-mutuel wagering on the broadcast signal of simulcast horse races from at least one such in-state host track, if such broadcast signal is made available to it on usual and customary terms and conditions, including price, as determined by the commission.

(IV) All simulcasting of horse races shall comply with the federal "Interstate Horse-racing Act of 1978", 15 U.S.C. secs. 3001-3007, as amended.

(V) (A) For purposes of administering this paragraph (b), each operating year of an in-state simulcast facility located on the premises of a class B track shall be deemed to begin on April 21 and end on the following April 20. Simulcast days allotted to such a facility pursuant to this paragraph (b) may be used at any time during the operating year, but unused days remaining as of the end of one operating year may not be carried forward to the next operating year.

(B) Repealed.

(C) (Deleted by amendment, L. 2009, (SB 09-174), ch. 296, p. 1586, § 6, effective May 21, 2009.)

(6) An in-state simulcast facility having a written simulcast racing agreement with an in-state or out-of-state host track pursuant to section 12-60-503 (2) may receive simulcast races, as specified in subsections (2) to (5) of this section, on any day, including a day not within the race meet of such in-state simulcast facility which is also a track and a day on which no live race is conducted within the race meet of such in-state simulcast facility which is also a track.

(7) Repealed.

Source: L. 93: Entire article amended with relocations, p. 1224, § 1, effective July 1. L. 96: (4), (5)(b)(I), (5)(b)(II), and (7) amended and (5)(b)(I.5), (5)(b)(II.5), and (5)(b)(V) added, p. 444, § 2, effective April 23. L. 98: (4)(a)(II), (4)(b)(II), (5)(b)(I)(A), (5)(b)(I.5)(B), (5)(b)(II)(B), (5)(b)(II.5)(B), and (5)(b)(V)(C) amended, p. 30, § 2, effective March 16. L. 2002: (4), (5)(b)(I)(A), (5)(b)(I.5), (5)(b)(II), (5)(b)(II.5), and (5)(b)(V)(C) amended, p. 1077, § 2, effective August 7. L. 2003: (5)(a) amended, p. 1381, § 1, effective June 1. L. 2006: (5)(a)(I) amended, p. 1287, § 1, effective May 26. L. 2008: (4), (5)(b)(I)(A), (5)(b)(I.5), (5)(b)(II), (5)(b)(II.5), and (5)(b)(V)(C) amended, p. 527, § 2, effective April 17. L. 2009: (4)(a), (4)(b), (5)(a)(I), (5)(a)(III), (5)(a)(IV), (5)(b)(I)(A), (5)(b)(I.5), (5)(b)(II), (5)(b)(II.5), (5)(b)(IV), and (5)(b)(V)(C) amended, (SB 09-174), ch. 296, p. 1586, § 6, effective May 21.

Editor's note: (1) This section is similar to former § 12-60-106.5 as it existed prior to 1993.

(2) Section 12-60-503 (2)(b), referred to in subsection (5)(b)(I)(B), was repealed July 1, 1993. For more information, see L. 93, p. 1210.

(3) Subsection (5)(b)(V)(B) provided for the repeal of subsection (5)(b)(V)(B), effective April 20, 1997. (See L. 96, p. 444.)

(4) Subsection (7)(b) provided for the repeal of subsection (7), effective April 20, 1997. (See L. 96, p. 444.)

12-60-603. Duration of meets. (1) (a) It is unlawful to conduct any race meet at which wagering is permitted except under the provisions of this article. It is lawful to conduct pari-mutuel wagering on live horse or greyhound races that are part of a race meet licensed and conducted pursuant to this article. The duration of any horse race meet at a class B track shall be as specified in section 12-60-102 (4); except that the commission may prescribe a lesser number of race days in the event of unforeseen circumstances or acts of God.

(b) A race day is any period of twenty-four hours beginning at 12 midnight Colorado time and included in the period of a race meet and upon which day live racing is held. Dark

days within a race meet shall not be counted as race days. Days on which an in-state simulcast facility which is a track receives simulcast races but does not conduct live races shall not be counted as race days. Subject to the provisions of this article, the number and kind of race meets to be held at any one track shall be determined by the commission; however, race meet days for both horses and greyhounds shall be permitted on Sundays; except that no live Sunday greyhound racing shall be permitted while live horse racing is in progress at any horse track within forty miles.

(c) In order to promote live racing of both horses and greyhounds throughout the state of Colorado, the commission, when determining the number and kind of race meets held and the dates and times of races held at such race meets, may take into consideration the interests of the racing industry as a whole throughout the state but shall give particular consideration to the racing dates and times requested by or assigned to the following:

(I) In the case of greyhound tracks, other greyhound tracks;

(II) In the case of class A tracks, other class A tracks; and

(III) In the case of class B tracks, other class B tracks.

(d) The commission shall determine, consistent with all other provisions of this article, the total number of races conducted and performances held during any race meet.

(2) (a) (Deleted by amendment, L. 2009, (SB 09-174), ch. 296, p. 1589, § 7, effective May 21, 2009.)

(b) The commission shall license greyhound tracks for race meets of a duration of up to one hundred eighty consecutive days unless the license applicant, in its application, requests nonconsecutive days or a shorter period.

(c) Each greyhound track shall be licensed by the commission to conduct only one race meet in any twelve-month period. Upon approval by the commission, a licensed greyhound track shall be permitted to contract with another licensed greyhound track to conduct part or all of the race meet days granted it at such other greyhound track; except that, unless the transferring greyhound track operates a race meet, without any transfer of race days, at its home greyhound track during the twelve-month period immediately following the last race meet day so transferred, such transferred race dates in such following twelve-month period shall be assigned by the commission to the transferee greyhound track, in addition to the race meet dates of the transferee greyhound track that are otherwise authorized pursuant to this subsection (2), upon application by the transferee greyhound track for such race dates if the transferee greyhound track otherwise meets all requirements for conducting a greyhound race meet.

(d) The commission shall schedule race meets of greyhounds so that there is a race meet, but not more than one race meet, being conducted at all times; except that race meets of greyhounds may be scheduled to run concurrently if the greyhound tracks running the concurrent meets are not closer to each other than one hundred miles.

Source: L. 93: Entire article amended with relocations, p. 1226, § 1, effective July 1. L. 99: (1)(a) amended, p. 1252, § 5, effective June 2. L. 2009: (1)(c)(I) and (2) amended, (SB 09-174), ch. 296, p. 1589, § 7, effective May 21.

Editor's note: This section is similar to former § 12-60-107 as it existed prior to 1993.

PART 7

TAXES AND FEES

12-60-701. License fees and Colorado-bred horse race requirement. (1) Subject to section 12-60-702 (1), for the privilege of conducting racing under a license issued under and of operating an in-state simulcast facility pursuant to this article, a licensee for the racing of greyhounds and an operator of an in-state simulcast facility that receives simulcast races of greyhounds shall pay to the department of revenue through the division four and one-half percent of the gross receipts derived from pari-mutuel wagering during any such race meet or placed on such simulcast races that are received through a live greyhound track.

(2) (a) (I) For the privilege of conducting racing under a license issued under and of operating an in-state simulcast facility pursuant to this article, a licensee for the racing of horses and an operator of an in-state simulcast facility that receives simulcast races of horses or greyhounds pursuant to section 12-60-602 (5) (a) (III) shall pay to the department of revenue through the division three-fourths of one percent of the gross receipts of the pari-mutuel wagering at any such race meet or placed on such simulcast races; except that a licensee for the racing of horses at a class B track race meet shall pay to the department of revenue through the division three-fourths of one percent of the gross receipts of the pari-mutuel wagering at any such race meet.

(II) (A) Except as otherwise provided in sub-subparagraph (B) of this subparagraph (II), in addition to the amount paid to the department of revenue through the division in subparagraph (I) of this paragraph (a), a licensee for the racing of horses and an operator of an in-state simulcast facility that receives simulcast races of horses or greyhounds pursuant to section 12-60-602 (5) (a) (III) shall pay to Colorado state university for allocation to its school of veterinary medicine one-fourth of one percent of the gross receipts of all pari-mutuel wagering, except on win, place, or show, at such horse race meet or placed on such simulcast races, to be used for racing-related equine research. To receive research funding under this subparagraph (II), an institution or individual must describe and report to the commission on all projects upon completion.

(B) In the case of pari-mutuel wagers on greyhound simulcast signals received by a class B track, in lieu of the amounts otherwise payable to Colorado state university pursuant to sub-subparagraph (A) of this subparagraph (II), the licensee shall instead pay an equivalent amount into a trust account for distribution in accordance with rules of the commission under section 12-60-702 (1) (e) (II).

(b) In addition to any moneys to be paid pursuant to paragraph (a) of this subsection (2), a licensee for the racing of horses and an operator of an in-state simulcast facility that receives simulcast races of horses or greyhounds pursuant to section 12-60-602 (5) (a) (III) shall pay to a trust account one-half of one percent of the gross receipts of pari-mutuel wagering on win, place, and show and one and one-half percent of the gross receipts from all other pari-mutuel wagering at any such race meet or placed on such simulcast races for the horse breeders' and owners' awards and supplemental purse fund established in section 12-60-704.

(c) (I) The operator of a simulcast facility that receives simulcast races of horses or greyhounds pursuant to section 12-60-602 (5) (a) (III) shall retain five percent of the gross receipts of pari-mutuel wagering placed on such simulcast races at that facility, to be used to cover the particular expenses incurred in operating a simulcast facility.

(II) (A) Of the five percent of gross receipts retained pursuant to subparagraph (I) of this paragraph (c), the operator of a simulcast facility that is not located at a class B track and that receives simulcast races of horses shall remit to the operator of the class B track from which such simulcast races were received one-fifth, representing one percent of the gross receipts of pari-mutuel wagering placed on such simulcast races at the simulcast facility.

(B) (Deleted by amendment, L. 2009, (SB 09-174), ch. 296, p. 1590, § 8, effective May 21, 2009.)

(3) For the purpose of encouraging the breeding, within the state, of race horses registered within their breeds, at least one race of each day's live horse race meet shall consist exclusively of Colorado-bred horses, if Colorado-bred horses are available. This requirement shall not apply to an in-state simulcast facility which is a horse track and which receives simulcast races of horses on any given race meet day but does not conduct a live horse race on such day.

(4) (Deleted by amendment, L. 2009, (SB 09-174), ch. 296, p. 1590, § 8, effective May 21, 2009.)

Source: L. 93: Entire article amended with relocations, p. 1228, § 1, effective July 1. **L. 96:** (2)(c) amended, p. 446, § 3, effective April 23. **L. 98:** (2)(c)(II)(B) amended, p. 31, § 3, effective March 16. **L. 2000:** (2)(b) amended, p. 272, § 1, effective March 31. **L. 2002:** (2)(c)(II) amended, p. 1079, § 3, effective August 7. **L. 2003:** (4) added, p. 2153,

§ 1, effective July 1. **L. 2008:** (2)(c)(II) amended, p. 528, § 3, effective April 17. **L. 2009:** (1), (2), and (4) amended, (SB 09-174), ch. 296, p. 1590, § 8, effective May 21.

Editor's note: This section is similar to former § 12-60-109 as it existed prior to 1993.

ANNOTATION

Provision of this section requiring the operator of a simulcast facility to remit a percentage of gross receipts to the operator of the track from which the races were received does not violate federal and state constitutional equal protection guarantees. *Rocky Mountain Greyhound Park, Inc. v. Wembley*, 992 P.2d 711 (Colo. App. 1999).

The act is in the nature of an excise tax and if there is an uncertainty or ambiguity contained therein, it must be construed in favor of the taxpayer. *Centennial Turf Club, Inc. v. Colo. Racing Comm'n*, 129 Colo. 529, 271 P.2d 1046 (1954) (decided under § 12-6-109 as it existed prior to the 1993 amendment of this article).

12-60-702. Unlawful to wager - exception - excess - taxes - special provisions for simulcast races. (1) (a) It is unlawful to conduct pool selling or bookmaking, or to circulate handbooks, or to bet or wager on any race meet licensed under the provisions of this article other than by the pari-mutuel method.

(b) (I) Except as otherwise provided in subsection (4) of this section, it is unlawful for a racing or simulcast facility licensee for the racing of greyhounds or horses to take more than the percentage of the gross receipts authorized by the commission pursuant to subparagraph (II) of this paragraph (b) of any pari-mutuel wagering on such races or simulcast races.

(II) The commission may annually determine the authorized take-out under subparagraph (I) of this paragraph (b) by rule, but such take-out shall not exceed thirty percent of the gross receipts of any pari-mutuel wagering on races originating within Colorado.

(c) Each licensee for the racing of horses shall pay as purses for the races in any horse race meet conducted at its in-state host track fifty percent of the breakage attributable thereto, and fifty percent of the track's commission. For purposes of this paragraph (c), the track's commission means the maximum allowable percentage which may be taken, pursuant to paragraph (b) of this subsection (1), by a licensee for the racing of horses from the gross receipts from all pari-mutuel wagering placed on such races at the in-state host track, after deduction of the amounts specified in sections 12-60-701 (2) (a) and (2) (b) and 12-60-704 (2).

(d) For each horse race meet it conducts, a licensee shall file with its license application with the commission an agreement between such licensee and the organization which represents the majority of the owners of horses participating at such race meet. Such agreement shall specify the purse structure which shall apply to the races conducted at such horse race meet, including minimum purses per race and any conditions relating to overpayments or underpayments.

(d.5) For each greyhound race meet it conducts, a licensee shall file with its license application with the commission an agreement between such licensee and the organization which represents the majority of kennel owners participating at such race meet. Such agreement shall specify the purse structure which shall apply to the races conducted at such greyhound race meet.

(e) (I) Each licensee for the racing of greyhounds shall pay on a weekly basis as purses for the races in any greyhound race meet conducted at its in-state host track five percent of the gross receipts from all pari-mutuel wagering on such races.

(II) Each operator of an in-state simulcast facility that receives simulcast races of horses or greyhounds shall pay to purse funds for the racing of horses or greyhounds, respectively, depending on the animals represented by the licensee providing each simulcast race, and to such in-state or out-of-state tracks and simulcast facilities as described in the simulcast agreement filed with the commission such percentages of the gross pari-mutuel wagering on such simulcast races, after deduction of any signal fee required by an out-of-state host track or an in-state host track, paid during the current year or any previous

year, and the applicable amounts specified in paragraph (b) of subsection (2) of this section, in section 12-60-701 (1), (2) (a), (2) (b), and (2) (c), and in section 12-60-704 (2), as shall be specified in such simulcast agreement. In the case of pari-mutuel wagers on greyhound simulcast signals received by a class B track, the operator shall deposit the amounts payable pursuant to section 12-60-701 (2) (a) (II) (B) into a trust account for distribution, in accordance with rules of the commission, either as purses for live greyhound races in Colorado or, if there is no live greyhound racing in Colorado, to greyhound welfare and adoption organizations and other entities or organizations that promote or participate in greyhound racing or promote the welfare of racing greyhounds.

(III) (A) To defray operating expenses, the operator of a simulcast facility located at a class B track may retain up to twenty percent of the net purses earned and payable to the horse purse fund as provided in subparagraph (II) of this paragraph (e).

(B) (Deleted by amendment, L. 2009, (SB 09-174), ch. 296, § 9, effective May 21, 2009.)

(f) Horse purse funds and greyhound purse funds, including funds established in section 12-60-704, payable by a licensee or an operator pursuant to this section shall be retained by such licensee or operator in a trust account in a commercial bank located in Colorado until such date as the purse funds are paid to the horse or greyhound owners or to the host track for payment to the horse or greyhound owners; except that:

(I) The moneys deposited in any such trust account shall be invested in a fund that invests in obligations of the United States government with maturities of less than one year or that is account insured in full by an agency of the federal government; and

(II) Subject to prior approval by the commission, the operator of a horse track may withdraw moneys from such trust account to make up for shortfalls in the amounts of revenue derived from other sources which were reasonably anticipated to cover payments made on purses during a licensed race meet held at such track in the current year or a prior year.

(g) Except as otherwise provided in subsection (4) of this section:

(I) It is unlawful for any licensee to compute breaks in the pari-mutuel system in excess of ten cents; and

(II) If, during any race meet conducted under this article, there are underpayments of the amount actually due to the wagerers, the amount of the excess of such underpayments over and above overpayments to wagerers, at the expiration of thirty days from the end of said meet, shall revert and belong to the state of Colorado and be paid to the department of revenue through the division and become a part of its funds, and it shall not be retained by the licensee under whose license such race meet was held.

(h) (I) Fifty percent of the breakage at any horse race meet shall be retained by the licensee under whose license such horse race meet was held and the remainder shall be paid as purses for the races conducted at such race meet.

(II) The breakage at any greyhound race meet shall be retained by the licensee under whose license such greyhound race meet was held.

(III) Except as otherwise provided in subparagraph (IV) of this paragraph (h) or in subsection (4) of this section, the breakage on any simulcast race of horses or greyhounds received by an in-state simulcast facility shall be retained by the operator of such in-state simulcast facility.

(IV) In the case of simulcast races of horses received from an in-state host track, fifty percent of the breakage shall be paid to the licensee of such in-state host track within sixty days after the end of the race meet from which such simulcast race was broadcast and the remainder shall be paid as purses for the races conducted at such in-state host track.

(i) The proceeds derived from all unclaimed pari-mutuel tickets for each greyhound race meet shall be retained by the licensee under whose license such greyhound race meet was held and, after a period of one year following the end of such race meet, shall revert and belong to such licensee and shall be used by the licensee for capital improvements to the track at which the race meet was held.

(j) The proceeds derived from all unclaimed pari-mutuel tickets for each simulcast race of greyhounds received by an in-state simulcast facility shall be retained by the operator of such simulcast facility and, after a period of one year following such simulcast race, shall

revert and belong to such operator; except that, in the case of simulcast races received from an in-state host track, such proceeds shall be paid to the licensee of such in-state host track within sixty days after the end of the race meet from which the simulcast race was broadcast and, after a period of one year following the end of such race meet, shall revert and belong to such licensee and shall be used by the licensee for capital improvements to the track at which the race meet was held.

(2) (a) In the event the federal government or any federal governmental agency imposes a levy on said licensee by a tax on the money so wagered and upon and against its receipts, the licensee may collect, in addition to the percentage and breaks allowed in this section, the amount of the tax so levied.

(b) The tax and breaks and license fee provided for in this article shall be in lieu of all other license fees and privilege taxes or charges by the state of Colorado or any county, city, town, or other municipality or taxing body for the privilege of conducting any race meet provided for in this article and licensed by the authority of this article; except that any county, city, town, or other municipality or taxing body which imposed any fee, tax, or charge prior to July 1, 1982, on the money so wagered, or upon and against the licensee's receipts, or for the privilege of conducting any race meet provided for and licensed by authority of this article shall have the authority to amend, repeal and reenact, or repeal any such fee, tax, or charge and impose a new or different fee or tax on the money so wagered, or upon and against the licensee's receipts, or for the privilege of conducting any race meet provided for and licensed by authority of this article, and no provision of this article shall affect the authority of such county, city, town, or other municipality or taxing body with respect to such fees or taxes unless such provision specifically refers to this paragraph (b). Notwithstanding subsection (1) of this section, it is lawful for the licensee to take such fee or tax from the gross receipts on pari-mutuel wagering; and in such cases the licensee shall pay the fee or tax directly to the county, city, town, or other municipality or taxing body.

(3) Unless expressly authorized by this article, no person may act for consideration as an agent or courier for another person for the purpose of placing wagers or cashing or redeeming winning pari-mutuel tickets. In addition to the remedies otherwise provided for violations of this article, the commission may petition any court of competent jurisdiction for an order enjoining a violation of this subsection (3).

(4) Pursuant to a valid simulcasting agreement, an operator of an in-state simulcast facility that receives simulcast signals of horse or greyhound races held in another state may:

(a) Take the percentage of the gross receipts of any pari-mutuel wagering on such simulcast races as is allowable under the laws and rules of such other state; and

(b) Adopt such procedures for computation and distribution of breakage as are allowable under the laws and rules of such other state.

Source: **L. 93:** Entire article amended with relocations, p. 1229, § 1, effective July 1. **L. 95:** (1)(c) and (1)(e) amended, p. 1095, § 10, effective May 31. **L. 96:** (1)(e) amended, p. 447, § 4, effective April 23. **L. 98:** (1)(e)(III)(B) amended, p. 31, § 4, effective March 16; (1)(d.5) added, p. 215, § 1, effective April 10; (1)(b) and (1)(e)(I) amended, p. 1190, § 1, effective July 1. **L. 99:** (1)(b), (1)(g), and (1)(h) amended and (4) added, p. 1252, § 6, effective June 2. **L. 2000:** IP(1)(f) and (1)(f)(I) amended, p. 272, § 2, effective March 31. **L. 2002:** (1)(e)(III) amended, p. 1079, § 4, effective August 7. **L. 2003:** (1)(b) amended, p. 2154, § 4, effective July 1. **L. 2004:** (1)(e)(II) amended, p. 1196, § 46, effective August 4. **L. 2008:** (1)(e)(III) amended, p. 528, § 4, effective April 17. **L. 2009:** (1)(e)(II) and (1)(e)(III) amended, (SB 09-174), ch. 296, p. 1591, § 9, effective May 21.

Editor's note: This section is similar to former § 12-60-111 as it existed prior to 1993.

ANNOTATION

Annotator's note. Since § 12-60-702 is similar to § 12-60-111 as it existed prior to the 1993 amendment of this article, relevant cases

construing that provision have been included in the annotations to this section.

Statutes authorizing pari-mutuel betting

on racing events are valid over the contention that such betting constituted a lottery. *Ginsberg v. Centennial Turf Club, Inc.*, 126 Colo. 471, 251 P.2d 926 (1952).

Pari-mutuel betting upon horse and dog races did not offend against the former constitutional provision which provided that the general assembly "shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this state". *Ginsberg v. Centennial Turf Club, Inc.*, 126 Colo. 471, 251 P.2d 926 (1952).

In an action involving the disposition of funds collected in connection with horse racing, it was held on review that a licensee shall collect and retain the breakage. *Centennial Turf Club, Inc. v. Colo. Racing Comm'n*, 129 Colo. 529, 271 P.2d 1046 (1954).

The general assembly took time out to specify and direct to whom the underpayments should be made, that is, to the state, and it could have easily included the breakage if such was its intention. *Centennial Turf Club, Inc. v. Colo. Racing Comm'n*, 129 Colo. 529, 271 P.2d 1046 (1954).

The track is not quasi-trustee of the breakage, because there is no beneficiary stated in the section and certainly it is not trustee for the wagerers because the section clearly indicates that the breakage does not go to the wagerers, but it authorizes a withholding of the odd pennies therefrom, and it cannot be trustee for the state because the section does not say that the state is entitled to this breakage. *Centennial Turf Club, Inc. v. Colo. Racing Comm'n*, 129 Colo. 529, 271 P.2d 1046 (1954).

12-60-703. Pari-mutuel pools for race meets and simulcast races. (1) The pari-mutuel pool for a horse race meet and for simulcast races of such race meet shall be an intrastate common pool; except that, if such simulcast races are received by an out-of-state simulcast facility, the pari-mutuel pool may be an interstate common pool, and, in that case, it shall be operated by the in-state host track conducting such horse race meet.

(2) The pari-mutuel pool for a greyhound race meet and for simulcast races of such race meet shall be an intrastate common pool; except that, if such simulcast races are received by an out-of-state simulcast facility, the pari-mutuel pool may be an interstate common pool, and, in that case, it shall be operated by the in-state host track conducting such greyhound race meet.

(3) An in-state simulcast facility receiving simulcast races from an out-of-state host track may participate either in a pari-mutuel pool into which only the pari-mutuel wagers on such simulcast races that are placed at such in-state simulcast facility are taken or in an interstate common pool. The commission shall permit an operator of an in-state simulcast facility participating in an interstate common pool to adopt the takeout percentage of the out-of-state host track for such interstate common pool.

Source: L. 93: Entire article amended with relocations, p. 1232, § 1, effective July 1. L. 2003: (3) amended, p. 2154, § 5, effective July 1.

Editor's note: This section is similar to former § 12-60-111.5 as it existed prior to 1993.

12-60-703.5. Limitations on pari-mutuel wagering. (1) Wagers on pari-mutuel horse or greyhound races conducted in or out of this state may only be placed upon the premises of a racetrack or an in-state simulcast facility licensed by the commission or such out-of-state racetrack or simulcast facility as authorized by the commission. No wagering or betting on the results of any of the races licensed under this article shall be conducted outside a licensed or approved racetrack or simulcast facility.

(2) (a) No person or agent or employee of any person shall place, receive, offer, or agree to place or receive a wager on a pari-mutuel horse or greyhound race, conducted in or broadcast in this state, by messenger, telephone, telegraph, facsimile machine, or other electronic device; except that this subsection (2) shall not apply to associations or simulcast facilities licensed by the commission. Nothing in this section shall be construed to prohibit gambling as provided in section 18-10-102 (2) (d), C.R.S.

(b) Any person who violates paragraph (a) of this subsection (2) commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 96: Entire section added, p. 1004, § 8, effective May 23. L. 2002: (2)(b) amended, p. 1486, § 114, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2)(b), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-60-704. Horse breeders' and owners' awards and supplemental purse fund - awards - advisory committee. (1) There is hereby created a fund, to be known as the horse breeders' and owners' awards and supplemental purse fund, referred to in this section as the "fund", which shall consist of moneys deposited thereto by the licensee for the racing of horses and by an operator of an in-state simulcast facility that receives simulcast races of horses for the purposes of this section, to be held in a trust account, which moneys shall be paid out to owners and breeders of Colorado-bred horses as provided in this section and by rules of the commission. Such rules shall provide for an administrative fee to be paid to the Colorado horse breeder associations for registering and maintaining breeding records for the administration of the fund. Such fees shall not exceed ten percent of the total moneys generated by the unclaimed pari-mutuel tickets and such moneys provided by section 12-60-701 (2) (b).

(2) Those moneys derived pursuant to section 12-60-701 (2) (b) shall be paid to a trust account for the fund on the fifteenth day of the calendar month immediately following the month in which such sum was received. In addition, the proceeds derived from all unclaimed pari-mutuel tickets for each horse race meet and for each simulcast race of horses received by an in-state simulcast facility shall be paid to a trust account for the fund after a period of one year following the end of such race meet.

(3) (a) and (b) Repealed.

(c) After moneys from the fund have been distributed to the respective breeder associations, further distribution shall be governed by the bylaws of such associations. Nothing in this section shall be construed to prohibit the distribution of moneys from the fund to owners and breeders of Colorado-bred horses that are otherwise eligible under the bylaws of such associations and that run in races outside Colorado.

(4) Notwithstanding section 24-30-204, C.R.S., the commission may establish by rule a period for distribution of moneys in the fund which is not consistent with the state's general fiscal-year period.

(5) Any moneys credited to the fund and not distributed within three years shall be paid, as authorized by the commission, either:

(a) As purses for races held at live race meets in Colorado; or

(b) As fees required for participation in an interstate compact to which Colorado is a party pursuant to section 12-60-202 (5).

Source: L. 93: Entire article amended with relocations, p. 1232, § 1, effective July 1. L. 94: (3)(b) repealed, p. 629, § 2, effective April 14. L. 96: (1) and (3) amended, p. 447, § 5, effective April 23; (2) amended, p. 1004, § 9, effective May 23. L. 99: (3)(a) repealed, p. 1253, § 7, effective June 2. L. 2000: (1) and (2) amended, p. 273, § 3, effective March 31. L. 2009: (5) added, (SB 09-174), ch. 296, p. 1592, § 10, effective May 21. L. 2010: (1) amended, (SB 10-037), ch. 62, p. 221, § 1, effective August 11; (5) amended, (HB 10-1134), ch. 74, p. 252, § 5, effective August 11.

Editor's note: This section is similar to former § 12-60-119 as it existed prior to 1993.

12-60-705. Payments to state - disposition. (1) (a) Except as otherwise provided in paragraph (b) of this subsection (1) and in sections 12-60-701, 12-60-702 (1), and 12-60-704, all sums referred to in sections 12-60-701, 12-60-702 (1), and 12-60-704, including all sums collected for license fees and fines pursuant to the provisions of this article shall be paid to the department of revenue through the division on the tenth business day of the month immediately following the month in which each performance took place, and the licensee shall make a return as required by rules of the commission.

(b) In temporary or emergency situations, a licensed operator for the racing of animals, with the approval of and under the direction of the director of the division or the director's designee, may provide for veterinary services as described in section 12-60-202 (3), at the licensed operator's expense, and the expense thus incurred may be deducted from the

payment made to the department in accordance with paragraph (a) of this subsection (1); except that the amount deducted shall not exceed the amount set by the commission for such veterinary services.

(2) All moneys collected by the department of revenue through the division shall, on the next business day following the receipt thereof, be transmitted to the state treasurer, who shall credit the same to the general fund of the state; except that license fees established and collected by the director pursuant to section 12-60-202 (3) (h) shall be credited to the racing cash fund created in section 12-60-205. The department of revenue shall have all the powers, rights, and duties provided in article 21 of title 39, C.R.S., to carry out such collection.

(3) The general assembly shall annually appropriate from the racing cash fund created in section 12-60-205 the direct and indirect costs of administering this article.

(4) Any person who fails to make a return or pay any tax required under this article shall be liable for penalties and interest as follows:

(a) A penalty of the greater of fifteen dollars for each failure to make a return and for each failure to pay a tax when due, or ten percent thereof plus one-half percent per month from the date when due, not exceeding eighteen percent, in the aggregate; and

(b) Interest on any tax due, from the date due, at the rate specified in section 39-21-110.5, C.R.S.

Source: **L. 93:** Entire article amended with relocations, p. 1233, § 1, effective July 1. **L. 99:** (1) amended, p. 1253, § 8, effective June 2. **L. 2000:** (2) amended, p. 273, § 4, effective March 31. **L. 2002:** (1) amended, p. 193, § 1, effective August 7. **L. 2003:** (2) and (3) amended, p. 2153, § 3, effective July 1. **L. 2009:** (2) amended, (SB 09-174), ch. 296, p. 1592, § 11, effective May 21.

Editor's note: This section is similar to former § 12-60-110 as it existed prior to 1993.

ANNOTATION

Law reviews. For article, "One Year Review of Constitutional and Administrative Law", see 38 Dicta 154 (1961).

12-60-706. Agreement of this state. In the event any county or municipality development revenue bonds are issued in reliance on the provisions of this article, the state of Colorado does hereby covenant and agree with the holders of any such bonds that the state will not limit or alter the rights or powers of the owners of such bonds or to repeal, amend, or otherwise directly or indirectly modify this article or the effect thereof as to the assessments, fees, charges, pledged revenues, or any combination thereof in such a manner as to impair adversely any such outstanding bonds, until all such bonds have been paid and discharged in full or provision for their payment and redemption has been fully made. Such covenant and agreement may be included in any agreement with the holders of such bonds.

Source: **L. 93:** Entire article amended with relocations, p. 1234, § 1, effective July 1.

Editor's note: This section is similar to former § 12-60-120 as it existed prior to 1993.

PART 8

ENFORCEMENT AND PENALTIES

12-60-801. Criminal penalties. (1) Except as provided in section 12-60-601, any person who commits any of the acts enumerated in section 12-60-507 (1) other than those which also constitute crimes under the "Colorado Criminal Code", title 18, C.R.S., commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) Any person who violates any rule of the commission promulgated under the authority granted in this article, other than those which also constitute crimes under the "Colorado Criminal Code", title 18, C.R.S., commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars.

(3) The penalties set forth in this section are cumulative and do not preclude the imposition of civil or administrative penalties, sanctions, actions against licenses or registrations, or any other penalties otherwise authorized.

Source: L. 93: Entire article amended with relocations, p. 1234, § 1, effective July 1.
L. 2002: (1) amended, p. 1486, § 115, effective October 1.

Editor's note: This section is similar to former § 12-60-115 as it existed prior to 1993.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-60-802. Cancellation of license. In case of a willful violation of this article by a person holding a license, the commission, upon conviction of the offender, may cancel the offender's license, and such cancellation shall operate as a forfeiture of all rights and privileges granted by the commission and of all sums of money paid to the department of revenue through the division by the offender, and the action of the commission in this respect shall be final.

Source: L. 93: Entire article amended with relocations, p. 1235, § 1, effective July 1.

Editor's note: This section is similar to former § 12-60-113 as it existed prior to 1993.

ANNOTATION

Former provision granting authority to exclude any person who shall willfully violate any federal or Colorado law was unconstitutional. Colo. Racing Comm'n v. Smaldone, 177

Colo. 33, 492 P.2d 619 (1972) (decided under a former version of § 12-60-113 prior to the 1993 amendment of this article).

12-60-803. Exclusion from licensed premises. The commission or the division may exclude from any and all licensed premises any person who has been convicted of a felony under the laws of this or any other state or of the United States, subject to the provisions of section 24-5-101, C.R.S. Any person so excluded by the commission or the division has a right to a hearing before the commission as to the basis of such exclusion, subject to the provisions of section 24-4-104, C.R.S. No such person shall enter or remain upon premises owned by any licensee conducting a race meet or operating a simulcast facility under the jurisdiction of the commission, and all such persons, upon discovery or recognition, shall be forthwith excluded or ejected from such premises. Any person so ejected or excluded from the premises of any licensee shall be denied admission to its premises and the premises of all other licensees of the commission until permission for entering has thereafter been obtained from the commission. The commission may also exclude any person from such licensed premises who willfully violates any of the provisions of this article or any rule issued by the commission.

Source: L. 93: Entire article amended with relocations, p. 1235, § 1, effective July 1.

Editor's note: This section is similar to former § 12-60-113.5 as it existed prior to 1993.

PART 9

REVIEW AND TERMINATION PROVISIONS

12-60-901. Repeal of article - review of functions. This article is repealed, effective July 1, 2016. Prior to such repeal, the division and its functions shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: **L. 93:** Entire article amended with relocations, p. 1235, § 1, effective July 1. **L. 99:** Entire section amended, p. 102, § 1, effective March 24. **L. 2004:** Entire section amended, p. 348, § 12, effective July 1. **L. 2007:** Entire section amended, p. 1312, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 12-60-121 as it existed prior to 1993. (2) Pursuant to § 12-60-103, the division and the commission are subject to the termination schedule in § 24-34-104.

ARTICLE 60.1

Racing - Sweepstakes Races Act

12-60.1-101 to 12-60.1-106. (Repealed)

Source: **L. 82:** Entire article repealed, p. 387, § 8, effective April 30.

Editor's note: (1) The 1977 sweepstakes legislation contained in this article was declared to be void and of no effect. (See In re Interrogatories of Governor Regarding Sweepstakes Races Act, 196 Colo. 353, 585 P.2d 595 (1978).) Subsequent to this decision, the Colorado Constitution was amended to allow the General Assembly to establish a state-supervised lottery. (See section 2 (7) of article XVIII, Colo. Const.)

(2) In 1982, the General Assembly authorized the implementation of a state-supervised lottery under the direction of the department of revenue. (See article 35 of title 24.)

(3) This article was added in 1977 and was not amended prior to its repeal in 1982. For the text of this article prior to 1982, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 61

Real Estate

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PART 1

BROKERS AND SALESPERSONS

12-61-101. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Employing real estate broker" or "employing broker" means a broker who is shown in real estate commission records as employing or engaging another broker.

(1.2) "HOA" or "homeowners' association" means an association or unit owners' association formed before, on, or after July 1, 1992, as part of a common interest community as defined in section 38-33.3-103, C.R.S.

(1.3) "Limited liability company" shall have the same meaning as it is given in section 7-80-102 (7), C.R.S.

(1.5) "Option dealer" means any person, firm, partnership, limited liability company, association, or corporation who, directly or indirectly, takes, obtains, or uses an option to purchase, exchange, rent, or lease real property or any interest therein with the intent or for the purpose of buying, selling, exchanging, renting, or leasing said real property or interest therein to another or others whether or not said option is in that person's or its name and whether or not title to said property passes through the name of said person, firm, partnership, limited liability company, association, or corporation in connection with the purchase, sale, exchange, rental, or lease of said real property or interest therein.

(1.7) "Partnership" includes, but is not limited to, a registered limited liability partnership.

(2) (a) "Real estate broker" or "broker" means any person, firm, partnership, limited liability company, association, or corporation who, in consideration of compensation by fee, commission, salary, or anything of value or with the intention of receiving or collecting such compensation, engages in or offers or attempts to engage in, either directly or indirectly, by a continuing course of conduct or by any single act or transaction, any of the following acts:

(I) Selling, exchanging, buying, renting, or leasing real estate, or interest therein, or improvements affixed thereon;

(II) Offering to sell, exchange, buy, rent, or lease real estate, or interest therein, or improvements affixed thereon;

(III) Selling or offering to sell or exchange an existing lease of real estate, or interest therein, or improvements affixed thereon;

(IV) Negotiating the purchase, sale, or exchange of real estate, or interest therein, or improvements affixed thereon;

(V) Listing, offering, attempting, or agreeing to list real estate, or interest therein, or improvements affixed thereon for sale, exchange, rent, or lease;

(VI) Auctioning or offering, attempting, or agreeing to auction real estate, or interest therein, or improvements affixed thereon;

(VII) Buying, selling, offering to buy or sell, or otherwise dealing in options on real estate, or interest therein, or improvements affixed thereon or acting as an "option dealer";

(VIII) Performing any of the foregoing acts as an employee of, or in behalf of, the owner of real estate, or interest therein, or improvements affixed thereon at a salary or for a fee, commission, or other consideration;

(IX) Negotiating or attempting or offering to negotiate the listing, sale, purchase, exchange, or lease of a business or business opportunity or the goodwill thereof or any interest therein when such act or transaction involves, directly or indirectly, any change in the ownership or interest in real estate, or in a leasehold interest or estate, or in a business or business opportunity which owns an interest in real estate or in a leasehold unless such act is performed by any broker-dealer licensed under the provisions of article 51 of title 11, C.R.S., who is actually engaged generally in the business of offering, selling, purchasing, or trading in securities or any officer, partner, salesperson, employee, or other authorized representative or agent thereof;

(X) Soliciting a fee or valuable consideration from a prospective tenant for furnishing information concerning the availability of real property, including apartment housing which may be leased or rented as a private dwelling, abode, or place of residence. Any person, firm, partnership, limited liability company, association, or corporation or any employee or authorized agent thereof engaged in the act of soliciting a fee or valuable consideration from any person other than a prospective tenant for furnishing information concerning the availability of real property, including apartment housing which may be leased or rented as a private dwelling, abode, or place of residence, is exempt from this definition of "real estate broker" or "broker". This exemption applies only in respect to the furnishing of information concerning the availability of real property.

(b) "Real estate broker" does not apply to any of the following:

(I) Any attorney-in-fact acting without compensation under a power of attorney, duly executed by an owner of real estate, authorizing the consummation of a real estate transaction;

(II) Any public official in the conduct of his or her official duties;

(III) Any receiver, trustee, administrator, conservator, executor, or guardian acting under proper authorization;

(IV) Any person, firm, partnership, limited liability company, or association acting personally or a corporation acting through its officers or regular salaried employees, on behalf of that person or on its own behalf as principal in acquiring or in negotiating to acquire any interest in real estate;

(V) An attorney-at-law in connection with his or her representation of clients in the practice of law;

(VI) Any person, firm, partnership, limited liability company, association, or corporation, or any employee or authorized agent thereof, engaged in the act of negotiating, acquiring, purchasing, assigning, exchanging, selling, leasing, or dealing in oil and gas or other mineral leases or interests therein or other severed mineral or royalty interests in real property, including easements, rights-of-way, permits, licenses, and any other interests in real property for or on behalf of a third party, for the purpose of, or facilities related to, intrastate and interstate pipelines for oil, gas, and other petroleum products, flow lines, gas gathering systems, and natural gas storage and distribution;

(VII) A natural person acting personally with respect to property owned or leased by that person or a natural person who is a general partner of a partnership, a manager of a limited liability company, or an owner of twenty percent or more of such partnership or

limited liability company, and authorized to sell or lease property owned by such partnership or limited liability company, except as provided in subsection (1.5) of this section;

(VIII) A corporation with respect to property owned or leased by it, acting through its officers or regular salaried employees, when such acts are incidental and necessary in the ordinary course of the corporation's business activities of a non-real estate nature (but only if the corporation is not engaged in the business of land transactions), except as provided in subsection (1.5) of this section. For the purposes of this subparagraph (VIII), the term "officers or regular salaried employees" means persons regularly employed who derive not less than seventy-five percent of their compensation from the corporation in the form of salaries.

(IX) A principal officer of any corporation with respect to property owned by it when such property is located within the state of Colorado and when such principal officer is the owner of twenty percent or more of the outstanding stock of such corporation, except as provided in subsection (1.5) of this section, but this exemption does not include any corporation selling previously occupied one-family and two-family dwellings;

(X) A sole proprietor, corporation, partnership, or limited liability company, acting through its officers or partners, or through regular salaried employees, with respect to property owned or leased by such sole proprietor, corporation, partnership, or limited liability company on which has been or will be erected a commercial, industrial, or residential building which has not been previously occupied and where the consideration paid for such property includes the cost of such building, payable, less deposit or down payment, at the time of conveyance of such property and building;

(XI) (A) A corporation, partnership, or limited liability company acting through its officers, partners, managers, or regularly salaried employees receiving no additional compensation therefor, or its wholly owned subsidiary or officers, partners, managers, or regular salaried employees thereof receiving no additional compensation, with respect to property located in Colorado which is owned or leased by such corporation, partnership, or limited liability company and on which has been or will be erected a shopping center, office building, or industrial park when such shopping center, office building, or industrial park is sold, leased, or otherwise offered for sale or lease in the ordinary course of the business of such corporation, partnership, limited liability company, or wholly owned subsidiary.

(B) For the purposes of this subparagraph (XI), "shopping center" means land on which buildings are or will be constructed which are used for commercial and office purposes around or adjacent to which off-street parking is provided; "office building" means a building used primarily for office purposes; and "industrial park" means land on which buildings are or will be constructed for warehouse, research, manufacturing, processing, or fabrication purposes.

(XII) A regularly salaried employee of an owner of an apartment building or complex who acts as an on-site manager of such an apartment building or complex. This exemption applies only in respect to the customary duties of an on-site manager performed for his or her employer.

(XIII) A regularly salaried employee of an owner of condominium units who acts as an on-site manager of such units. For purposes of this subparagraph (XIII) only, the term "owner" includes a homeowners' association formed and acting pursuant to its recorded condominium declaration and bylaws. This exemption applies only in respect to the customary duties of an on-site manager performed for his or her employer.

(XIV) A real estate broker licensed in another state who receives a share of a commission or finder's fee on a cooperative transaction from a licensed Colorado real estate broker;

(XV) A sole proprietor, corporation, partnership, or limited liability company, acting through its officers, partners, or regularly salaried employees, with respect to property located in Colorado, where the purchaser of such property is in the business of developing land for residential, commercial, or industrial purposes;

(XVI) Any person, firm, partnership, limited liability company, association, or corporation, or any employee or authorized agent thereof, engaged in the act of negotiating, purchasing, assigning, exchanging, selling, leasing, or acquiring rights-of-way, permits,

licenses, and any other interests in real property for or on behalf of a third party for the purpose of, or facilities related to:

- (A) Telecommunication lines;
- (B) Wireless communication facilities;
- (C) CATV;
- (D) Electric generation, transmission, and distribution lines;
- (E) Water diversion, collection, distribution, treatment, and storage or use; and
- (F) Transportation, so long as such person, firm, partnership, limited liability company, association, or corporation, including any employee or authorized agent thereof, does not represent any displaced person or entity as an agent thereof in the purchase, sale, or exchange of real estate, or an interest therein, resulting from residential or commercial relocations required under any transportation project, regardless of the source of public funding.

Source: **L. 29:** p. 529, § 2. **CSA:** C. 15, § 29. **CRS 53:** § 117-1-2. **C.R.S. 1963:** § 117-1-2. **L. 65:** p. 934, § 1. **L. 72:** pp. 517, 616, §§ 1, 145. **L. 73:** p. 1145, § 1. **L. 75:** (4)(g), (4)(j), and (4)(k) amended, p. 516, § 1, effective July 16. **L. 77:** (4)(l) amended and (4)(m) and (4)(n) added, p. 772, § 1, effective June 9. **L. 79:** (2)(j) added, p. 559, § 1, effective June 18; (4)(l) and (4)(m) amended, p. 562, § 1, effective June 31. **L. 80:** (2)(j) amended, p. 793, § 43, effective June 5. **L. 82:** (4)(o) added, p. 265, § 2, effective March 25. **L. 83:** (4)(o) amended, p. 2047, § 2, effective October 14. **L. 85:** (4)(j) amended, p. 561, § 2, effective July 1. **L. 91:** (1), IP(2), (2)(i), (2)(j), (3), IP(4), (4)(d), (4)(f), (4)(g), (4)(j), (4)(k), and (4)(o) amended and (1.5) added, p. 1619, § 1, effective July 1. **L. 92:** (2)(i), (3), (4)(g), (4)(h), and (4)(i) amended, p. 2169, § 12, effective June 2. **L. 94:** (4)(j) amended and (4)(p) added, p. 555, § 1, effective April 6; (4)(o) repealed, p. 704, § 4, effective April 19. **L. 95:** (1.7) added, p. 815, § 38, effective May 24. **L. 96:** (1) amended and (1.3) added, p. 414, § 1, effective January 1, 1997. **L. 99:** (4)(f) amended and (4)(q) added, p. 714, § 1, effective July 1. **L. 2008:** Entire section amended, p. 498, § 7, effective April 17. **L. 2010:** (1.2) added, (HB 10-1278), ch. 365, p. 1721, § 1, effective January 1, 2011.

Cross references: For the exemption of real estate brokers and sales representatives from certain provisions of the “Colorado Securities Act”, see §§ 11-51-402 (3) and 11-51-405 (2).

ANNOTATION

Law reviews. For article, “Finders and Finders’ Fees”, see 47 Den. L.J. 448 (1970). For article, “Timesharing in Colorado”, see 11 Colo. Law. 2804 (1982). For article, “Colorado ‘Buyer Brokerage’: Does it Still Exist After *Velten v. Robertson?*”, see 55 U. Colo. L. Rev. 83 (1983). For article, “Implications of Zimmerman on Buyer Brokerage in Colorado”, see 13 Colo. Law. 992 (1984).

Intent of this section is to align Colorado with the majority rule which requires a finder or business broker to have a real estate broker’s license if the sale of the business includes a transfer of any interest in real estate. *Broughall v. Black Forest Dev. Co.*, 196 Colo. 503, 593 P.2d 314 (1978).

A real estate broker is defined by this section. *Cary v. Borden Co.*, 153 Colo. 344, 386 P.2d 585 (1963).

To be broker, one must find person to whom to sell, or from whom to buy, as case may be. *Stank v. Michaelson*, 32 Colo. App. 75, 506 P.2d 757 (1973).

Definition of real estate broker to be liberally construed for purposes of determining who may be reimbursed from the real estate recovery fund because of the remedial purposes of that fund. *Moeller v. Colo. Real Estate Comm’n*, 759 P.2d 697 (Colo. 1988).

“Real estate broker” includes one who offers to negotiate the sale of a business by transfer of stock when the business owns a leasehold interest in real estate. *Barton v. Sittner*, 723 P.2d 153 (Colo. App. 1986).

A real estate finder falls under the definition of a “real estate broker”. The definition of a real estate broker does not recognize a distinction between a broker and a finder. The legislative intent is to extend the definition to include the full spectrum of activities related to the sale of real estate. *Amedeus Corp. v. McAllister*, 232 P.3d 107 (Colo. App. 2009).

One who is merely an employee of a real estate brokerage company, and is engaged in selling the company’s property, is not a real estate broker within the meaning of this section.

Black Forest Realty & Inv. Co. v. Clarke, 86 Colo. 454, 282 P. 878 (1929).

Term "real estate broker" includes all activities related to sale of real estate. The legislative history of this section reveals a legislative intent to enlarge and extend the definition of the term "real estate broker" to include the full spectrum of activities related to the sale of real estate. Brakhage v. Georgetown Associates, 33 Colo. App. 385, 523 P.2d 145 (1974).

No distinction between finder and broker. There is no distinction between a finder who merely introduces prospective buyers and sellers and a broker who participates in the details of the transaction. Brakhage v. Georgetown Associates, 33 Colo. App. 385, 523 P.2d 145 (1974).

The phrase "real estate . . . or improvements affixed thereon" in subsection (2) (a) refers to improvements situate on real estate at the time of the sale or attempted sale. Lemler v. Real Estate Comm'n, 38 Colo. App. 489, 558 P.2d 591 (1976).

Transfer of shares of corporation which owned interest in real estate was a transaction involving a change in "ownership or interest . . . in a business . . . which owns an interest in real estate". Brakhage v. Georgetown Associates, 33 Colo. App. 385, 523 P.2d 145 (1974).

Arranging for a loan which is secured by a deed of trust on real property does not involve a transaction which is an exchange of "an interest" in real estate, for the placing of a lien against property does not constitute a sale or exchange as those terms are used in this section. Bamford v. Cope, 31 Colo. App. 161, 499 P.2d 639 (1972).

Term "negotiate" includes act of bringing two parties together for the purpose of consummating a real estate transaction. Brakhage v. Georgetown Associates, 33 Colo. App. 385, 523 P.2d 145 (1974); Am. West Motel Brokers, Inc. v. Wu, 697 P.2d 34 (Colo. 1985).

Purpose of the exemptions in subsection (4) is to permit an owner of property to sell it, or to permit one to purchase property for his own account without having to procure a real estate license. Seibel v. Colo. Real Estate Comm'n, 34 Colo. App. 415, 530 P.2d 1290 (1974).

Mineral tailings lying on real property as waste may not properly be characterized as a

severed mineral interest for purposes of subsection (4)(f). Such tailings are deemed to become annexed to the real property over time and thus do not provide justification for use of the exception to licensure requirements for selling a severed mineral interest. Kerr v. Australia Pacific Res., Ltd., 841 P.2d 401 (Colo. App. 1992).

Purpose of subsection (4)(g) exemption. The purpose of the exemption set forth in subsection (4)(g) is to allow a private owner of real estate to sell it without having to obtain a real estate license. Richards v. Income Realty & Mtg., Inc., 654 P.2d 864 (Colo. App. 1982).

This section was not intended to be used by a salesman or broker who also happens to own real estate as a means of subverting the purpose of the real estate recovery fund. Richards v. Income Realty & Mtg., Inc., 654 P.2d 864 (Colo. App. 1982).

Subsection (4) has no application to the matter of discipline of licensed real estate brokers and salesmen. Seibel v. Colo. Real Estate Comm'n, 34 Colo. App. 415, 530 P.2d 1290 (1974).

Agency status of real estate salesmen. A licensed real estate salesman may not be employed in that capacity by a buyer or seller of real property but may only be employed by, and receive compensation from, his broker. Thus, a real estate salesman who obtains a listing contract from a seller and acts as the procuring cause in a sale, or a salesman who represents a buyer in the sale of realty functions only as an agent for the broker and acts as the broker's representative in the transaction. Becker v. Arnold, 42 Colo. App. 178, 591 P.2d 596 (1979); Olsen v. Bondurant and Co., 759 P.2d 861 (Colo. App. 1988).

Conduct of real estate salespersons employed by real estate brokerage firm constituted active competition and resulted in a breach of their duty of loyalty to conduct business activities solely on behalf of firm. Koontz v. Rosener, 787 P.2d 192 (Colo. App. 1989).

Applied in Schwartz v. Weiner, 94 Colo. 251, 30 P.2d 1110 (1934); Benham v. Heyde, 122 Colo. 233, 221 P.2d 1078 (1950); White v. Brock, 41 Colo. App. 156, 584 P.2d 1224 (1978); Backus v. Apishapa Land & Cattle Co., 44 Colo. App. 59, 615 P.2d 42 (1980).

12-61-102. License required. It is unlawful for any person, firm, partnership, limited liability company, association, or corporation to engage in the business or capacity of real estate broker in this state without first having obtained a license from the real estate commission. No person shall be granted a license until such person establishes compliance with the provisions of this part 1 concerning education, experience, and testing; truthfulness and honesty and otherwise good moral character; and, in addition to any other requirements of this section, competency to transact the business of a real estate broker in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualifications, together with the application for such license, is filed in the office of the commission. In determining such person's character, the real estate commission shall be governed by section 24-5-101, C.R.S.

Source: L. 29: p. 528, § 1. CSA: C. 15, § 28. CRS 53: § 117-1-1. C.R.S. 1963: § 117-1-1. L. 69: p. 973, § 1. L. 75: Entire section amended, p. 517, § 2, effective July 16. L. 81: Entire section amended, p. 861, § 1, effective May 28. L. 85: Entire section amended, p. 562, § 3, effective July 1. L. 91: Entire section amended, p. 1621, § 2, effective July 1. L. 2008: Entire section amended, p. 503, § 8, effective April 17.

ANNOTATION

Law reviews. For note, "One Year Review of Contracts", see 41 Den. L. Ctr. J. 89 (1964). For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L.J. 82 (1970).

This section requires one engaged in the business of real estate broker to obtain a license. Cary v. Borden Co., 153 Colo. 344, 386 P.2d 585 (1963).

The purpose of the Colorado real estate broker and salesman license law envisions an employer-employee relationship because it clothes the broker not only with the right to control his salesmen but it also charges him with a duty to do so, and it is the right, duty, and power to control that are important factors in distinguishing a servant or employee from a contractor. Faith Realty & Dev. Co. v. Indus. Comm'n, 170 Colo. 215, 460 P.2d 228 (1969).

Although the real estate licensing statutes have undergone revision, its provisions are still reflective of an employer-employee relationship between a licensed real estate broker and his licensed salesmen. Olsen v. Boudier and Co., 759 P.2d 861 (Colo. App. 1988).

The licensing statute is penal in nature because of the criminal penalties involved in violation of its terms. Lemler v. Real Estate Comm'n, 38 Colo. App. 489, 558 P.2d 591 (1976).

The provisions of the real estate broker's licensing statute are not to be extended by implication. Bamford v. Cope, 31 Colo. App. 161, 499 P.2d 639 (1972).

The fact that many real estate brokers arrange loans secured by deeds of trust on real property does not mean that only licensed real estate brokers can perform such services. Bamford v. Cope, 31 Colo. App. 161, 499 P.2d 639 (1972).

The preparation of simple real estate instruments, done without separate charge therefor by licensed real estate brokers only in connection with their established business and in behalf of their customers and in connection with a bona fide real estate transaction which they are handling as brokers should not be enjoined as unauthorized practices of law. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957).

Where services are performed by an unlicensed person in violation of the Colorado licensing statutes, the agreement for the services is illegal and unenforceable. Manufacturer's Nat'l Bank v. Hartmeister, 411 F.2d 173 (10th Cir. 1969).

Furthermore, in construing the act, courts have held that a sale of realty made by one who acts in the capacity of a broker without a license disentitles him to compensation for his services. Cary v. Borden Co., 153 Colo. 344, 386 P.2d 585 (1963).

One who functions as a real estate broker without obtaining the necessary license cannot recover compensation for his services. Brakhage v. Georgetown Associates, 33 Colo. App. 385, 523 P.2d 145 (1974).

Where a person who was not a licensed real estate broker nor engaged in the selling of real estate undertook and did sell certain farm lands owned by the defendant, he was not allowed to recover the agreed-upon compensation from the defendant. Benham v. Heyde, 122 Colo. 233, 221 P.2d 1078 (1950).

Nonlicensed broker precluded from seeking judicial assistance to enforce contract. Since plaintiff was not licensed as a broker or real estate salesman pursuant to this statute, an agreement between owner of mining claims, plaintiff, and defendant regarding the sale of such claims constituted an illegal contract, so that plaintiff was precluded from seeking judicial assistance to enforce the contract. Reed v. Bailey, 34 Colo. App. 20, 524 P.2d 80 (1974).

One who renders services in connection with the sale of a going business and who does not have a real estate broker's license where realty comprises a part of the assets of such going business may recover a commission. Cary v. Borden Co., 153 Colo. 344, 386 P.2d 585 (1963).

Although the appellee was not a licensed real estate broker, but he acted only as an agent for appellant and only with reference to property owned by appellant or by corporations wholly owned by him, the court held that such activities as an employee were not subject to the real estate broker licensing requirements, and the agreement lawfully entitled the appellee to the five percent commission on the property sales. Manufacturer's Nat'l Bank v. Hartmeister, 411 F.2d 173 (10th Cir. 1969).

Formerly under this section, one who engaged in the business, irrespective of actual transactions, must have had a license or incurred the prescribed penalty, but one not in the business needed no license for his protection, though engaging irregularly in isolated transactions. Schwartz v. Weiner, 94 Colo. 251, 30 P.2d 1110 (1934).

There is no requirement that real estate or a leasehold be transferred from one legal entity to another to trigger the licensure requirement. *Lieff v. Medco Prof'l Servs.*, 973 P.2d 1276 (Colo. App. 1998).

Protection of the public is the primary purpose of the commission and to further this purpose agents must use the commission's standardized forms. *Albright v. McDermond*, 14 P.3d 318 (Colo. 2000).

Applied in *Broughall v. Black Forest Dev. Co.*, 196 Colo. 503, 593 P.2d 314 (1978); *Backus v. Apishapa Land & Cattle Co.*, 44 Colo. App. 59, 615 P.2d 42 (1980); *Holter v. Moore & Co.*, 702 F.2d 854 (10th Cir. 1983); *Am. West Motel Brokers, Inc. v. Wu*, 697 P.2d 34 (Colo. 1985).

12-61-103. Application for license - rules. (1) (a) All persons desiring to become real estate brokers shall apply to the real estate commission for a license under the provisions of this part 1. Application for a license as a real estate broker shall be made to the commission upon forms or in a manner prescribed by it.

(b) (I) Prior to submitting an application for a license pursuant to paragraph (a) of this subsection (1), each applicant shall submit a set of fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. The applicant shall pay the fee established by the Colorado bureau of investigation for conducting the fingerprint-based criminal history record check to the bureau. Upon completion of the criminal history record check, the bureau shall forward the results to the real estate commission. The real estate commission may acquire a name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable.

(II) For purposes of this paragraph (b), "applicant" means an individual, or any person designated to act as broker for any partnership, limited liability company, or corporation pursuant to subsection (7) of this section.

(2) Every real estate broker licensed under this part 1 shall maintain a place of business within this state, except as provided in section 12-61-107. In case a real estate broker maintains more than one place of business within the state, the broker shall be responsible for supervising all licensed activities originating in such offices.

(3) The commission is authorized by this section to require and procure any such proof as is necessary in reference to the truthfulness, honesty, and good moral character of any applicant for a real estate broker's license or, if the applicant is a partnership, limited liability company, or corporation, of any partner, manager, director, officer, member, or stockholder if such person has, either directly or indirectly, a substantial interest in such applicant prior to the issuance of such license.

(4) (a) An applicant for a broker's license shall be at least eighteen years of age. The applicant must furnish proof satisfactory to the commission that the applicant has either received a degree from an accredited degree-granting college or university with a major course of study in real estate or has successfully completed courses of study, approved by the commission, at any accredited college or university or any private occupational school that has a certificate of approval from the private occupational school division in accordance with the provisions of article 59 of this title or that has been approved by the commission or licensed by an official state agency of any other state as follows:

(I) Forty-eight hours of classroom instruction or equivalent correspondent hours in real estate law and real estate practice; and

(II) Forty-eight hours of classroom instruction or equivalent correspondent hours in understanding and preparation of Colorado real estate contracts; and

(III) A total of seventy-two hours of instruction or equivalent correspondence hours from the following areas of study:

(A) Trust accounts and record-keeping;

(B) Real estate closings;

(C) Current legal issues; and

(D) Practical applications.

(b) An applicant for a broker's license who has been licensed as a real estate broker in another jurisdiction shall be required to complete only the course of study comprising the

subject matter areas described in subparagraphs (II) and (III) (B) of paragraph (a) of this subsection (4).

(c) An applicant for a broker's license who has been licensed as a real estate salesperson in another jurisdiction shall be required to complete only the course of study required in subparagraphs (II) and (III) of paragraph (a) of this subsection (4).

(d) (Deleted by amendment, L. 96, p. 414, § 2, effective January 1, 1997.)

(5) (Deleted by amendment, L. 96, p. 414, § 2, effective January 1, 1997.)

(6) (a) The applicant for a broker's license shall submit to and pass an examination designated to determine the competency of the applicant and prepared by or under the supervision of the real estate commission or its designated contractor. The commission may contract with an independent testing service to develop, administer, or grade examinations or to administer licensee records. The contract may allow the testing service to recover the costs of the examination and the costs of administering exam and license records from the applicant. The commission may contract separately for these functions and allow recovered costs to be collected and retained by a single contractor for distribution to other contractors. The commission shall have the authority to set the minimum passing score that an applicant must receive on the examination, and said score shall reflect the minimum level of competency required to be a broker. Said examination shall be given at such times and places as the commission prescribes. The examination shall include, but not be limited to, ethics, reading, spelling, basic mathematics, principles of land economics, appraisal, financing, a knowledge of the statutes and law of this state relating to deeds, trust deeds, mortgages, listing contracts, contracts of sale, bills of sale, leases, agency, brokerage, trust accounts, closings, securities, the provisions of this part 1, and the rules of the commission. The examination for a broker's license shall also include the preparation of a real estate closing statement.

(b) An applicant for a broker's license who has held a real estate license in another jurisdiction that administers a real estate broker's examination and who has been licensed for two or more years prior to applying for a Colorado license may be issued a broker's license if the applicant establishes that he or she possesses credentials and qualifications that are substantively equivalent to the requirements in Colorado for licensure by examination.

(c) In addition to all other applicable requirements, the following provisions apply to brokers that did not hold a current and valid broker's license on December 31, 1996:

(I) No such broker shall engage in an independent brokerage practice without first having served actively as a real estate broker for at least two years. The commission shall adopt rules requiring an employing broker to ensure that a high level of supervision is exercised over such a broker during such two-year period.

(II) No such broker shall employ another broker without first having completed twenty-four clock hours of instruction, or the equivalent in correspondence hours, as approved by the commission, in brokerage administration.

(7) (a) Real estate brokers' licenses may be granted to individuals, partnerships, limited liability companies, or corporations. A partnership, limited liability company, or corporation, in its application for a license, shall designate a qualified, active broker to be responsible for management and supervision of the licensed actions of the partnership, limited liability company, or corporation and all licensees shown in the commission's records as being in the employ of such entity. The application of the partnership, limited liability company, or corporation and the application of the broker designated by it shall be filed with the real estate commission.

(b) No license shall be issued to any partnership, limited liability company, or corporation unless and until the broker so designated by the partnership, limited liability company, or corporation submits to and passes the examination required by this part 1 on behalf of the partnership, limited liability company, or corporation. Upon such broker's successfully passing the examination and upon compliance with all other requirements of law by the partnership, limited liability company, or corporation, as well as by the designated broker, the commission shall issue a broker's license to the partnership, limited liability company, or corporation, which shall bear the name of such designated broker, and thereupon the broker so designated shall conduct business as a real estate broker only

through the said partnership, limited liability company, or corporation and not for the broker's own account.

(c) If the person so designated is refused a license by the real estate commission or ceases to be the designated broker of such partnership, limited liability company, or corporation, such entity may designate another person to make application for a license. If such person ceases to be the designated broker of such partnership, limited liability company, or corporation, the director may issue a temporary license to prevent hardship for a period not to exceed ninety days to the licensed person so designated. The director may extend a temporary license for one additional period not to exceed ninety days upon proper application and a showing of good cause; if the director refuses, no further extension of a temporary license shall be granted except by the commission. If any broker or employee of any such partnership, limited liability company, or corporation, other than the one designated as provided in this section, desires to act as a real estate broker, such broker or employee shall first obtain a license as a real estate broker as provided in this section and shall pay the regular fee therefor.

(8) The broker designated to act as broker for any partnership, limited liability company, or corporation is personally responsible for the handling of any and all earnest money deposits or escrow or trust funds received or disbursed by said partnership, limited liability company, or corporation. In the event of any breach of duty by the said partnership, limited liability company, or corporation as a fiduciary, any person aggrieved or damaged by the said breach of fiduciary duty shall have a claim for relief against such partnership, limited liability company, or corporation, as well as against the designated broker, and may pursue said claim against the partnership, limited liability company, or corporation and the designated broker personally. The said broker may be held responsible and liable for damages based upon such breach of fiduciary duty as may be recoverable against the said partnership, limited liability company, or corporation, and any judgment so obtained may be enforced jointly or severally against said broker personally and the said partnership, limited liability company, or corporation.

(9) No license for a broker registered as being in the employ of another broker shall be issued to a partnership, a limited liability company, or a corporation or under a fictitious name or trade name; except that a married woman may elect to use her birth name.

(10) No person shall be licensed as a real estate broker under more than one name, and no person shall conduct or promote a real estate brokerage business except under the name under which such person is licensed.

(11) Repealed.

(12) A licensed attorney shall take and pass the examination referred to in this section after having completed twelve hours of classroom instruction or equivalent correspondent hours in trust accounts, record-keeping, and real estate closings.

Source: L. 29: p. 531, § 4. CSA: C. 15, § 32. CRS 53: § 117-1-5. L. 55: p. 711, § 1. L. 63: p. 763, § 3. C.R.S. 1963: § 117-1-5. L. 69: p. 974, § 4. L. 75: (2), (4), (6), (9), and (10) amended, p. 517, § 3, effective July 1; (4) R&RE, (5) amended, and (11) added, pp. 524, 525, §§ 1, 2, 3, effective July 1. L. 77: (11)(b) R&RE, p. 772, § 2, effective June 9. L. 79: (7)(c) R&RE and (9) amended, pp. 562, 563, §§ 2, 3, effective May 31; (11) repealed, p. 568, § 5, effective July 1. L. 81: IP(4)(a) and (5) amended, p. 851, § 25, effective July 1. L. 85: (3), IP(4)(a), (5), and (7)(c) amended, p. 562, § 4, effective July 1. L. 86: IP(4)(a), (4)(a)(II), (5), and (6) amended, (4)(a)(III) and (4)(b) R&RE, and (4)(c) and (4)(d) added, pp. 668, 670, §§ 1, 2, effective July 1. L. 89: (6)(a) amended, p. 734, § 1, effective July 1. L. 90: IP(4)(a) and IP(5)(a) amended, p. 1171, § 30, effective July 1. L. 91: Entire section amended, p. 1622, § 3, effective July 1. L. 96: (1), (2), (3), (4), (5), (6)(a), (6)(c), and (7)(c) amended and (12) added, p. 414, § 2, effective January 1, 1997. L. 96: (1) amended and (1.3) added, p. 414, § 1, effective January 1, 1997. L. 99: (6)(b) amended, p. 715, § 3, effective July 1. L. 2001: (1), IP(4)(a), (7), and (8) amended, p. 22, § 1, effective March 9. L. 2002: (1) amended, p. 973, § 7, effective June 1. L. 2004: (6)(a) amended, p. 1253, § 4, effective May 27. L. 2005: (1)(b)(I) amended, p. 1055, § 1, effective August 8. L. 2008: (1)(b)(I), (6)(b), (6)(c)(I), (6)(c)(II), (9), and (10) amended, pp. 514, 512, 503, §§ 37, 34, 9, effective April 17.

Editor's note: Amendments to subsection (4) by House Bill 75-1402 and Senate Bill 75-274 were harmonized.

ANNOTATION

Law reviews. For article, "Contract and Conveyance Documents — Broker Beware", see 11 Colo. Law. 2383 (1982).

"Fiduciary relation" is defined as an expression including both technical fiduciary relations and those informal relations which exist whenever one man trusts and relies upon another, and it exists where there is special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to interests of one reposing the confidence. *Circle T Corp. v. Deerfield*, 166 Colo. 238, 444 P.2d 404 (1968).

The foundation for the fiduciary relationship which exists between an agent and his principal is predicated on the trust or confidence which the principal reposes in the agent. *Circle T Corp. v. Deerfield*, 166 Colo. 238, 444 P.2d 404 (1968).

In all his dealings affecting the subject matter of his agency, it is the duty of the agent to

act with the utmost good faith and loyalty in behalf of his principal. *Circle T Corp. v. Deerfield*, 166 Colo. 238, 444 P.2d 404 (1968).

There is no requirement that a real estate salesman hold a real estate broker's license issued in his own name. *White v. Minissale*, 155 Colo. 257, 394 P.2d 126 (1964).

This statute clearly does not declare unlicensed branch offices to be unlawful. *Holter v. Moore & Co.*, 681 P.2d 962 (Colo. App. 1983).

No private cause of action may be implied under this section for recovery of commissions paid to an unlicensed real estate office. *Holter v. Moore & Co.*, 681 P.2d 962 (Colo. App. 1983); *Miami Intern. Realty Co. v. Paynter*, 841 F.2d 348 (10th Cir. 1988).

Applied in *Tenderfoot Mt. Props. v. Jones*, 626 P.2d 703 (Colo. App. 1980); *Holter v. Moore & Co.*, 702 F.2d 854 (10th Cir. 1983).

12-61-103.5. Transitional provisions - holders of existing salesperson's licenses. (Repealed)

Source: L. 96: Entire section added, p. 418, § 3, effective January 1, 1997. L. 2008: Entire section repealed, p. 503, § 10, effective April 17.

12-61-103.6. Errors and omissions insurance required - rules. (1) Every licensee under this part 1, except an inactive broker or an attorney licensee who maintains a policy of professional malpractice insurance that provides coverage for errors and omissions for their activities as a licensee under this part 1, shall maintain errors and omissions insurance to cover all activities contemplated under parts 1 to 8 of this article. The commission shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after a competitive bid process in accordance with article 103 of title 24, C.R.S. Any group policy obtained by the commission shall be available to all licensees with no right on the part of the insurer to cancel any licensee. Any licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.

Editor's note: This version of subsection (1) is effective until July 1, 2013.

(1) Every licensee under this part 1, except an inactive broker or an attorney licensee who maintains a policy of professional malpractice insurance that provides coverage for errors and omissions for their activities as a licensee under this part 1, shall maintain errors and omissions insurance to cover all activities contemplated under parts 1 to 8 of this article. The division of real estate shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after a competitive bid process in accordance with article 103 of title 24, C.R.S. A group policy obtained by the division of real estate must be available to all licensees with no right on the part of the insurer to cancel a licensee. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the division of real estate.

Editor's note: This version of subsection (1) is effective July 1, 2013.

(2) (a) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable annual premium, as determined by the commission, a licensee shall independently obtain the errors and omissions insurance required by this section.

(b) The commission shall solicit and consider information and comments from interested persons when determining the reasonableness of annual premiums.

Editor's note: This version of subsection (2) is effective until July 1, 2013.

(2) (a) If the division of real estate is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable annual premium, as determined by the division of real estate, a licensee shall independently obtain the errors and omissions insurance required by this section.

(b) The division of real estate shall solicit and consider information and comments from interested persons when determining the reasonableness of annual premiums.

Editor's note: This version of subsection (2) is effective July 1, 2013.

(3) The commission shall determine the terms and conditions of coverage required under this section, including the minimum limits of coverage, the permissible deductible, and permissible exemptions. Each licensee shall be notified of the required terms and conditions at least thirty days prior to the annual premium renewal date as determined by the commission. Each licensee shall file a certificate of coverage showing compliance with the required terms and conditions with the commission by the annual premium renewal date, as determined by the commission.

Editor's note: This version of subsection (3) is effective until July 1, 2013.

(3) The division of real estate shall determine the terms and conditions of coverage required under this section based on rules promulgated by the commission. The commission shall notify each licensee of the required terms and conditions at least thirty days before the annual premium renewal date as determined by the commission. Each licensee shall file a certificate of coverage showing compliance with the required terms and conditions with the commission by the annual premium renewal date, as determined by the division of real estate.

Editor's note: This version of subsection (3) is effective July 1, 2013.

(4) In addition to all other powers and duties conferred upon the commission by this article, the commission shall adopt such rules as it deems necessary or proper to carry out the provisions of this section.

(5) (Deleted by amendment, L. 2008, p. 497, § 4, effective April 17, 2008.)

Source: L. 96: Entire section added, p. 1563, § 1, effective July 1. L. 99: (5) added, p. 716, § 4, effective July 1. L. 2003: (2) amended, p. 1971, § 1, effective August 6. L. 2006: (1) amended, p. 1588, § 4, effective July 1; (2)(a) amended, p. 1069, § 1, effective January 1, 2007. L. 2008: (1) and (5) amended, p. 497, § 4, effective April 17. L. 2012: (1) to (3) amended, (HB 12-1110), ch. 277, p. 1472, § 14, effective July 1, 2013.

ANNOTATION

Law reviews. For article, "E & O Insurance: Mandatory for Colorado Real Estate Professionals", see 27 Colo. Law. 99 (September 1998).

12-61-104. Licenses - issuance - contents - display. (1) The commission shall make available for each licensee a license in such form and size as said commission shall prescribe and adopt. The real estate license shall show the name of the licensee and shall have imprinted thereon the seal, or a facsimile, of the department of regulatory agencies and, in addition to the foregoing, shall contain such other matter as said commission shall prescribe.

(2) and (3) (Deleted by amendment, L. 2001, p. 24, § 2, effective March 9, 2001.)

Source: L. 25: p. 427, § 7. CSA: C. 15, § 33. CRS 53: § 117-1-6. L. 55: p. 712, § 2. L. 61: p. 633, § 1. L. 63: p. 766, § 4. C.R.S. 1963: § 117-1-6. L. 69: p. 974, § 5. L. 79: (2) amended, p. 563, § 4, effective May 31. L. 91: Entire section amended, p. 1626, § 4, effective July 1. L. 2001: Entire section amended, p. 24, § 2, effective March 9.

12-61-105. Commission - compensation - immunity - subject to termination.

(1) There shall be a commission of five members, appointed by the governor, which shall administer parts 1, 3, and 4 of this article. This commission shall be known as the real estate commission, also referred to in this part 1 as the "commission", and shall consist of three real estate brokers who have had not less than five years' experience in the real estate business in Colorado and two representatives of the public at large. Members of the commission shall hold office for a period of three years. Upon the death, resignation, removal, or otherwise of any member of the commission, the governor shall appoint a member to fill out the unexpired term. The governor may remove any member for misconduct, neglect of duty, or incompetence.

(2) Each member of the commission shall receive the same compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of professions and occupations pursuant to section 24-34-102 (13), C.R.S. Payment for all such per diem compensation and expenses shall be made out of annual appropriations from the division of real estate cash fund provided for in section 12-61-111.5.

(2.5) Members of the commission, consultants, expert witnesses, and complainants shall be immune from suit in any civil action based upon any disciplinary proceedings or other official acts they performed in good faith.

(3) No real estate broker's license shall be denied, suspended, or revoked except as determined by a majority vote of the members of the commission.

(4) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the real estate commission created by this section.

Source: L. 29: p. 530, § 3. CSA: C. 15, § 30. CRS 53: § 117-1-3. L. 63: p. 762, § 1. C.R.S. 1963: § 117-1-3. L. 69: p. 973, § 2. L. 76: (4) added, p. 625, § 31, effective July 1. L. 79: (1) amended, p. 567, § 3, and (2) repealed, p. 912, § 16, effective July 1. L. 80: (2) RC&RE, p. 793, § 44, effective June 5. L. 83: (3) amended, p. 588, § 1, effective April 26. L. 89: (2.5) added, p. 734, § 2, effective July 1. L. 91: (3) amended, p. 1627, § 5, effective July 1. L. 2008: (1) and (3) amended, pp. 512, 504, §§ 33, 11, effective April 17.

ANNOTATION

Law reviews. For article, "Contract and Conveyance Documents — Broker Beware", see 11 Colo. Law. 2383 (1982).

The sole power of appointment of the members of the real estate brokers board is

expressly conferred by this section upon the governor. People ex rel. Wade v. Downen, 106 Colo. 557, 108 P.2d 224 (1940).

12-61-106. Division of real estate - director, clerks, and assistants. (1) The executive director of the department of regulatory agencies is authorized by this section to employ, subject to the provisions of the state personnel system laws of the state, a director of the division of real estate, who in turn shall employ such attorneys, deputies, investigators, clerks, and assistants as are necessary to discharge the duties imposed by parts 1, 3, and 4 of this article. The division of real estate, which shall be a division in the department of regulatory agencies, and the director of the division shall exercise their powers and perform their duties and functions under the department of regulatory agencies as if they were transferred to the department by a **type 2** transfer.

(2) It is the duty of the director, personally, or his designee to aid in the administration and enforcement of parts 1, 3, and 4 of this article and in the prosecution of all persons

charged with violating any of their provisions, to conduct audits of business accounts of licensees, to perform such duties of the commission as the commission prescribes, and to act in behalf of the commission on such occasions and in such circumstances as the commission directs.

Source: L. 25: p. 432, § 11. CSA: C. 15, § 37. CRS 53: § 117-1-10. L. 63: p. 769, § 8. C.R.S. 1963: § 117-1-10. L. 69: p. 976, § 9. L. 75: Entire section amended, p. 518, § 4, effective July 16. L. 79: (1) and (2) amended, p. 559, § 2, effective May 18; (2) amended, p. 563, § 5, effective May 31. L. 2008: (1) amended, p. 516, § 43, effective April 17. L. 2010: (1) amended, (HB 10-1141), ch. 280, p. 1283, § 1, effective August 11.

Editor's note: Amendments to subsection (2) by Senate Bill 79-119 and House Bill 79-1268 were harmonized.

12-61-107. Resident licensee - nonresident licensee - consent to service. (1) A nonresident of the state may become a real estate broker in this state by conforming to all the conditions of this part 1; except that the nonresident broker shall not be required to maintain a place of business within this state if that broker maintains a definite place of business in another state.

(2) If a broker has no registered agent registered in this state, such registered agent is not located under its registered agent name at its registered agent address, or the registered agent cannot with reasonable diligence be served, the broker may be served by registered mail or by certified mail, return receipt requested, addressed to the entity at its principal address. Service is perfected under this subsection (2) at the earliest of:

- (a) The date the broker receives the process, notice, or demand;
 - (b) The date shown on the return receipt, if signed by or on behalf of the broker; or
 - (c) Five days after mailing.
- (3) All such applications shall contain a certification that the broker is authorized to act for the corporation.

Source: L. 25: p. 436, § 18. CSA: C. 15, § 44. CRS 53: § 117-1-17. L. 55: p. 716, § 6. C.R.S. 1963: § 117-1-17. L. 75: (2) and (3) amended, p. 518, § 5, effective July 16. L. 79: (3) amended, p. 439, § 23, effective July 1. L. 89: (1) amended, p. 735, § 3, effective July 1. L. 91: (1) amended, p. 1627, § 6, effective July 1. L. 96: (1) amended, p. 419, § 4, effective January 1, 1997. L. 2001: (2) and (3) amended, p. 24, § 3, effective March 9. L. 2008: (2) and (3) amended, p. 497, § 5, effective April 17.

12-61-108. Record of licensees - publications. The commission shall maintain a record of the names and addresses of all licensees licensed under the provisions of parts 1 and 4 of this article, together with such other information relative to the enforcement of said provisions as deemed by the commission to be necessary. Publication of the record and of any other information circulated in quantity outside the executive branch shall be in accordance with the provisions of section 24-1-136, C.R.S.

Source: L. 25: p. 437, § 19. CSA: C. 15, § 45. CRS 53: § 117-1-18. L. 63: p. 774, § 14. C.R.S. 1963: § 117-1-18. L. 64: p. 167, § 126. L. 69: p. 977, § 13. L. 75: Entire section amended, p. 518, § 6, effective July 16. L. 79: Entire section amended, p. 560, § 3, effective May 18; entire section amended, p. 563, § 6, effective May 31; entire section amended, p. 440, § 24, effective July 1. L. 83: Entire section amended, p. 831, § 28, effective July 1. L. 2001: Entire section amended, p. 25, § 4, effective March 9.

Editor's note: Amendments to this section by Senate Bill 79-119 were harmonized with Senate Bill 79-293 and House Bill 79-1268.

12-61-108.5. Compilation and publication of passing rates per educational institution for real estate licensure examinations - rules. (1) The commission shall have the authority to obtain information from each educational institution authorized to offer courses

in real estate for the purpose of compiling the number of applicants who pass the real estate licensure examination from each educational institution. The information shall include the name of each student who attended the institution and a statement of whether the student completed the necessary real estate courses required for licensure. The commission shall have access to such other information as necessary to accomplish the purpose of this section. For the purposes of this section, an "applicant" is a student who completed the required education requirements and who applied for and sat for the licensure examination.

(2) The commission shall compile the information obtained in subsection (1) of this section with applicant information retained by the commission. Specifically, the commission shall compile whether the student applied for the licensure examination and whether the applicant passed the licensure examination. The commission shall create statistical data setting forth:

- (a) The name of the educational institution;
 - (b) The number of students who completed the necessary real estate course required for licensure;
 - (c) Whether the student registered and sat for the licensure examination; and
 - (d) The number of those applicants who passed the licensure examination.
- (3) The commission shall publish this statistical data and make it available to the public quarterly.
- (4) The commission shall retain the statistical data for three years.
- (5) Specific examination scores for an applicant will be kept confidential by the commission unless the applicant authorizes release of such information.
- (6) The commission may promulgate rules for the administration of this section.

Source: L. 99: Entire section added, p. 716, § 5, effective July 1.

12-61-109. Change of license status - inactive - cancellation. (1) Immediate notice shall be given in a manner acceptable to the commission by each licensee of any change of business location or employment. A change of business address or employment without notification to the commission shall automatically inactivate the licensee's license.

(2) A broker who transfers to the address of another broker or a broker applicant who desires to be employed by another broker shall inform the commission if said broker is to be in the employ of the other broker. The employing broker shall have the control and custody of the employed broker's license. The employed broker may not act on behalf of said broker or as broker for a partnership, limited liability company, or corporation during the term of such employment; but this shall not affect the employed broker's right to transfer to another employing broker or to a location where the employed broker may conduct business as an independent broker or as a broker acting for a partnership, limited liability company, or corporation.

(3) In the event that any licensee is discharged by or terminates employment with a broker, it shall be the joint duty of both such parties to immediately notify the commission. Either party may furnish such notice in a manner acceptable to the commission. The party giving notice shall notify the other party in person or in writing of the termination of employment.

(4) It is unlawful for any such licensee to perform any of the acts authorized under the license in pursuance of this part 1, either directly or indirectly, on or after the date that employment has been terminated. When any real estate broker whose employment has been terminated is employed by another real estate broker, the commission shall, upon proper notification, enter such change of employment in the records of the commission. Not more than one employer or place of employment shall be shown for any real estate broker for the same period of time.

Source: L. 25: p. 428, § 8. **CSA:** C. 15, § 34. **CRS 53:** § 117-1-7. **L. 55:** p. 713, § 3. **L. 63:** p. 767, § 5. **C.R.S. 1963:** § 117-1-7. **L. 69:** p. 974, § 6. **L. 75:** (2) and (4) amended, p. 519, § 7, effective July 16. **L. 79:** (3) R&RE and (4) amended, p. 564, §§ 7,

8, effective May 31. **L. 91:** Entire section amended, p. 1627, § 7, effective July 1. **L. 2001:** (1) and (3) amended, p. 25, § 5, effective March 9. **L. 2008:** (2) and (4) amended, p. 504, § 12, effective April 17.

ANNOTATION

Applied in *United Buying Serv., Inc. v. State Dept. of Rev.*, 37 Colo. App. 465, 548 P.2d 1286 (1976).

12-61-110. License fees - partnership, limited liability company, and corporation licenses - rules. (1) Fees established pursuant to section 12-61-111.5 shall be charged by and paid to the commission or the agent for the commission for the following:

- (a) and (b) (Deleted by amendment, L. 96, p. 419, § 5, effective January 1, 1997.)
- (c) Each broker's examination;
- (d) Each broker's original application and license;
- (e) (Deleted by amendment, L. 96, p. 419, § 5, effective January 1, 1997.)
- (f) Each three-year renewal of a broker's license;
- (g) (Deleted by amendment, L. 96, p. 419, § 5, effective January 1, 1997.)
- (h) Any change of name, address, or employing broker requiring a change in commission records;

(i) A new application which shall be submitted when a licensed real estate broker wishes to become the broker acting for a partnership, a limited liability company, or a corporation.

(2) The proper fee shall accompany each application for licensure. The fee shall not be refundable. Failure by the person taking an examination to file the appropriate broker's application within one year of the date such person passed the examination will automatically cancel the examination, and all rights to a passing score will be terminated.

(3) Each real estate broker's license granted to an individual shall entitle such individual to perform all the acts contemplated by this part 1, without any further application on his part and without the payment of any fee other than the fees specified in this section.

(4) (a) The commission shall require that any person licensed under this part 1, whether on an active or inactive basis, renew said license on an anniversary date every three years. Renewal shall be conditioned upon fulfillment of the continuing education requirements set forth in section 12-61-110.5 and submission of fingerprints as required in section 12-61-110.8; except that any person licensed under this part 1 who maintains an inactive license and wants to renew to an active status shall only submit fingerprints as required in section 12-61-110.8 upon application to an active status and, except that, the real estate commission may acquire a name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. For persons renewing or reinstating an active license, written certification verifying completion for the previous three-year licensing period of the continuing education requirements set forth in said section shall accompany and be submitted to the commission with the application for renewal or reinstatement. For persons who did not submit certification verifying compliance with section 12-61-110.5 at the time a license was renewed or reinstated on an inactive status, written certification verifying completion for the previous three-year licensing period of the continuing education requirements set forth in said section shall accompany and be submitted with any future application to reactivate the license. The commission may by rule establish procedures to facilitate such a renewal. Until such procedures are established, every license issued under the provisions of this part 1 shall expire at 12 midnight on December 31 of the year in which issued; except that each renewal of such license shall be for three years and shall expire at 12 midnight on December 31 of the third year. In the absence of any reason or condition that might warrant the refusal of the granting of a license or the revocation thereof, the commission shall issue a new license upon receipt by the commission of the written request of the applicant and the fees therefor, as required by this section. Applications for renewal will be accepted thirty

days prior to January 1. A person who fails to renew a license before January 1 of the year succeeding the year of the expiration of such license may reinstate the license as follows:

(I) If proper application is made within thirty-one days after the date of expiration, by payment of the regular three-year renewal fee;

(II) If proper application is made more than thirty-one days but within one year after the date of expiration, by payment of the regular three-year renewal fee and payment of a reinstatement fee equal to one-half the regular three-year renewal fee;

(III) If proper application is made more than one year but within three years after the date of expiration, by payment of the regular three-year renewal fee and payment of a reinstatement fee equal to the regular three-year renewal fee.

(a.5) Repealed.

(b) Any reinstated license shall be effective only as of the date of reinstatement. Any person who fails to apply for reinstatement within three years after the expiration of a license shall, without exception, be treated as a new applicant for licensure.

(c) All reinstatement fees shall be transmitted to the state treasurer, who shall credit same to the division of real estate cash fund, as established by section 12-61-111.5.

(5) The suspension, expiration, or revocation of a real estate broker's license shall automatically inactivate every real estate broker's license where the holder of such license is shown in the commission records to be in the employ of the broker whose license has expired or has been suspended or revoked pending notification to the commission by the employed licensee of a change of employment.

(6) (Deleted by amendment, L. 91, p. 1628, § 8, effective July 1, 1991.)

Source: L. 25: p. 429, § 9. CSA: C. 15, § 35. CRS 53: § 117-1-8. L. 55: p. 714, § 4. L. 61: pp. 634, 635, §§ 2, 3. L. 63: pp. 768, 775, §§ 6, 17. C.R.S. 1963: § 117-1-8. L. 69: p. 975, § 7. L. 75: (4) and (5) amended, p. 519, § 8, effective July 16. L. 77: (4) amended, p. 775, § 1, effective June 9. L. 79: (4) amended, p. 564, § 9, effective May 31; (1) R&RE, p. 570, § 1, effective July 1. L. 83: (2) and (4) amended, p. 588, § 2, effective April 26. L. 85: (2) amended, p. 563, § 5, effective July 1. L. 86: (4) amended, p. 671, § 3, effective July 1. L. 88: (4)(a)(II) amended, p. 1430, § 7, effective June 11. L. 89: (4)(a.5) amended, p. 735, § 4, effective July 1. L. 90: IP(4)(a) and (4)(a)(III) amended, p. 831, § 1, and (4)(a.5) repealed, p. 834, § 4, effective April 24. L. 91: IP(1), (1)(a), (1)(b), (1)(e), (1)(h), (1)(i), (2), (5), and (6) amended, pp. 1627, 1628, § 8, effective July 1. L. 96: (1), (2), and (4)(b) amended, p. 419, § 5, effective January 1, 1997. L. 2001: (5) amended, p. 25, § 6, effective March 9. L. 2005: (4)(c) amended, p. 625, § 6, effective May 27; IP(4)(a) amended, p. 1290, § 1, effective July 1. L. 2008: IP(4)(a) and (5) amended, pp. 514, 505, §§ 38, 13, effective April 17.

ANNOTATION

Decisions as to whether to require previous licensee to take broker's examination rests within the sound discretion of the commission.

Howard v. Real Estate Comm'n, 35 Colo. App. 141, 531 P.2d 981 (1974).

12-61-110.5. Renewal of license - continuing education requirement. (1) Commencing January 1, 1992, except as otherwise provided in subsection (4) of this section, a broker applying for renewal of a license pursuant to section 12-61-110 (4) shall include with such application a certified statement verifying successful completion of real estate courses in accordance with the following schedule:

(a) and (b) Repealed.

(c) For licensees applying for renewal in 1994 and thereafter, passage within the previous three years of the Colorado portion of the real estate exam or completion of a minimum of twenty-four hours of credit, twelve of which shall be the credits developed by the real estate commission pursuant to subsection (2) of this section.

(2) The real estate commission shall develop twelve hours of credit designed to assure reasonable currency of real estate knowledge by licensees, which credits shall include an update of the current statutes and the rules promulgated by the commission that affect the

practice of real estate. If a licensee takes a course pursuant to rule 260 of the Colorado rules of civil procedure and such course concerns real property law, such licensee shall receive credit for such course toward the fulfillment of such licensee's continuing education requirements pursuant to this section. Such credits shall be taken from an accredited Colorado college or university; a Colorado community college; a Colorado private occupational school holding a certificate of approval from the state board for community colleges and occupational education; or an educational institution or an educational service described in section 12-59-104. Successful completion of such credits shall require satisfactory passage of a written examination or written examinations of the materials covered. Such examinations shall be audited by the commission to verify their accuracy and the validity of the grades given. The commission shall set the standards required for satisfactory passage of the examinations.

(3) All credits, other than the credits specified in subsection (2) of this section, shall be acquired from educational courses approved by the commission that contribute directly to the professional competence of a licensee. Such credits may be acquired through successful completion of instruction in one or more of the following subjects:

- (a) Real estate law;
- (b) Property exchanges;
- (c) Real estate contracts;
- (d) Real estate finance;
- (e) Real estate appraisal;
- (f) Real estate closing;
- (g) Real estate ethics;
- (h) Condominiums and cooperatives;
- (i) Real estate time-sharing;
- (j) Real estate marketing principles;
- (k) Real estate construction;
- (l) Land development;
- (m) Real estate energy concerns;
- (n) Real estate geology;
- (o) Water and waste management;
- (p) Commercial real estate;
- (q) Real estate securities and syndications;
- (r) Property management;
- (s) Real estate computer principles;
- (t) Brokerage administration and management;
- (u) Agency; and
- (v) Any other subject matter as approved by the real estate commission.

(4) A licensee applying for renewal of a license which expires on December 31 of the year in which it was issued is not subject to the education requirements set forth in subsection (1) of this section.

(5) The real estate commission shall promulgate rules and regulations to implement this section.

Source: **L. 90:** Entire section added, p. 832, § 2, effective April 24. **L. 91:** IP(1) and (2) amended, p. 1629, § 9, effective July 1. **L. 2004:** (1)(a) and (1)(b) repealed, p. 192, § 3, effective August 4. **L. 2007:** (2) amended, p. 52, § 1, effective March 14. **L. 2008:** IP(1), (1)(c), (2), and IP(3) amended, p. 511, § 32, effective April 17.

ANNOTATION

The real estate brokers licensing statute, publication of the rules and regulations promulgated by the state commission of real estate, and publication of a special announcement in The Real Estate News provided ade-

quate notice of the mandatory course requirement for real estate broker license renewal. Colo. Real Estate Comm'n v. Hanegan, 924 P.2d 1170 (Colo. App. 1996), rev'd on other grounds, 947 P.2d 933 (Colo. 1997).

12-61-110.6. Study - repeal. (Repealed)

Source: L. 99: Entire section added, p. 715, § 2, effective July 1.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 2001. (See L. 99, p. 715.)

12-61-110.8. Renewal of license - fingerprint-based criminal history record check - repeal. (Repealed)

Source: L. 2005: Entire section added, p. 1291, § 2, effective July 1. L. 2008: (1) amended, p. 505, § 14, effective April 17.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 2008. (See L. 2005, p. 1291.)

12-61-111. Disposition of fees. All fees collected by the real estate commission under parts 1 and 4 of this article, not including administrative fees that are in the nature of an administrative fine and fees retained by contractors pursuant to contracts entered into in accordance with section 12-61-103 or 24-34-101, C.R.S., shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund. Pursuant to section 12-61-111.5, the general assembly shall make annual appropriations from said fund for expenditures of the commission incurred in the performance of its duties under parts 1 and 4 of this article. The commission may request an appropriation specifically designated for educational and enforcement purposes. The expenditures incurred by the commission under parts 1 and 4 of this article shall be made out of such appropriations upon vouchers and warrants drawn pursuant to law.

Source: L. 29: p. 533, § 5. L. 35: p. 963, § 1. CSA: C. 15, § 36. L. 41: p. 626, § 6. CRS 53: § 117-1-9. L. 55: p. 715, § 5. L. 63: p. 768, § 7. C.R.S. 1963: § 117-1-9. L. 69: p. 976, § 8. L. 73: p. 1376, § 40. L. 75: Entire section amended, p. 520, § 9, effective July 16. L. 79: Entire section amended, p. 560, § 4, effective May 18; entire section amended, p. 570, § 5, effective July 1. L. 91: Entire section amended, p. 1629, § 10, effective July 1. L. 2004: Entire section amended, p. 1254, § 5, effective May 27. L. 2008: Entire section amended, p. 515, § 39, effective April 17.

Editor's note: Amendments to this section by Senate Bill 79-119 and House Bill 79-1231 were harmonized.

12-61-111.5. Fee adjustments. (1) This section shall apply to all activities of the division under parts 1, 3, 4, and 7 of this article.

(2) (a) (I) The division shall propose, as part of its annual budget request, an adjustment in the amount of each fee that it is authorized by law to collect under parts 1, 3, 4, and 7 of this article. The budget request and the adjusted fees for the division shall reflect direct and indirect costs.

(II) The costs of the HOA information and resource center, created in section 12-61-406.5, shall be paid from the HOA information and resource center cash fund created in section 12-61-406.5. The division of real estate shall estimate the direct and indirect costs of operating the HOA information and resource center and shall establish the amount of the annual registration fee to be collected under section 38-33.3-401, C.R.S. The amount of the registration fee shall be sufficient to recover such costs, subject to a maximum limit of fifty dollars and subject to adjustment to reflect the actual direct and indirect costs of operating the HOA information and resource center pursuant to the general directive to adjust fees to avoid exceeding the statutory limit on uncommitted reserves in administrative agency cash funds as set forth in section 24-75-401 (3), C.R.S.

(b) Based upon the appropriation made and subject to the approval of the executive director of the department of regulatory agencies, the division of real estate shall adjust its fees so that the revenue generated from said fees approximates its direct and indirect costs. Such fees shall remain in effect for the fiscal year for which the budget request applies. All fees collected by the division, not including fees retained by contractors pursuant to contracts entered into in accordance with section 12-61-103 or 24-34-101, C.R.S., shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund, which fund is hereby created. All moneys credited to the division of real estate cash fund shall be used as provided in this section and shall not be deposited in or transferred to the general fund of this state or any other fund.

(c) Beginning July 1, 1979, and each July 1 thereafter, whenever moneys appropriated to the division for its activities for the prior fiscal year are unexpended, said moneys shall be made a part of the appropriation to the division for the next fiscal year, and such amount shall not be raised from fees collected by the division. If a supplemental appropriation is made to the division for its activities, its fees, when adjusted for the fiscal year next following that in which the supplemental appropriation was made, shall be adjusted by an additional amount which is sufficient to compensate for such supplemental appropriation. Funds appropriated to the division in the annual long appropriations bill shall be designated as a cash fund and shall not exceed the amount anticipated to be raised from fees collected by the division.

Source: L. 79: Entire section added, p. 571, § 6, effective July 1. L. 89: (1) and (2)(a) amended, p. 735, § 5, effective July 1. L. 90: Entire section amended, p. 845, § 2, effective July 1. L. 2004: (2)(b) amended, p. 1254, § 6, effective May 27. L. 2010: (2)(a) amended, (HB 10-1278), ch. 365, p. 1721, § 2, effective January 1, 2011.

12-61-112. Records - evidence - inspection. (1) The executive director of the department of regulatory agencies shall adopt a seal by which all proceedings authorized under parts 1, 3, and 4 of this article shall be authenticated. Copies of records and papers in the office of the commission or department of regulatory agencies relating to the administration of parts 1, 3, and 4 of this article, when duly certified and authenticated by the seal, shall be received as evidence in all courts equally and with like effect as the originals. All records kept in the office of the commission or department of regulatory agencies, under authority of parts 1, 3, and 4 of this article, shall be open to public inspection at such time and in such manner as may be prescribed by rules and regulations formulated by the said commission.

(2) Repealed.

(3) The commission shall not be required to maintain or preserve licensing history records of any person licensed under the provisions of this part 1 for any period of time longer than seven years.

Source: L. 27: p. 583, § 3. CSA: C. 15, § 31. CRS 53: § 117-1-4. L. 63: p. 763, § 2. C.R.S. 1963: § 117-1-4. L. 64: p. 167, § 125. L. 69: p. 974, § 3. L. 75: Entire section amended, p. 520, § 10, effective July 16. L. 79: (1) amended, p. 560, § 5, effective May 18. L. 83: (3) added, p. 589, § 3, effective April 26; (2) amended, p. 832, § 29, effective July 1. L. 96: (2) repealed, p. 1227, § 37, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (2), see section 1 of chapter 237, Session Laws of Colorado 1996.

12-61-113. Investigation - revocation - actions against licensee - repeal. (1) The commission, upon its own motion, may, and, upon the complaint in writing of any person, shall, investigate the activities of any licensee or any person who assumes to act in such capacity within the state, and the commission, after the holding of a hearing pursuant to section 12-61-114, has the power to impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense and to censure a licensee, to place

the licensee on probation and to set the terms of probation, or to temporarily suspend or permanently revoke a license when the licensee has performed, is performing, or is attempting to perform any of the following acts and is guilty of:

(a) Knowingly making any misrepresentation or knowingly making use of any false or misleading advertising;

(b) Making any promise of a character which influences, persuades, or induces another person when he could not or did not intend to keep such promise;

(c) Knowingly misrepresenting or making false promises through agents, advertising, or otherwise;

(c.5) Violating any provision of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.;

(d) Acting for more than one party in a transaction without the knowledge of all parties thereto;

(e) Representing or attempting to represent a real estate broker other than the licensee's employer without the express knowledge and consent of that employer;

(f) In the case of a broker registered as in the employ of another broker, failing to place, as soon after receipt as is practicably possible, in the custody of that licensed broker-employer any deposit money or other money or fund entrusted to the employee by any person dealing with the employee as the representative of that licensed broker-employer;

(g) Failing to account for or to remit, within a reasonable time, any moneys coming into the licensee's possession that belong to others, whether acting as real estate brokers or otherwise, and failing to keep records relative to said moneys, which records shall contain such information as may be prescribed by the rules of the commission relative thereto and shall be subject to audit by the commission;

(g.5) Converting funds of others, diverting funds of others without proper authorization, commingling funds of others with the broker's own funds, or failing to keep such funds of others in an escrow or a trustee account with some bank or recognized depository in this state, which account may be any type of checking, demand, passbook, or statement account insured by an agency of the United States government, and to so keep records relative to the deposit which contain such information as may be prescribed by the rules and regulations of the commission relative thereto, which records shall be subject to audit by the commission;

(h) Failing to provide the purchaser and seller of real estate with a closing statement of the transaction, containing such information as may be prescribed by the rules and regulations of the commission or failing to provide a signed duplicate copy of the listing contract and the contract of sale or the preliminary agreement to sell to the parties thereto;

(i) Failing to maintain possession, for future use or inspection by an authorized representative of the commission, for a period of four years, of the documents or records prescribed by the rules and regulations of the commission or to produce such documents or records upon reasonable request by the commission or by an authorized representative of the commission;

(j) Paying a commission or valuable consideration for performing any of the functions of a real estate broker, as described in this part 1, to any person not licensed under this part 1; except that a licensed broker may pay a finder's fee or a share of any commission on a cooperative sale when such payment is made to a real estate broker licensed in another state or country. If a country does not license real estate brokers, then the payee must be a citizen or resident of said country and represent that the payee is in the business of selling real estate in said country.

(k) Disregarding or violating any provision of this part 1 or part 8 of this article, violating any reasonable rule or regulation promulgated by the commission in the interests of the public and in conformance with the provisions of this part 1 or part 8 of this article; violating any lawful commission orders; or aiding and abetting a violation of any rule, regulation, commission order, or provision of this part 1 or part 8 of this article;

(l) Repealed.

(m) Conviction of, entering a plea of guilty to, or entering a plea of nolo contendere to any crime in article 3 of title 18, C.R.S.; parts 1, 2, 3, and 4 of article 4 of title 18, C.R.S.; part 1, 2, 3, 4, 5, 7, 8, or 9 of article 5 of title 18, C.R.S.; article 5.5 of title 18, C.R.S.; parts

1, 3, 4, 6, 7, and 8 of article 6 of title 18, C.R.S.; parts 1, 3, 4, 5, 6, 7, and 8 of article 7 of title 18, C.R.S.; part 3 of article 8 of title 18, C.R.S.; article 15 of title 18, C.R.S.; article 17 of title 18, C.R.S.; section 18-18-404, 18-18-405, 18-18-406, 18-18-411, 18-18-412.5, 18-18-412.7, 18-18-412.8, 18-18-415, 18-18-416, 18-18-422, or 18-18-423, C.R.S., or any other like crime under Colorado law, federal law, or the laws of other states. A certified copy of the judgment of a court of competent jurisdiction of such conviction or other official record indicating that such plea was entered shall be conclusive evidence of such conviction or plea in any hearing under this part 1.

(m.5) Violating or aiding and abetting in the violation of the Colorado or federal fair housing laws;

(m.6) Failing to immediately notify the commission in writing of a conviction, plea, or violation pursuant to paragraph (m) or (m.5) of this subsection (1);

(n) Having demonstrated unworthiness or incompetency to act as a real estate broker by conducting business in such a manner as to endanger the interest of the public;

(o) In the case of a broker licensee, failing to exercise reasonable supervision over the activities of licensed employees;

(p) Procuring, or attempting to procure, a real estate broker's license or renewing, reinstating, or reactivating, or attempting to renew, reinstate, or reactivate, a real estate broker's license by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for such license;

(q) Claiming, arranging for, or taking any secret or undisclosed amount of compensation, commission, or profit or failing to reveal to the licensee's principal or employer the full amount of such licensee's compensation, commission, or profit in connection with any acts for which a license is required under this part 1;

(r) Using any provision allowing the licensee an option to purchase in any agreement authorizing or employing such licensee to sell, buy, or exchange real estate for compensation or commission, except when such licensee, prior to or coincident with election to exercise such option to purchase, reveals in writing to the licensee's principal or employer the full amount of the licensee's profit and obtains the written consent of such principal or employer approving the amount of such profit;

(s) (I) Fraud, misrepresentation, deceit, or conversion of trust funds that results in the payment of any claim pursuant to part 3 of this article. This subparagraph (I) is repealed, effective when the last final judgment from any of the civil actions allowed pursuant to section 12-61-302 (2) becomes effective and any resulting claim has been paid according to law. The director of the division of real estate shall notify the revisor of statutes, in writing, when the condition specified in this paragraph (s) has been satisfied.

(II) Effective on and after the repeal of part 3 of this article, fraud, misrepresentation, deceit, or conversion of trust funds that results in the entry of a civil judgment for damages.

(t) Any other conduct, whether of the same or a different character than specified in this subsection (1), which constitutes dishonest dealing;

(u) Repealed.

(v) Having had a real estate broker's or a subdivision developer's license suspended or revoked in any jurisdiction, or having had any disciplinary action taken against the broker or subdivision developer in any other jurisdiction if the broker's or subdivision developer's action would constitute a violation of this subsection (1). A certified copy of the order of disciplinary action shall be prima facie evidence of such disciplinary action.

(w) Failing to keep records documenting proof of completion of the continuing education requirements in accordance with section 12-61-110.5 for a period of four years from the date of compliance with said section;

(x) (I) Violating any provision of section 12-61-113.2.

(II) In addition to any other remedies available to the commission pursuant to this title, after notice and a hearing pursuant to section 24-4-105, C.R.S., the commission may assess a penalty for a violation of section 12-61-113.2 or of any rule promulgated pursuant to section 12-61-113.2. The penalty shall be the amount of remuneration improperly paid and shall be transmitted to the state treasurer and credited to the general fund.

(y) Within the last five years, having a license, registration, or certification issued by Colorado or another state revoked or suspended for fraud, deceit, material misrepresenta-

tion, theft, or the breach of a fiduciary duty, and such discipline denied the person authorization to practice as:

- (I) A mortgage broker or mortgage loan originator;
- (II) A real estate broker or salesperson;
- (III) A real estate appraiser, as defined by section 12-61-702 (5);
- (IV) An insurance producer, as defined by section 10-2-103 (6), C.R.S.;
- (V) An attorney;
- (VI) A securities broker-dealer, as defined by section 11-51-201 (2), C.R.S.;
- (VII) A securities sales representative, as defined by section 11-51-201 (14), C.R.S.;
- (VIII) An investment advisor, as defined by section 11-51-201 (9.5), C.R.S.; or
- (IX) An investment advisor representative, as defined by section 11-51-201 (9.6), C.R.S.

(1.5) Every person licensed pursuant to section 12-61-101 (2) (a) (X) shall give a prospective tenant a contract or receipt; and such contract or receipt shall include the address and telephone number of the real estate commission in prominent letters and shall state that the regulation of rental location agents is under the purview of the real estate commission.

(2) In the event a firm, partnership, limited liability company, association, or corporation operating under the license of a broker designated and licensed as representative of said firm, partnership, limited liability company, association, or corporation is guilty of any of the foregoing acts, the commission may suspend or revoke the right of the said firm, partnership, limited liability company, association, or corporation to conduct its business under the license of said broker, whether or not the designated broker had personal knowledge thereof and whether or not the commission suspends or revokes the individual license of said broker.

(3) Upon request of the commission, when any real estate broker is a party to any suit or proceeding, either civil or criminal, arising out of any transaction involving the sale or exchange of any interest in real property or out of any transaction involving a leasehold interest in the real property and when such broker is involved in such transaction in such capacity as a licensed broker, it shall be the duty of said broker to supply to the commission a copy of the complaint, indictment, information, or other initiating pleading and the answer filed, if any, and to advise the commission of the disposition of the case and of the nature and amount of any judgment, verdict, finding, or sentence that may be made, entered, or imposed therein.

(4) This part 1 shall not be construed to relieve any person from civil liability or criminal prosecution under the laws of this state.

(5) Complaints of record in the office of the commission and the results of staff investigations may, in the discretion of the commission, be closed to public inspection, except as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee.

Editor's note: This version of subsection (5) is effective until July 1, 2013.

(5) Complaints of record in the office of the commission and commission investigations, including commission investigative files, are closed to public inspection. Stipulations and final agency orders are public records subject to sections 24-72-203 and 24-72-204, C.R.S.

Editor's note: This version of subsection (5) is effective July 1, 2013.

(6) When a complaint or an investigation discloses an instance of misconduct which, in the opinion of the commission, does not warrant formal action by the commission but which should not be dismissed as being without merit, the commission may send a letter of admonition by certified mail, return receipt requested, to the licensee against whom a complaint was made and a copy thereof to the person making the complaint, but the letter shall advise the licensee that the licensee has the right to request in writing, within twenty days after proven receipt, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is

timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

(7) All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund.

(8) Any application for licensure from a person whose license has been revoked shall not be considered until the passage of one year from the date of revocation.

(9) When the division of real estate becomes aware of facts or circumstances that fall within the jurisdiction of a criminal justice or other law enforcement authority upon investigation of the activities of a licensee, the division shall, in addition to the exercise of its authority under this part 1, refer and transmit such information, which may include originals or copies of documents and materials, to one or more criminal justice or other law enforcement authorities for investigation and prosecution as authorized by law.

Source: **L. 25:** p. 432, § 13. **CSA:** C. 15, § 39. **CRS 53:** § 117-1-12. **L. 63:** p. 769, § 10. **C.R.S. 1963:** § 117-1-12. **L. 69:** p. 976, § 10. **L. 71:** p. 1111, § 1. **L. 72:** p. 566, § 41. **L. 73:** p. 1147, §§ 1. **L. 75:** IP(1), (1)(f), (1)(g), (1)(m), and (1)(q) amended and (1)(g.5) added, p. 521, §§ 11, 12, effective July 16. **L. 77:** IP(1), (1)(i), (1)(m), and (1)(p) amended, p. 773, § 3, effective June 9. **L. 79:** (1)(u) added, p. 560, § 6, effective May 18. **L. 83:** (1)(m) and (3) amended, p. 589, § 4, effective April 26; (1)(j) amended, p. 591, § 1, effective May 20. **L. 85:** IP(1) amended and (1)(v) and (6) added, pp. 563, 564, §§ 6, 7, effective July 1. **L. 86:** (1)(u) repealed and (1.5) added, p. 1217, §§ 11, 12, effective July 1. **L. 87:** IP(1) amended and (7) added, p. 533, § 1, effective July 1. **L. 89:** IP(1), (1)(a), (1)(c), (1)(k), (1)(m), (1)(s), and (1)(v) amended, (1)(c.5) and (1)(m.5) added, and (1)(l) repealed, p. 735, 744, §§ 6, 25, effective July 1. **L. 90:** (1)(p) amended and (1)(w) added, p. 834, § 3, effective April 24. **L. 91:** (1)(c), (1)(e), (1)(f), (1)(g), (1)(g.5), (1)(i), (1)(j), (1)(n), (1)(o), (1)(p), (1)(q), (1)(r), (1)(v), (2), (3), and (6) amended and (1)(m.6) added, p. 1629, § 11, effective July 1. **L. 93:** (1)(k) amended, p. 992, § 2, effective January 1, 1994. **L. 99:** (8) added, p. 717, § 6, effective July 1. **L. 2001:** (1)(i), (1)(m), (1)(w), and (2) amended, p. 25, § 7, effective March 9. **L. 2005:** (1)(s) and (7) amended, p. 625, § 7, effective May 27. **L. 2006:** (1)(x) added, p. 272, § 6, effective July 1; (9) added, p. 1069, § 2, effective January 1, 2007. **L. 2008:** (1)(c), (1)(f), (1)(g), (1)(j), (1)(m), (1)(n), (1)(p), (1)(v), (1.5), and (3) amended and (1)(y) added, pp. 505, 513, §§ 15, 36, 35, effective April 17. **L. 2009:** (1)(y)(l) amended, (HB 09-1085), ch. 303, p. 1638, § 3, effective August 5. **L. 2012:** (5) amended, (HB 12-1110), ch. 277, p. 1473, § 15, effective July 1, 2013.

Cross references: For an alternative disciplinary action for persons licensed pursuant to this part 1, see § 24-34-106.

ANNOTATION

Law reviews. For article, "Colorado 'Buyer Brokerage': Does it Still Exist After Velten v. Robertson?", see 55 U. Colo. L. Rev. 83 (1983). For article, "Affiliated Business Arrangements: Compliance with RESPA and H.B. 06-1141", see 35 Colo. Law. 65 (November 2006).

Terms "unworthiness" and "incompetency" are not unconstitutionally vague as used in subsection (1)(n). *Eckley v. Colorado Real Estate Comm'n*, 752 P.2d 68 (Colo. 1988).

Commission has jurisdiction over broker dealing for own account. Where a real estate broker is dealing in real estate for his own account, the Colorado real estate commission has jurisdiction over his acts and can suspend or revoke his license for proven violations of the licensing statute or of the commission's rules. *Seibel v. Colo. Real Estate Comm'n*, 34 Colo. App. 415, 530 P.2d 1290 (1974).

Real estate agent has duty to act with utmost faith and loyalty. Under both the common law and applicable statutes, a real estate agent, in all dealings affecting the subject matter of his agency, has a fiduciary duty to act with the utmost faith and loyalty in behalf of his principal. This duty requires the agent to make a full and complete disclosure before he becomes the purchaser of property which is the subject of his agency with his principal. *M.S.R., Inc. v. Lish*, 34 Colo. App. 320, 527 P.2d 912 (1974).

Unless otherwise agreed, in all dealings affecting the subject matter of his agency, a real estate broker or salesman has a fiduciary duty to act with the utmost faith and loyalty in behalf of, and to act solely for the benefit of, his principal. *Lestoque v. M.R. Mansfield Realty, Inc.*, 36 Colo. App. 32, 536 P.2d 1146 (1975).

Where real estate agents had a combined

two-thirds interest in the buyer corporation, they did not act with the utmost loyalty to their principal, and, because they initially failed to advise their principal that they owned two-thirds of the buyer corporation, they did not make a full and complete disclosure of their interests to her. Since the agents in fact own a controlling interest in the buyer corporation, knowledge of the breach of their fiduciary duty as licensed real estate agents is imputed to the buyer. *M.S.R., Inc. v. Lish*, 34 Colo. App. 320, 527 P.2d 912 (1974).

Complete disclosure to and informed consent of principal required. The fiduciary duty of a real estate agent to act with faith and loyalty requires that the agent make a full and complete disclosure to, and obtain the informed consent from, the principal before the agent can sell his own property to the principal or can himself buy the principal's property. *Lestoque v. M.R. Mansfield Realty, Inc.*, 36 Colo. App. 32, 536 P.2d 1146 (1975).

If there is no such disclosure or consent, there is a breach of duty. A sale by the real estate broker of his own property to the principal or purchase of the principal's property for his own without the informed knowledge and consent of the principal is a breach of duty, and, in such a transaction, if the agent makes a profit, he must account therefor to his principal. *Lestoque v. M.R. Mansfield Realty, Inc.*, 36 Colo. App. 32, 536 P.2d 1146 (1975).

Accounting is required. Rule requiring real estate broker to account to principal if the agent makes a profit in violation of fiduciary duty applies regardless of whether there is any harm to the principal as a result of the self-dealing by the agent. In such event, the principal can disaffirm and avoid the deal or can ratify the deal and take the profits. *Lestoque v. M.R. Mansfield Realty, Inc.*, 36 Colo. App. 32, 536 P.2d 1146 (1975).

Absent fiduciary duty, evidence of misconduct insufficient to suspend license. Absent a fiduciary duty incumbent on an agent, evidence of real estate broker's misconduct was insufficient to sustain a suspension of his license under subsections (1)(n) and (1)(t). *Hiller v. Real Estate Comm'n*, 627 P.2d 769 (Colo. 1981).

Fiduciary duty imposed on licensed brokers pursuant to paragraphs (g) and (g.5) of subsection (1) fall within the meaning of section 523 (a)(4) of the federal bankruptcy code. In *re Currin*, 55 Bankr. 928 (Bankr. D. Colo. 1985).

Subsection (1)(m) of this section, read together with § 24-5-101, does not authorize the commission to revoke a broker's license based solely on his or her conviction of a felony. The commission bears the burden of proving not only that the licensee was convicted of a felony, but also that he or she has not been rehabilitated. *Colo. Real Estate Comm'n v. Bartlett*, 272 P.3d 1099 (Colo. App. 2011).

Failure to provide purchaser with sufficiently detailed closing statement in violation of rule E-5(b) of the rules of the real estate commission was violation of subsections (1)(h) and (1)(n). *Eckley v. Colo. Real Estate Comm'n*, 752 P.2d 68 (Colo. 1988).

Failure to properly deposit escrow funds in violation of subsection (1)(g.5) and rule E-1 of the rules of the real estate commission was incompetency and unworthiness in violation of subsection (1)(n). *Eckley v. Colo. Real Estate Comm'n*, 752 P.2d 68 (Colo. 1988).

Application of disciplinary sections. The disciplinary sections apply even when the broker is selling or buying his own property. *Hammer v. Real Estate Comm'n*, 40 Colo. App. 260, 576 P.2d 191 (1977).

Disciplinary action of real estate commission was not arbitrary or capricious. Order of real estate commission suspending license of broker in reliance upon hearing officer's finding that broker's failure to disclose financial records, making material misrepresentations, failure to deposit trust funds into escrow account, failure to provide sufficiently detailed closing statement and other misconduct constituted a violation of subsection (1)(n) was neither arbitrary nor capricious. *Eckley v. Colo. Real Estate Comm'n*, 752 P.2d 68 (Colo. 1988).

The imposition of sanctions is a discretionary function that cannot be overturned unless it is an abuse of that discretion. As long as the record as a whole provides sufficient evidence that the penalty is not manifestly excessive in relation to the misconduct and the public need, the penalty will be upheld. The "reasonable basis" standard does not apply to the review of an agency's imposition of sanctions. *Colo. Real Estate Comm'n v. Hanegan*, 947 P.2d 933 (Colo. 1997).

The commission is not required to impose the same disciplinary sanction in all comparable cases. *Colo. Real Estate Comm'n v. Bartlett*, 272 P.3d 1099 (Colo. App. 2011).

Real estate commission may discipline real estate agents for related activities that do not require a license. *Hart v. Colo. Real Estate Comm'n*, 702 P.2d 763 (Colo. App. 1985).

Violation of requirements of this section may not be vindicated by action of another agency. The fact that liquor license authority issued license based upon certain documents does not cure violations of this section represented by those documents. *Eckley v. Colo. Real Estate Comm'n*, 752 P.2d 68 (Colo. 1988).

Private cause of action not inferred. In light of enforcement procedures provided in this section, coupled with lack of legislative intent authorizing a private cause of action, such a cause of action must not be inferred. *Holter v. Moore and Co.*, 681 P.2d 962 (Colo. App. 1983).

Applied in *Holter v. Moore & Co.*, 702 F.2d 854 (10th Cir. 1983); *Hart v. Colo. Real Estate Comm'n*, 702 P.2d 763 (Colo. App. 1985).

12-61-113.2. Affiliated business arrangements - definitions - disclosures - enforcement and penalties - reporting - rules - investigation information shared with the division of insurance. (1) As used in this section, unless the context otherwise requires:

(a) “Affiliated business arrangement” means an arrangement in which:

(I) A provider of settlement services or an associate of a provider of settlement services has either an affiliate relationship with or a direct beneficial ownership interest of more than one percent in another provider of settlement services; and

(II) A provider of settlement services or the associate of a provider directly or indirectly refers settlement service business to another provider of settlement services or affirmatively influences the selection of another provider of settlement services.

(b) “Associate” means a person who has one or more of the following relationships with a person in a position to refer settlement service business:

(I) A spouse, parent, or child of such person;

(II) A corporation or business entity that controls, is controlled by, or is under common control with such person;

(III) An employer, officer, director, partner, franchiser, or franchisee of such person, including a broker acting as an independent contractor; or

(IV) Anyone who has an agreement, arrangement, or understanding with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement service business to benefit financially from referrals of such business.

(c) “Settlement service” means any service provided in connection with a real estate settlement including, but not limited to, the following:

(I) Title searches;

(II) Title examinations;

(III) The provision of title certificates;

(IV) Title insurance;

(V) Services rendered by an attorney;

(VI) The preparation of title documents;

(VII) Property surveys;

(VIII) The rendering of credit reports or appraisals;

(IX) Real estate appraisal services;

(X) Home inspection services;

(XI) Services rendered by a real estate broker;

(XII) Pest and fungus inspections;

(XIII) The origination of a loan;

(XIV) The taking of a loan application;

(XV) The processing of a loan;

(XVI) Underwriting and funding of a loan;

(XVII) Escrow handling services;

(XVIII) The handling of the processing; and

(XIX) Closing of settlement.

(2) (a) An affiliated business arrangement is permitted where the person referring business to the affiliated business arrangement receives payment only in the form of a return on an investment and where it does not violate the provisions of section 12-61-113.

(b) If a licensee or the employing broker of a licensee is part of an affiliated business arrangement when an offer to purchase real property is fully executed, the licensee shall disclose to all parties to the real estate transaction the existence of the arrangement. The disclosure shall be written, shall be signed by all parties to the real estate transaction, and shall comply with the federal “Real Estate Settlement Procedures Act of 1974”, as amended, 12 U.S.C. sec. 2601 et seq.

(c) A licensee shall not require the use of an affiliated business arrangement or a particular provider of settlement services as a condition of obtaining services from that licensee for any settlement service. For the purposes of this paragraph (c), “require the use” shall have the same meaning as “required use” in 24 CFR 3500.2 (b).

(d) No licensee shall give or accept any fee, kickback, or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a

settlement service involving an affiliated business arrangement shall be referred to any provider of settlement services.

(e) Nothing in this section shall be construed to prohibit payment of a fee to:

(I) An attorney for services actually rendered;

(II) A title insurance company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance;

(III) A lender to its duly appointed agent for services actually performed in the making of a loan.

(f) Nothing in this section shall be construed to prohibit payment to any person of:

(I) A bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed;

(II) A fee pursuant to cooperative brokerage and referral arrangements or agreements between real estate brokers.

(g) It shall not be a violation of this section for an affiliated business arrangement:

(I) To require a buyer, borrower, or seller to pay for the services of any attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction; or

(II) If an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or her law practice.

(h) No person shall be liable for a violation of this section if such person proves by a preponderance of the evidence that such violation was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures that are reasonably adopted to avoid such error.

(3) On and after July 1, 2006, a licensee shall disclose at the time the licensee enters into or changes an affiliated business arrangement, in a form and manner acceptable to the commission, the names of all affiliated business arrangements to which the licensee is a party. The disclosure shall include the physical locations of the affiliated businesses.

(4) On and after July 1, 2006, an employing broker, in a form and manner acceptable to the commission, shall at least annually disclose the names of all affiliated business arrangements to which the employing broker is a party. The disclosure shall include the physical locations of the affiliated businesses.

(5) The commission may promulgate rules concerning the creation and conduct of an affiliated business arrangement, including, but not limited to, rules defining what constitutes a sham affiliated business arrangement. The commission shall adopt the rules, policies, or guidelines issued by the United States department of housing and urban development concerning the federal "Real Estate Settlement Procedures Act of 1974", as amended, 12 U.S.C. sec. 2601 et seq. Rules adopted by the commission shall be at least as stringent as the federal rules and shall ensure that consumers are adequately informed about affiliated business arrangements. The commission shall consult with the insurance commissioner pursuant to section 10-11-124 (2), C.R.S., concerning rules, policies, or guidelines the insurance commissioner adopts concerning affiliated business arrangements. Neither the rules promulgated by the commissioner nor the real estate commission may create a conflicting regulatory burden on an affiliated business arrangement.

(6) The division may share information gathered during an investigation of an affiliated business arrangement with the division of insurance.

Source: L. 99: Entire section added, p. 1030, § 1, effective May 29. L. 2006: Entire section R&RE, p. 269, § 5, effective July 1. L. 2007: (2)(b) and (5) amended, p. 2023, § 21, effective June 1.

ANNOTATION

Law reviews. For article, "Affiliated Business Arrangements: Compliance with RESPA

and H.B. 06-1141", see 35 Colo. Law. 65 (November 2006).

12-61-113.5. Mobile home transactions - requirements. (Repealed)

Source: **L. 82:** Entire section added, p. 266, § 3, effective March 25. **L. 94:** Entire section repealed, p. 705, § 5, effective April 19.

12-61-114. Hearing - administrative law judge - review - rule-making authority.

(1) Except as otherwise provided in this section, all proceedings before the commission with respect to disciplinary actions and denial of licensure under this part 1 and part 8 of this article and certifications issued under part 4 of this article shall be conducted by an administrative law judge pursuant to the provisions of sections 24-4-104 and 24-4-105, C.R.S.

(2) Such proceedings shall be held in the county where the commission has its office or in such other place as the commission may designate. If the licensee is an employed broker, the commission shall also notify the broker employing the licensee by mailing, by first-class mail, a copy of the written notice required under section 24-4-104 (3), C.R.S., to the employing broker's last-known business address.

(3) An administrative law judge shall conduct all hearings for denying, suspending, or revoking a license or certificate on behalf of the commission, subject to appropriations made to the department of personnel. Each administrative law judge shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S. The administrative law judge shall conduct the hearing pursuant to the provisions of sections 24-4-104 and 24-4-105, C.R.S. No license shall be denied, suspended, or revoked until the commission has made its decision by a majority vote.

(4) The decision of the commission in any disciplinary action or denial of licensure under this section is subject to review by the court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S. In order to effectuate the purposes of parts 1, 3, 4, and 8 of this article, the commission has the power to promulgate rules and regulations pursuant to article 4 of title 24, C.R.S. The commission may appear in court by its own attorney.

(5) Pursuant to said proceeding, the court has the right, in its discretion, to stay the execution or effect of any final order of the commission; but a hearing shall be held affording the parties an opportunity to be heard for the purpose of determining whether the public health, safety, and welfare would be endangered by staying the commission's order. If the court determines that the order should be stayed, it shall also determine at said hearing the amount of the bond and adequacy of the surety, which bond shall be conditioned upon the faithful performance by such petitioner of all obligations as a real estate broker and upon the prompt payment of all damages arising from or caused by the delay in the taking effect of or enforcement of the order complained of and for all costs that may be assessed or required to be paid in connection with such proceedings.

(6) In any hearing conducted by the commission in which there is a possibility of the denial, suspension, or revocation of a license because of the conviction of a felony or of a crime involving moral turpitude, the commission shall be governed by the provisions of section 24-5-101, C.R.S.

Source: **L. 25:** p. 434, § 14. **CSA:** C. 15, § 40. **CRS 53:** § 117-1-13. **L. 61:** p. 636, § 1. **L. 63:** p. 772, § 11. **C.R.S. 1963:** § 117-1-13. **L. 69:** p. 976, § 11. **L. 73:** pp. 529, 1147, §§ 71, 2. **L. 75:** (1) to (4) and (6) amended, p. 522, § 13, effective July 16. **L. 76:** (3) R&RE, p. 581, § 10, effective May 24. **L. 77:** (3) amended, p. 773, § 4, effective June 9. **L. 78:** (3) amended, p. 260, § 35, effective May 23. **L. 79:** (1) and (4) amended, p. 561, § 7, effective May 18; (3) amended, p. 565, § 10, effective May 31. **L. 83:** (1) and (3) amended, p. 589, § 5, effective April 26. **L. 85:** (4) and (5) amended, p. 564, § 8, effective July 1. **L. 87:** (1) and (3) amended, p. 951, § 51, effective March 13. **L. 89:** (1) and (4) amended, p. 737, § 7, effective July 1. **L. 91:** (2) and (5) amended, p. 1632, § 12, effective July 1. **L. 93:** (1) and (4) amended, p. 992, § 3, effective January 1, 1994. **L. 95:** (3) amended, p. 637, § 22, effective July 1. **L. 2008:** (2) and (5) amended, p. 507, § 16, effective April 17.

ANNOTATION

Administrative hearing to revoke or suspend license is a disciplinary, not a criminal, proceeding. Seibel v. Colo. Real Estate Comm'n, 34 Colo. App. 415, 530 P.2d 1290 (1974).

Recording not required. Neither this section or the administrative procedure act require that

proceedings of the commission to review a hearing officer's initial decision in a disciplinary case be recorded. Ranum v. Colo. Real Estate Comm'n, 713 P.2d 418 (Colo. App. 1985).

12-61-114.5. Rules. All rules adopted or amended by the commission on or after July 1, 1979, shall be subject to sections 24-4-103 (8) (c) and (8) (d) and 24-34-104 (9) (b) (II), C.R.S.

Source: L. 79: Entire section added, p. 565, § 11, effective May 31; entire section added, pp. 568, 571, §§ 4, 6, effective July 1. L. 80: Entire section amended, p. 787, § 19, effective June 5. L. 81: Entire section amended, p. 1178, § 5, effective July 1.

12-61-115. Subpoena compelling attendance of witnesses, records, and documents. (Repealed)

Source: L. 25: p. 435, § 15. CSA C. 15, § 41. CRS 53: § 117-1-14. L. 63: p. 773, § 12. C.R.S. 1963: § 117-1-14. L. 69: p. 977, § 12. L. 75: Entire section R&RE, p. 522, § 14, effective July 16. L. 76: Entire section repealed, p. 588, § 28, effective May 24.

12-61-116. Failure to obey subpoena - penalty. (Repealed)

Source: L. 25: p. 435, § 16. CSA: C. 15, § 42. CRS 53: § 117-1-15. C.R.S. 1963: § 117-1-15. L. 75: Entire section amended, p. 523, § 15, effective July 16. L. 76: Entire section repealed, p. 588, § 28, effective May 24.

12-61-117. Broker remuneration. It is unlawful for a real estate broker registered in the commission office as in the employ of another broker to accept a commission or valuable consideration for the performance of any of the acts specified in this part 1 from any person except the broker's employer, who shall be a licensed real estate broker.

Source: L. 25: p. 432, § 12. CSA: C. 15, § 38. CRS 53: § 117-1-11. L. 63: p. 769, § 9. C.R.S. 1963: § 117-1-11. L. 91: Entire section amended, p. 1633, § 13, effective July 1. L. 2008: Entire section amended, p. 507, § 17, effective April 17.

ANNOTATION

Applied in Broughall v. Black Forest Dev. Co., 196 Colo. 503, 593 P.2d 314 (1978); Holter v. Moore & Co., 702 F.2d 854 (10th Cir. 1983).

12-61-118. Acts of third parties - broker's liability. Any unlawful act or violation of any of the provisions of this part 1 upon the part of an employee, officer, or member of a licensed real estate broker shall not be cause for disciplinary action against a real estate broker, unless it appears to the satisfaction of the commission that the real estate broker had actual knowledge of the unlawful act or violation or had been negligent in the supervision of employees.

Source: L. 25: p. 436, § 17. CSA: C. 15, § 43. CRS 53: § 117-1-16. L. 63: p. 774, § 13. C.R.S. 1963: § 117-1-16. L. 75: Entire section amended, p. 523, § 16, effective

July 16. **L. 89:** Entire section amended, p. 737, § 8, effective July 1. **L. 91:** Entire section amended, p. 1633, § 14, effective July 1. **L. 2008:** Entire section amended, p. 507, § 18, effective April 17.

12-61-119. Violations. Any natural person, firm, partnership, limited liability company, association, or corporation violating the provisions of this part 1 by acting as real estate broker in this state without having obtained a license or by acting as real estate broker after the broker's license has been revoked or during any period for which said license may have been suspended is guilty of a misdemeanor and, upon conviction thereof, if a natural person, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment and, if an entity, shall be punished by a fine of not more than five thousand dollars. A second violation, if by a natural person, shall be punishable by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Source: **L. 25:** p. 437, § 21. **CSA:** C. 15, § 46. **CRS 53:** § 117-1-19. **L. 63:** p. 774, § 15. **C.R.S. 1963:** § 117-1-19. **L. 91:** Entire section amended, p. 1633, § 15, effective July 1. **L. 2008:** Entire section amended, p. 507, § 19, effective April 17.

ANNOTATION

To act without a license is made a criminal offense by this section. *Cary v. Borden Co.*, 153 Colo. 344, 386 P.2d 585 (1963).

12-61-120. Subpoena compelling attendance of witnesses and production of records and documents. The commission, the director for the commission, or the administrative law judge appointed for hearings may issue a subpoena compelling the attendance and testimony of witnesses and the production of books, papers, or records pursuant to an investigation or hearing of such commission. Such subpoenas shall be served in the same manner as subpoenas issued by district courts and shall be issued without discrimination between public or private parties requiring the attendance of witnesses and the production of documents at hearings. If a person fails or refuses to obey a subpoena issued by the commission, the director, or the appointed administrative law judge, the commission may petition the district court having jurisdiction for issuance of a subpoena in the premises, and the court shall, in a proper case, issue its subpoena. Any person who refuses to obey such subpoena shall be punished as provided in section 12-61-121.

Source: **L. 79:** Entire section added, p. 565, § 11, effective May 31. **L. 87:** Entire section amended, p. 951, § 52, effective March 13.

12-61-121. Failure to obey subpoena - penalty. Any person who willfully fails or neglects to appear and testify or to produce books, papers, or records required by subpoena, duly served upon him in any matter conducted under parts 1, 3, and 4 of this article, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of twenty-five dollars, or imprisonment in the county jail for not more than thirty days for each such offense, or by both such fine and imprisonment. Each day such person so refuses or neglects shall constitute a separate offense.

Source: **L. 79:** Entire section added, p. 565, § 11, effective May 31. **L. 89:** Entire section amended, p. 737, § 9, effective July 1.

12-61-122. Powers of commission - injunctions. The commission may apply to a court of competent jurisdiction for an order enjoining any act or practice which constitutes a violation of parts 1, 3, and 4 of this article, and, upon a showing that a person is engaging

or intends to engage in any such act or practice, an injunction, restraining order, or other appropriate order shall be granted by such court regardless of the existence of another remedy therefor. Any notice, hearing, or duration of any injunction or restraining order shall be made in accordance with the provisions of the Colorado rules of civil procedure.

Source: **L. 83:** Entire section added, p. 590, § 6, effective April 26. **L. 89:** Entire section amended, p. 737, § 10, effective July 1.

Cross references: For the Colorado rule of civil procedure concerning injunctions, see C.R.C.P. 65.

12-61-123. Repeal of part. This part 1 is repealed, effective July 1, 2017. Prior to such repeal, the real estate division, including the real estate commission, shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: **L. 91:** Entire section added, p. 685, § 41, effective April 20. **L. 99:** Entire section amended, p. 717, § 7, effective July 1. **L. 2004:** Entire section amended, p. 349, § 13, effective July 1. **L. 2008:** Entire section amended, p. 496, § 1, effective April 17.

PART 2

BROKERS' COMMISSIONS

12-61-201. When entitled to commission. No real estate agent or broker is entitled to a commission for finding a purchaser who is ready, willing, and able to complete the purchase of real estate as proposed by the owner until the same is consummated or is defeated by the refusal or neglect of the owner to consummate the same as agreed upon.

Source: **L. 15:** p. 397, § 1. **C.L.** § 4852. **CSA:** C. 15, § 25. **CRS 53:** § 117-2-1. **C.R.S. 1963:** § 117-2-1.

ANNOTATION

Law reviews. For article, "A Decade of Colorado Law: Conflict of Laws, Security, Contracts, and Equity", see 23 Rocky Mt. L. Rev. 247 (1951). For article, "One Year Review of Contracts", see 34 Dicta 85 (1957). For article, "One Year Review of Corporations, Partnerships, and Agency", see 34 Dicta 129 (1957). For note, "Real Estate Brokerage Commissions in Colorado", see 35 Dicta 297 (1958). For note, "Colorado Real Estate Broker Listing Contracts", see 35 U. Colo. L. Rev. 205 (1963). For article, "Finders and Finders' Fees", see 47 Den. L.J. 448 (1970).

When broker entitled to commission. The general rule is that a real estate broker, under a valid listing agreement, is entitled to recover a commission (1) when he produces a purchaser who is ready, willing, and able to purchase the property upon the terms designated by the principal, and (2) he is the efficient agent or procuring cause of the sale. *Circle T Corp. v. Deerfield*, 166 Colo. 238, 444 P.2d 404 (1968); *Muck v. McKanna*, 687 P.2d 1326 (Colo. App. 1984); *Harding v. Lucero*, 721 P.2d 695 (Colo. App. 1986); *Real Equity Diversification v. Coville*, 744 P.2d 756 (Colo. App. 1987); *In re Ruetz*, 317 B.R. 549 (Bankr. D. Colo. 2004).

Where a vendor refuses to consummate a transaction, and a deal fails because of such refusal, a broker is entitled to his commission. *Gerbaz v. Hulsey*, 132 Colo. 359, 288 P.2d 357 (1955).

When plaintiffs produced a purchaser ready, willing, and able to purchase the listed property in accordance with the terms and conditions prescribed by the owners, they were entitled to their commission. *McCullough v. Thompson*, 133 Colo. 352, 295 P.2d 221 (1956); *Watson v. United Farm Agency, Inc.*, 165 Colo. 439, 439 P.2d 738 (1968).

If the actions of the lessor, or his neglect, defeated consummation of this lease, he is not to be relieved of his liability to pay the broker. *M.R. Mansfield Realty, Inc. v. Sunshine*, 38 Colo. App. 334, 561 P.2d 342 (1976), *aff'd*, 195 Colo. 95, 575 P.2d 847 (1978).

A broker is entitled to his commission if he produces a ready, willing, and able purchaser, even if the vendor, prior to execution of a contract, refuses to consummate the transaction and the deal fails because of such refusal. *Colo. Inv. Servs., Inc., v. Hager*, 685 P.2d 1371 (Colo. App. 1984).

Broker entitled to commission where the owner and the purchaser thereafter conduct further negotiations resulting in a change of the terms. *Brewer v. Williams*, 147 Colo. 146, 362 P.2d 1033 (1961).

The broker must find the purchaser and the sale must proceed from his efforts acting as broker. *Bradley Realty Inv. Co. v. Schwartz*, 145 Colo. 65, 357 P.2d 638 (1960).

There is no presumption that purchaser is ready, willing, and able to purchase. *Horton-Cavey Realty Co. v. Reese*, 34 Colo. App. 323, 527 P.2d 914 (1974).

Burden of proof on agent. Real estate agent had the burden to establish not only its authority to act as the sales agent, but also that plaintiff had produced a purchaser who was ready, able, and willing to purchase on the terms proposed by sellers. *Horton-Cavey Realty Co. v. Reese*, 34 Colo. App. 323, 527 P.2d 914 (1974).

Broker's right to receive the brokerage commission depends upon the terms of the listing agreement and the duties actually performed by the broker. *Watson v. United Farm Agency, Inc.*, 165 Colo. 439, 439 P.2d 738 (1968).

The right to collect a commission is inchoate until the deal closes or the seller refuses or neglects to complete the deal. The contingent or inchoate nature of that interest does not negate the broker or agent's right to receive a commission if the contingencies are satisfied. In re Ruetz, 317 B.R. 549 (Bankr. D. Colo. 2004).

Where by the agreement, the owners expressly agree to do certain things, and the broker does not expressly agree to do anything, courts uniformly hold that such a document is not a binding contract until some service is rendered by the broker looking to the sale of the property. *Circle T Corp. v. Deerfield*, 166 Colo. 238, 444 P.2d 404 (1968).

A broker who had a nonexclusive listing of property, and who failed to produce a purchaser, ready, willing, and able to buy the listed property upon terms satisfactory to the owner or upon any terms suggested by the owner, was not entitled to a commission upon the sale of the property by another broker. *Ginsberg v. Frankenberg*, 133 Colo. 382, 295 P.2d 1036 (1956).

Where the list furnished to the broker was not a written listing agreement, this meant that the seller had the privilege of refusing to accept the offer to purchase tendered by the broker on behalf of his client, and it therefore follows that no commission was due. *Stavely v. Johnson*, 157 Colo. 56, 400 P.2d 922 (1965).

A contract of employment may be oral or may be implied from the particular circumstances of the case. *Brewer v. Williams*, 147 Colo. 146, 362 P.2d 1033 (1961); *Fletcher v. Garrett*, 167 Colo. 60, 445 P.2d 401 (1968);

Harding v. Lucero, 721 P.2d 695 (Colo. App. 1986).

Where an antecedent oral listing agreement which was subsequently modified in writing was source of brokers' employment and was not dependent upon a particular transaction, such agreement governed two separate and unrelated transactions by which property was sold to purchaser procured by brokers. *Harding v. Lucero*, 721 P.2d 695 (Colo. App. 1986).

The circumstances from which a contract may be implied seem to be two: first, that the broker or agent has rendered services, and is permitted to do so in such a manner as to indicate that he expected to be paid for these services; and second, that the services are beneficial to the party sought to be made liable. *Chambers v. Shivers*, 31 Colo. App. 16, 497 P.2d 327 (1972).

The broker's right to remuneration for his service must be predicated on contractual relations existing between himself and the person against whom the alleged right is sought to be enforced. *Chambers v. Shivers*, 31 Colo. App. 16, 497 P.2d 327 (1972).

Where plaintiff broker failed to show that she had an expectation of being paid a commission by defendant, such failure is fatal to her claim of the existence of an implied contract, and she is not entitled to a commission. *Chambers v. Shivers*, 31 Colo. App. 16, 497 P.2d 327 (1972).

Absent contract so specifying, one cannot claim broker's commission for merely participating in negotiating or closing transaction between ready buyer and willing seller since such services, as matter of law, are not procuring or efficient cause of sale. *Stank v. Michaelson*, 32 Colo. App. 75, 506 P.2d 757 (1973).

Where buyer planned to purchase specific property before he contacted plaintiff, and all plaintiff did was assist buyer in completing plan to purchase property, and where plaintiff was not efficient agent or procuring cause of sale, plaintiff was not entitled to broker's commission in absence of contract so specifying. *Stank v. Michaelson*, 32 Colo. App. 75, 506 P.2d 757 (1973).

A broker cannot recover his fee where the principals merely conclude an executory contract, performance of which depends upon fulfillment of an express condition precedent, but the broker's right to the commission could not be defeated by the owner's failure to perform an unambiguous promise according to the agreed terms of sale. *Watson v. United Farm Agency, Inc.*, 165 Colo. 439, 439 P.2d 738 (1968).

Where the fee is contingent upon the result achieved, the broker is entitled to receive the fee agreed upon regardless of the amount of time spent. *Bamford v. Cope*, 31 Colo. App. 161, 499 P.2d 639 (1972).

A broker who participates in a transaction resulting in the sale of property without authorization from the seller to act as his agent is not entitled to a commission from the seller. *Chambers v. Shivers*, 31 Colo. App. 16, 497 P.2d 327 (1972).

Where variation between offer and listing is substantial, seller is at liberty to reject offer without explanation, and the broker may not use the failure to state specific objections as grounds for claiming a commission. *Horton-Cavey Realty Co. v. Reese*, 34 Colo. App. 323, 527 P.2d 914 (1974).

Where an offer contains substantial additions to or variations from the terms of the listing agreement, the broker is not entitled to a commission, because he failed to perform according to the terms of his employment contract. Regardless of whether the seller is rejecting the offer because of the variations or simply because it has decided not to sell, the broker's duty to submit an offer which substantially meets the terms of the listing agreement remains unfulfilled. *Colo. City Dev. Co. v. Jones-Healy Realty, Inc.*, 195 Colo. 114, 576 P.2d 160 (1978).

A seller may not defeat a broker's right to a commission by rejecting an offer solicited by his broker, without explanation, when the variations between the listing and the offer are of a minor nature. The basis for this rule is that the broker should be given an opportunity to rectify minor variations in order to earn his commission and the premise is that the broker may well be able to obtain concessions on minor problems from the prospective buyer. *Horton-Cavey Realty Co. v. Reese*, 34 Colo. App. 323, 527 P.2d 914 (1974).

A realty company could recover a brokerage commission under an exclusive listing although it knew that the property stood in joint tenancy and did not secure the signature of one of the joint tenants on the exclusive listing agreement where the agreement was an extension of an earlier agreement which had been signed by both joint tenants, and the husband acted as an agent for his wife in signing the extension agreement who, by her acts and conduct, adopted and ratified the act of her husband. *Helgerson v. Fort Collins Realty, Inc.*, 28 Colo. App. 180, 471 P.2d 630 (1970).

Vendor who does not commit bad faith or culpable conduct is not liable for commission, if sale does not go through and further negotiations between vendor and broker's client result in transaction not contemplated by terms of listing agreement. *Harding v. Lucero*, 721 P.2d 695 (Colo. App. 1986).

Even though vendor may have breached exclusive listing agreement with real estate agent, agent was not entitled to commission because vendor's sale of the property to partner-

ship of which he was member is not a "sale or exchange" of the property. *Cooley Inv. Co. v. Jones*, 780 P.2d 29 (Colo. App. 1989).

Purchases by employee of realty firm. Where an employee of a realty firm makes an offer to purchase property which is the subject of that firm's listing with the seller, the realty firm must establish that a full disclosure was made to the seller regarding the employment relationship; and that, following this disclosure, the seller consented to sell to the employee. *Horton-Cavey Realty Co. v. Reese*, 34 Colo. App. 323, 527 P.2d 914 (1974).

A real estate broker is not entitled to a commission for a sale where the purchaser failed to perform on stipulated date, and the broker's contract with the vendor stated that time was of the essence. *Dunton v. Stemme*, 117 Colo. 327, 187 P.2d 593 (1947).

Where there is competent evidence from which the trier of the facts may find that a contract of employment was entered into, and that pursuant thereto the broker produced a purchaser ready, willing, and able to buy on the terms and at the price set by the vendor, and that the broker was the efficient agent or procuring cause of the sale, a finding in accordance therewith will not be disturbed. *Palmer v. Gleason*, 154 Colo. 145, 389 P.2d 90 (1964).

Evidence to establish broker's right to commission held sufficient. *Brand v. Merritt*, 15 Colo. 286, 25 P. 175 (1890); *Chambers v. Shivers*, 31 Colo. App. 16, 497 P.2d 327 (1972).

Ordinarily, a broker suing on a contract providing for a fixed commission is entitled to that commission or nothing, because employment contracts with fixed commissions or salaries involve liquidated sums and therefore judgments in suits on them must be for the liquidated amounts or nothing, but the rule is rendered inapplicable where an erroneous verdict is induced by the conduct of defendant. *Palmer v. Gleason*, 154 Colo. 145, 389 P.2d 90 (1964).

Where an owner's termination of a lease was due to an unreasonable understanding of a lease provision, the termination constituted a refusal or neglect to consummate the contract as agreed upon, and the broker was entitled to his commission. *Sunshine v. M.R. Mansfield Realty, Inc.*, 195 Colo. 95, 575 P.2d 847 (1978).

Where broker not entitled to commission. Where completion of a sale was not prevented through any fault of the sellers but because the broker told sellers "not to appear at the closing unless they came up with cash or certified funds" to pay the broker's fee, the broker himself thwarted the closing and is not entitled to a commission. *Denver 1500, Inc. v. Wall*, 43 Colo. App. 282, 602 P.2d 903 (1979).

Applied in *Reese v. McVittie*, 119 Colo. 29, 200 P.2d 390 (1948); *Rankin v. McFerrin*, 626

P.2d 720 (Colo. App. 1980); McGill Corp. v. Max Suburban, Inc. v. Widener, 633 P.2d 530 Werner, 631 P.2d 1178 (Colo. App. 1981); Re/ (Colo. App. 1981).

12-61-202. Objections on account of title. No real estate agent or broker is entitled to a commission when a proposed purchaser fails or refuses to complete his contract of purchase because of defects in the title of the owner, unless such owner, within a reasonable time, has said defects corrected by legal proceedings or otherwise.

Source: L. 15: p. 397, § 2. C.L. § 4853. CSA: C. 15, § 26. CRS 53: § 117-2-2. C.R.S. 1963: § 117-2-2.

12-61-203. When owner must perfect title. The owner shall not be required to begin legal or other proceedings for the correction of such title, until such agent or broker secures from the proposed purchaser an enforceable contract in writing, binding him to complete the purchase whenever the defects in the title are corrected.

Source: L. 15: p. 397, § 3. C.L. § 4854. CSA: C. 15, § 27. CRS 53: § 117-2-3. C.R.S. 1963: § 117-2-3.

12-61-203.5. Referral fees - interference with brokerage relationship. (1) No licensee under parts 1 to 4 of this article shall pay a referral fee unless reasonable cause for payment of the referral fee exists. A reasonable cause for payment means:

- (a) An actual introduction of business has been made;
 - (b) A contractual referral fee relationship exists; or
 - (c) A contractual cooperative brokerage relationship exists.
- (2) (a) No person shall interfere with the brokerage relationship of a licensee.
(b) As used in this subsection (2):

(I) “Brokerage relationship” means a relationship entered into between a broker and a buyer, seller, landlord, or tenant under which the broker engages in any of the acts set forth in section 12-61-101 (2). A brokerage relationship is not established until a written brokerage agreement is entered into between the parties or is otherwise established by law.

(II) “Interference with the brokerage relationship” means demanding a referral fee from a licensee without reasonable cause.

(III) “Referral fee” means any fee paid by a licensee to any person or entity, other than a cooperative commission offered by a listing broker to a selling broker or vice versa.

(3) Any person aggrieved by a violation of any provision of this section may bring a civil action in a court of competent jurisdiction. The prevailing party in any such action shall be entitled to actual damages and, in addition, the court may award an amount up to three times the amount of actual damages sustained as a result of any such violation plus reasonable attorney fees.

Source: L. 99: Entire section added, p. 308, § 1, effective April 15. L. 2008: (2)(b)(I) amended, p. 508, § 20, effective April 17.

12-61-204. Repeal of part. This part 2 is repealed, effective July 1, 2017. Prior to such repeal, the provisions in this part 2 shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 91: Entire section added, p. 685, § 42, effective April 20. L. 99: Entire section amended, p. 717, § 8, effective July 1. L. 2008: Entire section amended, p. 515, § 40, effective April 17.

PART 3

RECOVERY FUND

Editor’s note: This part 3 was numbered as article 3 of chapter 117, C.R.S. 1963. The provisions of this part 3 were repealed and reenacted in 1995, resulting in the addition, relocation, and

elimination of sections as well as subject matter. For amendments to this part 3 prior to 1995, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

12-61-301. Real estate recovery fund - fees - repeal. (Repealed)

Source: L. 95: Entire part R&RE, p. 95, § 1, effective July 1. **L. 2003:** (4)(c) added, p. 455, § 7, effective March 5; (3)(a) amended, p. 1971, § 2, effective August 6. **L. 2005:** Entire section repealed, p. 622, § 1, effective May 27.

12-61-302. Limitation on payments out of the real estate cash fund - repeal.

(1) No payment shall be made from the general fund pursuant to this part 3 unless:

(a) The applicant has notified the commission, in writing, of the commencement of a civil action for a judgment that may result in an application for recovery from the fund. Such written notice shall be given no later than ninety days after commencement of the civil action.

(b) The revenues, if any, transferred to the division of real estate cash fund pursuant to subsection (11) of this section have first been exhausted. As used in this part 3, "fund" shall mean in the first instance such revenues transferred pursuant to subsection (11) of this section and then, if such revenues have been exhausted, the general fund.

(2) No payment shall be made from the fund unless the underlying civil action, on the basis of which payment from the fund is sought, was commenced within the time period prescribed in section 13-80-103, C.R.S., and by thirty days after May 27, 2005.

(3) (a) No payment shall be made from the fund unless the order of judgment in the underlying civil action contains specific findings of fact and conclusions of law that the licensed real estate broker or salesperson committed negligence, fraud, willful misrepresentation, or conversion of trust funds.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (3), no payment for negligence shall be made from the fund if said licensed real estate broker or salesperson had in effect a complying policy of errors and omissions insurance coverage pursuant to section 12-61-103.6 at the time of the negligent act or omission.

(4) The fund shall be liable to pay only for reimbursement of actual and direct out-of-pocket losses, court costs and reasonable attorney fees that remain unpaid on the judgment, and postjudgment interest as provided by law. The fund shall not be liable for the payment of prejudgment interest of any kind.

(5) The fund shall not be liable for losses attributable to pain and suffering or mental anguish.

(6) Attorney fees recoverable pursuant to this section shall not exceed twenty-five percent of the amount of actual and direct out-of-pocket losses paid from the fund.

(7) The fund shall be liable only for claims based on judgments against natural persons.

(8) The fund shall not be subject to a claim by a licensee involving a transaction in which the applicant performed acts for which a broker's or salesperson's license is required.

(9) Notwithstanding any provision of this part 3 to the contrary, the liability of the fund shall not exceed:

(a) For applications filed after July 1, 1987, and before July 1, 1991, fifteen thousand dollars per claimant;

(b) For applications filed on or after July 1, 1991, and before July 1, 1995, fifteen thousand dollars per transaction, regardless of the number of persons aggrieved or the number of real estate licensees or parcels of real estate involved in such transactions;

(c) For applications filed on or after July 1, 1995, and before July 1, 1999, twenty thousand dollars per transaction, regardless of the number of persons aggrieved, the number of parcels, or the number of real estate licensees involved in such transaction;

(c.5) For applications filed on or after July 1, 1999, fifty thousand dollars per transaction, regardless of the persons aggrieved, the number of parcels, or the number of real estate licensees involved in such transactions;

(d) One hundred fifty thousand dollars for any one licensee, regardless of the number of judgments entered against the licensee, parcels of real estate involved, number of licensees involved, or number of persons aggrieved in such transactions.

(10) (a) If the validly filed applications exceed the limitation on liability set forth in paragraphs (a) to (d) of subsection (9) of this section, then payment from the fund shall be distributed among such applicants in the ratio that their respective claims bear to the aggregate of such valid claims or in such other manner as a court of record may deem equitable. Distribution of such moneys shall be among the persons entitled to share therein without regard to the order of priority in which their respective judgments may have been obtained or their applications may have been filed.

(b) If the commission issues an administrative order which directs payment from the fund in accordance with section 12-61-303 and this subsection (10), any prospective applicant affected by such order may file a petition with the appropriate court pursuant to section 12-61-304. In that proceeding, the commission may then move the court for an order consolidating or joining all applicants and prospective applicants whose judgments have been entered against a common licensee judgment debtor into one action so that the respective rights of all such applicants may be equitably adjudicated and settled.

(11) (a) The unexpended and unencumbered balance of the real estate recovery fund, as such fund existed prior to its repeal, shall be transferred to the division of real estate cash fund.

(b) This part 3 is repealed, effective when the last final judgment from any of the civil actions allowed pursuant to subsection (2) of this section becomes effective and any resulting claim has been paid according to law. The director of the division of real estate shall notify the revisor of statutes when the condition specified in this paragraph (b) has been satisfied.

Source: L. 95: Entire part R&RE, p. 96, § 1, effective July 1. L. 96: (3) amended, p. 1564, § 2, effective July 1. L. 99: (9)(c) and (9)(d) amended and (9)(c.5) added, p. 717, § 9, effective July 1. L. 2005: (1) and (2) amended and (11) added, p. 623, § 2, effective May 27.

Editor's note: Section 2 of chapter 177, Session Laws of Colorado 2005, provided that the repeal of part 3 of article 61 of title 12, as provided for in subsection (11)(b), shall be effective when the last final judgment from any of the civil actions allowed pursuant to subsection (2) becomes effective, any resulting claim has been paid according to law, and the director of the division of real estate has notified the revisor of statutes that said conditions have been satisfied. As of the publication date, the revisor of statutes has not received notice from the director of the division of real estate.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to the 1995 repeal and reenactment of this part 3.

The fund was established to protect innocent purchasers of real estate from financially unstable brokers or salesmen who are guilty of fraudulent conduct. *Richards v. Income Realty & Mtg., Inc.*, 654 P.2d 864 (Colo. App. 1982); *Johns v. Colo. Real Estate Comm'n*, 697 P.2d 410 (Colo. App. 1984).

This section provides relief only for those who obtain a judgment against a licensed broker or salesman on the grounds of negligence, fraud, willful misrepresentation, deceit, or conversion of trust funds. Where plaintiff's judgments are based on breach of contract, he is ineligible for relief from the fund. *Short v. Day*, 708 P.2d 488 (Colo. App. 1985).

Definition of real estate broker to be liberally construed for purposes of determining who may be reimbursed from the real estate recovery fund because of the remedial purposes of the fund. *Moeller v. Colo. Real Estate Comm'n*, 759 P.2d 697 (Colo. 1988).

Payment may not be obtained to satisfy certain judgments. Payment may not be obtained from the Colorado real estate recovery fund to satisfy a judgment entered against a corporation and its president as the result of fraud committed in connection with a contract to erect a residence upon the property of the plaintiffs. *Lemler v. Real Estate Comm'n*, 38 Colo. App. 489, 558 P.2d 591 (1976).

When secretary of state deemed agent for service. A real estate salesman, licensed at the time the claim for relief arose and upon whom service may not be made with reasonable dili-

gence, may be deemed to have appointed the secretary of state as his agent for service of process although he is no longer licensed in Colorado. *Chetelat v. District Court*, 196 Colo. 473, 586 P.2d 1335 (1978).

Recovery is not precluded simply because the property sold belonged to the real estate salesman. *Johns v. Colo. Real Estate Comm'n*, 697 P.2d 410 (Colo. App. 1984).

12-61-303. Simplified procedure - application for administrative order for payment from the fund - rules. (1) A person who obtains a final judgment in any court of competent jurisdiction against a real estate broker or salesperson may file a verified application with the Colorado real estate commission for an administrative order for payment from the fund of any amount remaining unpaid on the judgment. The burden shall be upon such applicant to show the validity of the application under this part 3 and to provide the commission with such information as the commission may deem necessary to determine the validity of the application.

(2) The application shall be made on a form provided by the commission, which form shall be sufficient to provide the applicant with a reasonable opportunity to show compliance with this part 3 and shall require that the applicant submit the following information:

- (a) The name, address, and telephone number of the applicant;
- (b) If the applicant is represented by an attorney, the name, business address, telephone number, and Colorado supreme court registration number of the attorney;
- (c) Identification of the underlying judgment forming the basis of the application, including the named parties, case number, and court entering judgment;
- (d) The amount of the claim and an explanation of the applicant's computation of the claim; and
- (e) Any other information the commission reasonably deems necessary to determine the validity of the application.

(3) The form provided to the applicant by the commission shall contain, in a prominent place, the following notice to the licensee judgment debtor:

NOTICE: Based on a judgment entered against you in the above-captioned matter, an application for an administrative order directing payment has been filed with the real estate commission.

If the real estate commission issues an administrative order for payment, your real estate license will automatically be revoked when the order is issued and payment is made to the applicant. Any subsequent application for a license shall not be granted until the amount paid has been reimbursed, plus interest at the statutory rate, and the passage of one year from the date of revocation.

If you wish to object to the application, you must file a written objection, setting forth the specific grounds for such objection, with the commission within thirty days after having been served with a copy of the application. If you do not file a written objection, you waive your right to defend against the claim.

(4) The applicant shall also be required to show that:

- (a) There is no collusion between the applicant and the judgment debtor or any other person liable to the applicant in the transaction for which the applicant seeks payment from the fund;
- (b) The judgment debtor was licensed as a real estate broker or salesperson at the time of the transaction;
- (c) The judgment debtor was acting in a real estate transaction as a real estate broker or salesperson, performing acts for which a real estate broker's or salesperson's license is required under this article, or that the transaction involved acts for which a real estate license was required and the judgment debtor was acting as a principal, not an agent, in that transaction;
- (d) The judgment debtor committed fraud, willful misrepresentation, or conversion of trust funds;

(d.5) The judgment debtor committed negligence and did not, at the time of the negligent act or omission, have in effect a complying policy of errors and omissions insurance coverage pursuant to section 12-61-103.6;

(e) The application was not filed more than one year after finality of the judgment against the judgment debtor, including appeals;

(f) The applicant has reasonably sought to obtain a judgment against all persons and entities that are liable to the applicant for losses suffered in the transaction upon which the fund claim is based;

(g) The applicant has made reasonable searches and inquiries to ascertain whether there exists real or personal property or other assets available to satisfy the judgment in the underlying civil action and has undertaken reasonable legal means to reach such assets or other property in satisfaction of the judgment;

(h) The judgment debtor has been served with a copy of the application as required by subsection (5) of this section.

(5) When any person files an application with the commission requesting the issuance of an administrative order for payment from the fund, a copy of the verified application including the notice required by subsection (3) of this section and any other documents filed with the application shall be served upon the licensee judgment debtor by the applicant within twenty days after the date upon which the application is filed. A certificate or affidavit of such service shall be filed with the commission. Service upon a licensee judgment debtor shall be made according to the Colorado rules of civil procedure and subsection (6) of this section.

(6) (a) Service upon any real estate broker who is licensed or who renews a license under part 1 of this article on or after January 1, 2008, and upon whom personal service cannot be made with reasonable diligence shall be upon the registered agent of such real estate broker. If the real estate broker has no registered agent, the registered agent is not located under its registered agent name at its registered agent address, or the registered agent cannot with reasonable diligence be served, the real estate broker may be served by registered mail or by certified mail, return receipt requested, addressed to the entity at its principal address. Service is perfected under this subsection (6) at the earliest of:

(I) The date the real estate broker receives the process, notice, or demand;

(II) The date shown on the return receipt, if signed by or on behalf of the real estate broker; or

(III) Five days after mailing.

(b) (Deleted by amendment, L. 2008, p. 498, § 6, effective April 17, 2008.)

(7) The judgment debtor shall have thirty days after being served with the application within which to file a written objection to payment from the fund by the commission. Such objection shall be served upon the commission in accordance with the Colorado rules of civil procedure and shall clearly set forth the grounds upon which the objection is made. Failure to file such an objection shall constitute waiver of any right to proceed under section 12-61-304.

(8) (a) If the commission determines that an application is complete and valid, the commission may, by administrative order:

(I) Pay the requested amount or such lesser amount as the commission may deem appropriate;

(II) Settle the claim with the applicant for an appropriate agreed amount; or

(III) Deny the application on the grounds that the application does not demonstrate compliance with this part 3.

(b) Such administrative determination shall be promptly made by the commission or its designee in writing in the form of an administrative order and, if the application is denied, setting forth the general grounds therefor.

(c) Such administrative order shall be sent by regular mail to the applicant and the judgment debtor at their last known addresses according to records of the commission.

(9) The commission may adopt rules implementing this part 3 in accordance with article 4 of title 24, C.R.S.

Source: **L. 95:** Entire part R&RE, p. 97, § 1, effective July 1. **L. 96:** (4)(d) amended and (4)(d.5) added, p. 1564, § 3, effective July 1. **L. 99:** (3) amended, p. 718, § 10, effective July 1. **L. 2003:** (6)(b) added by revision, pp. 2356, 2357, §§ 347, 348. **L. 2004:** (6)(b) amended, p. 349, § 14, effective July 1. **L. 2005:** (3) amended, p. 624, § 3, effective May 27. **L. 2008:** (6) amended, p. 498, § 6, effective April 17.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to the 1995 repeal and reenactment of this part 3.

Notice requirement mandatory. Subsection (1) imposes a mandatory burden on a person to affirmatively give notice to the commission at the time he commences an action which might subsequently impact the real estate recovery fund. Since the fund creates a right against a state agency not existing at common law and requires that certain conditions be met by persons seeking its benefits, strict compliance with such statutory conditions, including notice, is mandatory. *Slabey v. Colo. Real Estate Comm'n*, 762 P.2d 734 (Colo. App. 1988); *Albrecht v. Parker*, 802 P.2d 1151 (Colo. App. 1990).

1987 amendments which provided for procedural requirements to enforce previously vested rights were applied retroactively since that was the legislative intent. *Davis v. Colo. Real Estate Comm'n*, 796 P.2d 40 (Colo. App. 1990).

Notices of court proceedings need to be served by the judgment creditor and not by

the commission. *Davis v. Colo. Real Estate Comm'n*, 796 P.2d 40 (Colo. App. 1990).

Trial court properly dismissed action because the judgment debtor had not been given statutory notice. *Davis v. Colo. Real Estate Comm'n*, 796 P.2d 40 (Colo. App. 1990).

Payment may not be obtained to satisfy certain judgments. Payment may not be obtained from the Colorado real estate recovery fund to satisfy a judgment entered against a corporation and its president as the result of fraud committed in connection with a contract to erect a residence upon the property of the plaintiffs. *Lemler v. Real Estate Comm'n*, 38 Colo. App. 489, 558 P.2d 591 (1976).

Commission's findings not introduced into evidence are not binding. Findings of the commission, when attached to the plaintiff's motion to make the commission a party, but not introduced into evidence at the hearing and not referred to by the trial court in its findings, are not evidence in a case and are not binding on the trial court. *Tenderfoot Mt. Props. v. Jones*, 626 P.2d 703 (Colo. App. 1980).

12-61-304. Procedure upon objection to payment or denial of application. (1) If the commission issues an administrative order that denies an application for payment from the fund in whole or in part, the applicant may file a verified petition for payment from the fund in the court that entered the judgment on which the application is based. When an applicant files such a petition, the applicant shall serve a copy of the verified petition, including the notice required by subsection (2) of this section upon the real estate commission and upon the licensee judgment debtor in accordance with the Colorado rules of civil procedure and section 12-61-303 (6). A certificate or affidavit of such service shall be filed with the court.

(2) When a petition is filed with the court pursuant to subsection (1) of this section, the petition shall be accompanied by a notice that shall state as follows:

NOTICE: Based on a judgment entered against you in the above-captioned matter, a petition for an order directing payment has been filed with the court.

If the real estate commission makes a payment pursuant to a court order based upon this petition, your real estate license will automatically be revoked when the court order becomes final and payment is made. Any subsequent application for a license shall not be granted until the amount paid has been reimbursed, plus interest at the statutory rate, and the passage of one year from the date of revocation.

If you wish to defend against this claim, you must file a written response with the court and mail a copy to the party filing the petition and to the real

estate commission within thirty days after having been served with this notice. If you do not file a written response, you waive your right to defend against the claim.

(3) If the judgment debtor files an objection to the issuance of an administrative order for payment from the fund in accordance with section 12-61-303 (7) and the commission issues an administrative order directing payment from the fund, the judgment debtor may file a verified petition objecting to payment from the fund in the court that entered the judgment on which the application was based. When a judgment debtor files such a petition, the judgment debtor shall serve a copy of the petition upon the real estate commission and the applicant in accordance with the Colorado rules of civil procedure. A certificate or affidavit of such service shall be filed with the court.

(4) A petition filed with a court pursuant to subsection (1) or (2) of this section shall be in the form of a pleading and shall comply with the rules of procedure applicable to the court in which it is filed. Such petition shall be filed in the appropriate court no later than thirty days from the date upon which the administrative order is mailed by the commission pursuant to section 12-61-303 (8). The petition shall be accompanied by a verified copy of the application form and any attached documents that were filed with the commission.

(5) The real estate commission and any person served with a petition pursuant to this section shall have thirty days after service of the petition within which to file a written answer. The court shall thereafter set the matter for hearing.

(6) At a hearing under subsection (5) of this section, the party filing the petition shall be required to show compliance, or lack thereof, with sections 12-61-302 to 12-61-304. Such hearing shall be on the merits of the application and shall not be in the nature of judicial review of the administrative order issued by the commission or of the procedure employed in issuing such order.

Source: L. 95: Entire part R&RE, p. 100, § 1, effective July 1. **L. 99:** (2) amended, p. 718, § 11, effective July 1. **L. 2005:** (2) amended, p. 624, § 4, effective May 27.

12-61-305. Commission may defend against petition - burden of proof - presumption - compromise of claims. The real estate commission may, on behalf of the fund, defend against a petition filed pursuant to section 12-61-304 and shall have recourse to all appropriate means of defense and appeal, including examination of witnesses and the right to relitigate any issues that were material and relevant to the proceeding against the fund and that were finally adjudicated in the underlying action on which the judgment in favor of the applicant was based. If such judgment was by default, stipulation, or consent, or whenever the action against the licensee judgment debtor was defended by a trustee in bankruptcy, the applicant shall have the burden of producing evidence of, and the burden of proving, the negligence, fraud, willful misrepresentation, or conversion of trust funds by the licensee judgment debtor; otherwise, the judgment shall create a rebuttable presumption of the negligence, fraud, willful misrepresentation, or conversion of trust funds by the licensee, and such presumption shall affect the burden of producing evidence. The real estate commission may, subject to court approval, settle a claim based upon the petition of an applicant and shall not be bound by any prior compromise of the judgment debtor.

Source: L. 95: Entire part R&RE, p. 102, § 1, effective July 1.

ANNOTATION

This section does not, on its face, conflict with 11 U.S.C. § 525 of the federal bankruptcy code which prohibits the suspension or revocation of a license solely because person has not paid debt which was discharged in bankruptcy. Payment from the fund because of the debt may trigger a suspension or revocation hearing but

factors other than the nonpayment of the debt must be present in order to suspend or revoke the license. In re Fasse, 40 Bankr. 198 (Bankr. D. Colo. 1984); In re Phillips, 40 Bankr. 194 (Bankr. D. Colo. 1984) (decided under § 12-61-304 as it existed prior to the 1995 repeal and reenactment of this part 3).

12-61-306. Defense against petition - conclusive adjudication of issues. The judgment debtor may defend an action against the fund and shall have recourse to all appropriate means of defense and appeal, including examination of witnesses; except that matters finally adjudicated in the underlying action, including, but not limited to, the issues of negligence, fraud, willful misrepresentation, or conversion of trust funds, are conclusive against both the licensee judgment debtor and the applicant and may not be relitigated.

Source: L. 95: Entire part R&RE, p. 102, § 1, effective July 1.

ANNOTATION

Annotator's note. The following annotations include cases decided under § 12-61-305 as it existed prior to the 1995 repeal and reenactment of this part 3.

This section is unconstitutional when applied to bankruptcy debtor proceedings under federal bankruptcy law because it violates the supremacy clause of the United

States constitution. In compelling repayment to the recovery fund or in the alternative, automatic loss of license and livelihood, this section appears to frustrate and defeat the federal law granting debtors a "fresh start". In re Harris, 85 Bankr. 858 (Bankr. D. Colo. 1988).

Applied in Tenderfoot Mt. Props. v. Jones, 626 P.2d 703 (Colo. App. 1980).

12-61-307. Automatic revocation of license - reinstatement. (1) Should the real estate commission pay from the fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed broker or salesperson, either by administrative order or by order of the court, the license of the broker or salesperson shall be automatically revoked upon the final date of such order.

(2) No such broker or salesperson shall be eligible to be licensed again until such broker or salesperson has repaid in full, plus interest at the statutory rate, the amount paid from the fund on the broker or salesperson's account and one year has passed from the date of revocation.

Source: L. 95: Entire part R&RE, p. 102, § 1, effective July 1. L. 99: Entire section amended, p. 719, § 12, effective July 1.

12-61-308. Distribution from fund - fund insufficient to pay claims - delayed distribution authorized. (1) Upon the issuance by the commission of an administrative order directing that payment be made out of the fund, or upon the entry of such an order by a court of competent jurisdiction, the controller is authorized to draw a warrant for the payment of the same upon a voucher approved by the real estate commission, and the state treasurer is authorized to pay the same out of the fund.

(2) If at any time the balance remaining in the fund is insufficient to satisfy any duly authorized claim or portion thereof, the real estate commission, when sufficient money has been deposited in the fund, shall satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of four percent per year.

(3) After an administrative order for payment from the fund has been issued by the commission, the commission may delay payment in order to allow the filing periods in section 12-61-304 to expire. In the event that a petition is filed pursuant to section 12-61-304, payment pursuant to the administrative order shall be withheld pending the outcome of the court proceeding on the petition.

Source: L. 95: Entire part R&RE, p. 102, § 1, effective July 1.

12-61-309. Subrogation of rights. (1) When, upon administrative order of the real estate commission or of any court, the real estate commission has made payment from the fund to an applicant, the real estate commission shall be subrogated to the rights of the applicant with respect to the amount so paid.

(2) Up to an amount equal to five percent of the payment to an applicant may be drawn from the fund and expended by the real estate commission for the purpose of enforcing the rights of a particular applicant to which the commission is subrogated pursuant to this section.

Source: L. 95: Entire part R&RE, p. 103, § 1, effective July 1.

PART 4

SUBDIVISIONS

Cross references: (1) For additional definitions relating to this part, see § 38-30-150.

(2) For regulation of subdivisions by planning commissions, see part 1 of article 28 of title 30 and part 2 of article 23 of title 31.

12-61-401. Definitions. As used in this part 4, unless the context otherwise requires:

(1) “Commission” means the real estate commission established under section 12-61-105.

(2) “Developer” means any person, as defined in section 2-4-401 (8), C.R.S., which participates as owner, promoter, or sales agent in the promotion, sale, or lease of a subdivision or any part thereof.

(2.5) “HOA” or “homeowners’ association” means an association or unit owners’ association formed before, on, or after July 1, 1992, as part of a common interest community as defined in section 38-33.3-103, C.R.S.

(3) (a) “Subdivision” means any real property divided into twenty or more interests intended solely for residential use and offered for sale, lease, or transfer.

(b) (I) The term “subdivision” also includes:

(A) The conversion of an existing structure into a common interest community of twenty or more residential units, as defined in article 33.3 of title 38, C.R.S.;

(B) A group of twenty or more time shares intended for residential use; and

(C) A group of twenty or more proprietary leases in a cooperative housing corporation, as defined in article 33.5 of title 38, C.R.S.

(II) The term “subdivision” does not include:

(A) The selling of memberships in campgrounds;

(B) Bulk sales and transfers between developers;

(C) Property upon which there has been or upon which there will be erected residential buildings that have not been previously occupied and where the consideration paid for such property includes the cost of such buildings;

(D) Lots which, at the time of closing of a sale or occupancy under a lease, are situated on a street or road and street or road system improved to standards at least equal to streets and roads maintained by the county, city, or town in which the lots are located; have a feasible plan to provide potable water and sewage disposal; and have telephone and electricity facilities and systems adequate to serve the lots, which facilities and systems are installed and in place on the lots or in a street, road, or easement adjacent to the lots and which facilities and systems comply with applicable state, county, municipal, or other local laws, rules, and regulations; or any subdivision that has been or is required to be approved after September 1, 1972, by a regional, county, or municipal planning authority pursuant to article 28 of title 30 or article 23 of title 31, C.R.S.;

(E) Sales by public officials in the official conduct of their duties.

(4) “Time share” means a time share estate, as defined in section 38-33-110 (5), C.R.S., or a time share use, but the term does not include group reservations made for convention purposes as a single transaction with a hotel, motel, or condominium owner or association. For the purposes of this subsection (4), “time share use” means a contractual or membership right of occupancy (which cannot be terminated at the will of the owner) for life or for a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, or specific

or nonspecific segment of real property, annually or on some other periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the property has been divided.

Source: **L. 63:** p. 785, § 1. **C.R.S. 1963:** § 118-16-1. **L. 79:** (3) amended, p. 573, § 1, effective May 25. **L. 83:** (3) amended and (4) added, p. 592, § 1, effective May 25. **L. 89:** (3) amended, p. 738, § 11, effective July 6. **L. 96:** (2) and (3) amended, p. 369, § 1, effective April 17. **L. 2010:** (2.5) added, (HB 10-1278), ch. 365, p. 1722, § 3, effective January 1, 2011.

ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974). For article, "Representing a Purchaser of a Time Share", see 11 Colo. Law. 1543 (1982).

Trial court erred in declaring §§ 12-61-401 through 12-61-407 unconstitutional. *People v. Maxwell*, 162 Colo. 495, 427 P.2d 310 (1967).

The classification of subdividers is based upon a need, believed justified by the general assembly, to require registration and certain information from large subdividers for the benefit and financial safety of the public to deal with such a subdivider. *People v. Maxwell*, 162 Colo. 495, 427 P.2d 310 (1967).

12-61-402. Registration required. (1) Unless exempt under the provisions of section 12-61-401 (3), a developer, before selling, leasing, or transferring or agreeing or negotiating to sell, lease, or transfer, directly or indirectly, any subdivision or any part thereof, shall register pursuant to this part 4.

(2) Upon approval by the commission, a developer who has applied for registration pursuant to section 12-61-403 may offer reservations in a subdivision during the pendency of such application and until such application is granted or denied if the fees for such reservations are held in trust by an independent third party and are fully refundable.

Source: **L. 63:** p. 785, § 2. **C.R.S. 1963:** § 118-16-2. **L. 79:** Entire section R&RE, p. 573, § 2, effective May 25. **L. 84:** (2) amended, p. 445, § 1, effective April 2. **L. 89:** (2) amended, p. 739, § 12, effective July 1. **L. 96:** (1) amended, p. 370, § 2, effective April 17.

ANNOTATION

Law reviews. For article, "Residential Condominium Conversions", see 11 Colo. Law. 2790 (1982).

The purpose of the general assembly is to eliminate fraudulent promotions, and this is a proper exercise of the police power, which may be exercised not only to protect the health, safety, and morals of the public, but also to safeguard the public from financial loss caused by the fraud of others. *People v. Maxwell*, 162 Colo. 495, 427 P.2d 310 (1967).

The registration of subdivision developers statute requires that subdivision developers of a tract containing a group of 20 or more building sites not intended for commercial or industrial use must apply to the real estate commission and receive a certificate of registration as a subdivision developer before engaging in the promotion and sale of the sites. *People v. Maxwell*, 162 Colo. 495, 427 P.2d 310 (1967).

12-61-403. Application for registration. (1) Every person who is required to register as a developer under this part 4 shall submit to the commission an application which contains the information described in subsections (2) and (3) of this section. If such information is not submitted, the commission may deny the application for registration. If a developer is currently regulated in another state that has registration requirements substantially equivalent to the requirements of this part 4 or that provide substantially comparable protection to a purchaser, the commission may accept proof of such registration along with the developer's disclosure or equivalent statement from the other state in full or partial satisfaction of the information required by this section. In addition, the applicant

shall be under a continuing obligation to notify the commission within ten days of any change in the information so submitted, and a failure to do so shall be a cause for disciplinary action.

(2) (a) Registration information concerning the developer shall include:

(I) The principal office of the applicant wherever situate;

(II) The location of the principal office and the branch offices of the applicant in this state;

(III) Repealed.

(IV) The names and residence and business addresses of all natural persons who have a twenty-four percent or greater financial or ultimate beneficial interest in the business of the developer, either directly or indirectly, as principal, manager, member, partner, officer, director, or stockholder, specifying each such person's capacity, title, and percentage of ownership. If no natural person has a twenty-four percent or greater financial or beneficial interest in the business of the developer, the information required in this subparagraph (IV) shall be submitted regarding the natural person having the largest single financial or beneficial interest.

(V) The length of time and the locations where the applicant has been engaged in the business of real estate sales or development;

(VI) Any felony of which the applicant has been convicted within the preceding ten years. In determining whether a certificate of registration shall be issued to an applicant who has been convicted of a felony within such period of time, the commission shall be governed by the provisions of section 24-5-101, C.R.S.

(VII) The states in which the applicant has had a license or registration similar to the developer's registration in this state granted, refused, suspended, or revoked or is currently the subject of an investigation or charges that could result in refusal, suspension, or revocation;

(VIII) Whether the developer or any other person financially interested in the business of the developer as principal, partner, officer, director, or stockholder has engaged in any activity that would constitute a violation of this part 4.

(b) If the applicant is a corporate developer, a copy of the certificate of authority to do business in this state or a certificate of incorporation issued by the secretary of state shall accompany the application.

(3) Registration information concerning the subdivision shall include:

(a) The location of each subdivision from which sales are intended to be made;

(b) The name of each subdivision and the trade, corporate, or partnership name used by the developer;

(c) Evidence or certification that each subdivision offered for sale or lease is registered or will be registered in accordance with state or local requirements of the state in which each subdivision is located;

(d) Copies of documents evidencing the title or other interest in the subdivision;

(e) If there is a blanket encumbrance upon the title of the subdivision or any other ownership, leasehold, or contractual interest that could defeat all possessory or ownership rights of a purchaser, a copy of the instruments creating such liens, encumbrances, or interests, with dates as to the recording, along with documentary evidence that any beneficiary, mortgagee, or trustee of a deed of trust or any other holder of such ownership, leasehold, or contractual interest will release any lot or time share from the blanket encumbrance or has subordinated its interest in the subdivision to the interest of any purchaser or has established any other arrangement acceptable to the real estate commission that protects the rights of the purchaser;

(f) A statement that standard commission-approved forms will be used for contracts of sale, notes, deeds, and other legal documents used to effectuate the sale or lease of the subdivision or any part thereof, unless the forms to be used were prepared by an attorney representing the developer;

(g) A true statement by the developer that, in any conveyance by means of an installment contract, the purchaser shall be advised to record the contract with the proper authorities in the jurisdiction in which the subdivision is located. In no event shall any developer specifically prohibit the recording of the installment contract.

(h) A true statement by the developer of the provisions for and availability of legal access, sewage disposal, and public utilities, including water, electricity, gas, and telephone facilities, in the subdivision offered for sale or lease, including whether such are to be a developer or purchaser expense;

(i) A true statement as to whether or not a survey of each lot, site, or tract offered for sale or lease from such subdivision has been made and whether survey monuments are in place;

(i.5) A true statement by the developer as to whether or not a common interest community is to be or has been created within the subdivision and whether or not such common interest community is or will be a small cooperative or small and limited expense planned community created pursuant to section 38-33.3-116, C.R.S.;

(j) A true statement by the developer concerning the existence of any common interest community association, including whether the developer controls funds in such association.

(3.5) The commission may disapprove the form of the documents submitted pursuant to paragraph (f) of subsection (3) of this section and may deny an application for registration until such time as the applicant submits such documents in a form that is satisfactory to the commission.

(4) Repealed.

(5) Each registration shall be accompanied by fees established pursuant to section 12-61-111.5.

Source: L. 63: p. 786, § 3. C.R.S. 1963: § 118-16-3. L. 73: p. 529, § 72. L. 79: Entire section R&RE, p. 570, § 3, effective May 25; (2) amended, p. 570, § 2, effective July 1. L. 89: (1), (3)(e), and (3)(f) amended, (2)(a)(III) and (4) repealed, and (2)(a)(VIII), (3)(j), and (3.5) added, pp. 739, 744, §§ 13, 15, 25, 14, effective July 1. L. 96: (1), (2)(a)(IV), (2)(a)(VII), (3)(e), (3)(i), and (3)(j) amended and (3)(i.5) added, p. 370, § 3, effective April 17.

Editor's note: Amendments to this section and subsection (2) by Senate Bill 79-457 and House Bill 79-1231 were harmonized.

12-61-404. Registration of developers. (1) The commission shall register all applicants who meet the requirements of this part 4 and provide each applicant so registered with a certificate indicating that the developer named therein is registered in the state of Colorado as a subdivision developer. The developer which will sign as seller or lessor in any contract of sale, lease, or deed purporting to convey any site, tract, lot, or divided or undivided interest from a subdivision shall secure a certificate before offering, negotiating, or agreeing to sell, lease, or transfer before such sale, lease, or transfer is made. If such person or entity is acting only as a trustee, the beneficial owner of the subdivision shall secure a certificate. A certificate issued to a developer shall entitle all sales agents and employees of such developer to act in the capacity of a developer as agent for such developer. The developer shall be responsible for all actions of such sales agents and employees.

(2) All certificates issued under this section shall expire on December 31 following the date of issuance. In the absence of any reason or condition under this part 4 that might warrant the denial or revocation of a registration, a certificate shall be renewed by payment of a renewal fee established pursuant to section 12-61-111.5. A registration that has expired may be reinstated within two years after such expiration upon payment of the appropriate renewal fee if the applicant meets all other requirements of this part 4.

(3) All fees collected under this part 4 shall be deposited in accordance with section 12-61-111.

(4) With regard to any subdivision for which the information required by section 12-61-403 (3) has not been previously submitted to the commission, each registered developer shall register such subdivision by providing the commission with such information before sale, lease, or transfer, or negotiating or agreeing to sell, lease, or transfer, any such subdivision or any part thereof.

Source: **L. 63:** p. 787, § 4. **C.R.S. 1963:** § 118-16-4. **L. 65:** p. 950, § 1. **L. 79:** (1) amended and (4) added, p. 575, § 4, effective May 25; (2) amended, p. 574, § 3, effective July 1. **L. 89:** (1) and (2) amended, p. 740, § 16, effective July 1. **L. 96:** (1) and (2) amended, p. 372, § 4, effective April 17.

12-61-405. Refusal, revocation, or suspension of registration - letter of admonition - probation. (1) The commission may impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense; may issue a letter of admonition; may place a registrant on probation under its close supervision on such terms and for such time as it deems appropriate; and may refuse, revoke, or suspend the registration of any developer or registrant if, after an investigation and after notice and a hearing pursuant to the provisions of section 24-4-104, C.R.S., the commission determines that the developer or any director, officer, or stockholder with controlling interest in the corporation:

(a) Has used false or misleading advertising or has made a false or misleading statement or a concealment in his application for registration;

(b) Has misrepresented or concealed any material fact from a purchaser of any interest in a subdivision;

(c) Has employed any device, scheme, or artifice with intent to defraud a purchaser of any interest in a subdivision;

(d) Has been convicted of or pled guilty or nolo contendere to a crime involving fraud, deception, false pretense, theft, misrepresentation, false advertising, or dishonest dealing in any court;

(e) Has disposed of, concealed, diverted, converted, or otherwise failed to account for any funds or assets of any purchaser of any interest in a subdivision or any homeowners' association under the control of such developer or director, officer, or stockholder;

(f) Has failed to comply with any stipulation or agreement made with the commission;

(g) Has failed to comply with or has violated any provision of this article, including any failure to comply with the registration requirements of section 12-61-403, or any lawful rule or regulation promulgated by the commission under this article;

(h) (Deleted by amendment, L. 89, p. 740, § 17, effective July 1, 1989.)

(i) Has refused to honor a buyer's request to cancel a contract for the purchase of a time share or subdivision or part thereof if such request was made within five calendar days after execution of the contract and was made either by telegram, mail, or hand delivery. A request is considered made if by mail when postmarked, if by telegram when filed for telegraphic transmission, or if by hand delivery when delivered to the seller's place of business. No developer shall employ a contract that contains any provision waiving a buyer's right to such a cancellation period.

(j) Has committed any act that constitutes a violation of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.;

(k) Has employed any sales agent or employee who violates the provisions of this part 4;

(l) Has used documents for sales or lease transactions other than those described in section 12-61-403 (3) (f);

(m) Has failed to disclose encumbrances to prospective purchasers or has failed to transfer clear title at the time of sale, if the parties agreed that such transfer would be made at that time.

(1.5) A disciplinary action relating to the business of subdivision development taken by any other state or local jurisdiction or the federal government shall be deemed to be prima facie evidence of grounds for disciplinary action, including denial of registration, under this part 4. This subsection (1.5) shall apply only to such disciplinary actions as are substantially similar to those set out as grounds for disciplinary action or denial of registration under this part 4.

(2) Any hearing held under this section shall be in accordance with the procedures established in sections 24-4-105 and 24-4-106, C.R.S.

(2.5) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the commission, does not initially warrant formal action by the commission but which should not be dismissed as being without merit, the commission may send a letter of

admonition by certified mail, return receipt requested, to the registrant who is the subject of the complaint or investigation and a copy thereof to any person making such complaint. Such letter shall advise the registrant that he has the right to request in writing, within twenty days after proven receipt, that formal disciplinary proceedings be initiated against him to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

(3) All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund.

Source: L. 63: p. 787, § 5. C.R.S. 1963: § 118-16-5. L. 79: (1) R&RE, p. 576, § 5, effective May 25. L. 80: (1)(h) amended, p. 785, § 10, effective June 5. L. 84: (1)(i) added, p. 445, § 2, effective April 2. L. 87: IP(1) amended and (3) added, p. 533, § 2, effective July 1. L. 89: (1) amended and (1.5) and (2.5) added, p. 740, § 17, effective July 1. L. 2005: (3) amended, p. 625, § 5, effective May 27.

ANNOTATION

Law reviews. For comment, "State and Local Regulation of Timesharing in Colorado", see 56 U. Colo. L. Rev. 289 (1985).

Serving the period of suspension of registration under this section does not render the appeal of a suspension decision moot due to the possible injury to good will and reputation the public nature of such a decision can cause. *Coronado Dev. Corp. v. Real Estate Comm'n*, 40 Colo. App. 328, 574 P.2d 514 (1978).

Penal standards need specificity in order to be imposed. While the state needs to define offensive conduct of subdividers in language

broad enough to allow revocation of a license where the public is being harmed, penalties cannot be imposed for violations of a standard whose meaning is dependent upon surmise or conjecture or uncontrolled application by the board imposing the penalty, and where ambiguous criteria such as "reputation" and "unethical practices" are sought to be the basis of a license revocation, they must be struck down as unconstitutionally void. *LDS, Inc. v. Healy*, 197 Colo. 19, 589 P.2d 490 (1979) (decided under former law).

12-61-406. Powers of commission - injunction - rules. (1) The commission may apply to a court of competent jurisdiction for an order enjoining any act or practice which constitutes a violation of this part 4, and, upon a showing that a person is engaging or intends to engage in any such act or practice, an injunction, restraining order, or other appropriate order shall be granted by such court, regardless of the existence of another remedy therefor. Any notice, hearing, or duration of any injunction or restraining order shall be made in accordance with the provisions of the Colorado rules of civil procedure.

(1.2) The commission may apply to a court of competent jurisdiction for the appointment of receiver if it determines that such appointment is necessary to protect the property or interests of purchasers of a subdivision or part thereof.

(1.5) The commission shall issue or deny a certificate or additional registration within sixty days from the date of receipt of the application by the commission. The commission may make necessary investigations and inspections to determine whether any developer has violated this part 4 or any lawful rule or regulation promulgated by the commission. If, after an application by a developer has been submitted pursuant to section 12-61-403 or information has been submitted pursuant to section 12-61-404, the commission determines that an inspection of a subdivision is necessary, it shall complete the inspection within sixty days from the date of filing of the application or information, or the right of inspection is waived and the lack thereof shall not be grounds for denial of a registration.

(1.6) The commission, the director for the commission, or the administrative law judge appointed for a hearing may issue a subpoena compelling the attendance and testimony of witnesses and the production of books, papers, or records pursuant to an investigation or hearing of such commission. Any such subpoena shall be served in the same manner as for subpoenas issued by district courts.

(2) The commission has the power to make any rules necessary for the enforcement or administration of this part 4.

(2.5) The commission shall adopt, promulgate, amend, or repeal such rules and regulations as are necessary to:

(a) Require written disclosures to any purchasers as provided in subsection (3) of this section and to prescribe and require that standardized forms be used by subdivision developers in connection with the sale or lease of a subdivision or any part thereof, except as otherwise provided in section 12-61-403 (3) (f); and

(b) Require that developers maintain certain business records for a period of at least seven years.

(3) The commission may require any developer to make written disclosures to purchasers in their contracts of sale or by separate written documents if the commission finds that such disclosures are necessary for the protection of such purchasers.

(4) The commission or its designated representative may audit the accounts of any homeowner association the funds of which are controlled by a developer.

Source: L. 63: p. 787, § 6. C.R.S. 1963: § 118-16-6. L. 79: (1.5) and (1.6) added, p. 576, § 6, effective May 25. L. 83: (3) added, p. 593, § 2, effective May 25. L. 87: (1.6) added, p. 952, § 53, effective March 13. L. 89: (1.2), (2.5), and (4) added and (3) amended, p. 742, § 18, effective July 1.

Cross references: For the Colorado rules of civil procedure concerning subpoenas and injunctions, see C.R.C.P. 45 and 65.

ANNOTATION

Law reviews. For comment, "State and Local Regulation of Timesharing in Colorado", see 56 U. Colo. L. Rev. 289 (1985).

12-61-406.5. HOA information and resource center - creation - duties - rules - cash fund - repeal. (1) There is hereby created, within the division of real estate, the HOA information and resource center, the head of which shall be the HOA information officer. The HOA information officer shall be appointed by the executive director of the department of regulatory agencies pursuant to section 13 of article XII of the state constitution.

(2) The HOA information officer shall be familiar with the "Colorado Common Interest Ownership Act", article 33.3 of title 38, C.R.S., also referred to in this section as the "act". No person who is or, within the immediately preceding ten years, has been licensed by or registered with the division of real estate or who owns stocks, bonds, or any pecuniary interest in a corporation subject in whole or in part to regulation by the division of real estate shall be appointed as HOA information officer. In addition, in conducting the search for an appointee, the executive director of the division of real estate shall place a high premium on candidates who are balanced, independent, unbiased, and without any current financial ties to an HOA board or board member or to any person or entity that provides HOA management services. After being appointed, the HOA information officer shall refrain from engaging in any conduct or relationship that would create a conflict of interest or the appearance of a conflict of interest.

(3) (a) The HOA information officer shall act as a clearing house for information concerning the basic rights and duties of unit owners, declarants, and unit owners' associations under the act.

(b) The HOA information officer:

(I) May employ one or more assistants, up to a maximum of 1.0 FTE, as may be necessary to carry out his or her duties; and

(II) Shall track inquiries and complaints and report annually to the director of the division of real estate regarding the number and types of inquiries and complaints received.

(4) The operating expenses of the HOA information and resource center shall be paid from the HOA information and resource center cash fund, which fund is hereby created in the state treasury. The fund shall consist of annual registration fees paid by unit owners' associations and collected by the division of real estate pursuant to section 38-33.3-401,

C.R.S. Interest earned on moneys in the fund shall remain in the fund, and any unexpended and unencumbered moneys in the fund at the end of any fiscal year shall not revert to the general fund or any other fund. Payments from the fund shall be subject to annual appropriation.

(5) The director of the division of real estate may adopt rules as necessary to implement this section and section 38-33.3-401, C.R.S. This subsection (5) shall not be construed to confer additional rule-making authority upon the director for any other purpose.

(6) This section is repealed, effective September 1, 2020. Prior to such repeal, the HOA information and resource center and the HOA information officer's powers and duties under this section shall be reviewed in accordance with section 24-34-104, C.R.S.

Source: L. 2010: Entire section added, (HB 10-1278), ch. 365, p. 1722, § 4, effective January 1, 2011.

12-61-407. Violation - penalty. Any person who fails to register as a developer in violation of this part 4 commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S. Any agreement or contract for the sale or lease of a subdivision or part thereof shall be voidable by the purchaser and unenforceable by the developer unless such developer was duly registered under the provisions of this part 4 when such agreement or contract was made.

Source: L. 63: p. 788, § 7. **C.R.S. 1963:** § 118-16-7. **L. 77:** Entire section amended, p. 877, § 42, effective July 1, 1979. **L. 79:** Entire section amended, p. 577, § 7, effective May 25. **L. 89:** Entire section amended, p. 743, § 19, effective July 1; entire section amended, p. 827, § 30, effective July 1. **L. 2002:** Entire section amended, p. 1486, § 116, effective October 1.

Editor's note: (1) Amendments to this section by Senate Bill 89-246 and Senate Bill 89-22 were harmonized.

(2) The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23. L. 79. See *People v. McKenna*, 199 Colo. 452, 611 P.2d 54 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-61-408. Repeal of part. This part 4 is repealed, effective July 1, 2017. Prior to such repeal, the provisions in this part 4 shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 91: Entire section added, p. 685, § 44, effective May 20. **L. 99:** Entire section amended, p. 719, § 13, effective July 1. **L. 2008:** Entire section amended, p. 515, § 41, effective April 17.

PART 5

RENTAL LOCATION AGENTS

12-61-501 to 12-61-507. (Repealed)

Editor's note: (1) This part 5 was numbered as article 4 of chapter 117, C.R.S. 1963. For amendments to this part 5 prior to its repeal in 1980, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 8 of chapter 117, Session Laws of Colorado 1979, provided for the repeal of this part 5, effective January 1, 1980. (See L. 79, p. 561.)

PART 6

PREOWNED HOUSING HOME WARRANTY
SERVICE CONTRACTS**12-61-601. Short title. (Repealed)**

Source: **L. 79:** Entire part added, p. 578, § 1, effective June 7. **L. 89:** Entire section repealed, p. 744, § 25, effective July 1.

12-61-602. Definitions. As used in this part 6, unless the context otherwise requires: (1) and (2) Repealed.

(3) “Person” includes an individual, company, corporation, association, agent, and every other legal entity.

(4) “Preowned” means a single-family residence, residential unit in a multiple-dwelling structure, or mobile home on a foundation that is occupied as a residence and not owned by the builder-developer or first occupant.

(5) “Preowned home warranty service company”, referred to in this part 6 as the “company”, means any person who undertakes a contractual obligation on a preowned home through a preowned home warranty service contract.

(6) (a) “Preowned home warranty service contract” means any contract or agreement whereby a person undertakes for a predetermined fee, with respect to a specified period of time, to maintain, repair, or replace any or all of the following elements of a specified preowned home:

(I) Structural components, such as the roof, foundation, basement, walls, ceilings, or floors;

(II) Utility systems, such as electrical, air conditioning, plumbing, and heating systems, including furnaces; and

(III) Appliances, such as stoves, washers, dryers, and dishwashers.

(b) “Preowned home warranty service contract” does not include any contract or agreement whereby a public utility undertakes for a predetermined fee, with respect to a specified period of time, to repair or replace any or all of the elements of a specified preowned home as specified in subparagraph (II) or (III) of paragraph (a) of this subsection (6).

Source: **L. 79:** Entire part added, p. 578, § 1, effective June 7. **L. 89:** (1) and (2) repealed and (3) R&RE, pp. 743, 744, §§ 20, 25, effective July 1. **L. 2007:** (3) to (6) R&RE, p. 2024, § 22, effective June 1.

12-61-603. Registration required - exemption. (Repealed)

Source: **L. 79:** Entire part added, p. 579, § 1, effective June 7. **L. 80:** (1) and (6) amended, p. 793, § 45, effective June 5. **L. 89:** Entire section repealed, p. 744, § 25, effective July 1.

12-61-604. Deposit - bond - letter of credit or initial capitalization. (Repealed)

Source: **L. 79:** Entire part added, p. 579, § 1, effective June 7. **L. 89:** Entire section repealed, p. 744, § 25, effective July 1.

12-61-605. Registration - denial - expiration and renewal. (Repealed)

Source: **L. 79:** Entire part added, p. 579, § 1, effective June 7. **L. 86:** (5) amended, p. 1217, § 13, effective May 30. **L. 89:** Entire section repealed, p. 744, § 25, effective July 1.

12-61-606. Grounds for suspension or revocation of registration. (Repealed)

Source: L. 79: Entire part added, p. 580, § 1, effective June 7. **L. 89:** Entire section repealed, p. 744, § 25, effective July 1.

12-61-607. Judgments - distribution. (Repealed)

Source: L. 79: Entire part added, p. 581, § 1, effective June 7. **L. 89:** Entire section repealed, p. 744, § 25, effective July 1.

12-61-608. Order of suspension or revocation of registration. (Repealed)

Source: L. 79: Entire part added, p. 581, § 1, effective June 7. **L. 89:** Entire section repealed, p. 744, § 25, effective July 1.

12-61-609. Annual statement - review. (Repealed)

Source: L. 79: Entire part added, p. 581, § 1, effective June 7. **L. 89:** Entire section repealed, p. 744, § 25, effective July 1.

12-61-610. Reporting of service of process. (Repealed)

Source: L. 79: Entire part added, p. 582, § 1, effective June 7. **L. 89:** Entire section repealed, p. 744, § 25, effective July 1.

12-61-611. Purchase of service contract not to be compulsory. No company selling, offering to sell, or effecting the issuance of a preowned home warranty service contract under this part 6 shall in any manner require a home buyer or seller, or prospective home buyer or seller, or person refinancing a home to purchase a preowned home warranty service contract.

Source: L. 79: Entire part added, p. 582, § 1, effective June 7.

12-61-611.5. Contract requirements. (1) Every preowned home warranty service contract shall contain the following information:

- (a) A specific listing of all items or elements excluded from coverage;
- (b) A specific listing of all other limitations in coverage, including the exclusion of preexisting conditions if applicable;
- (c) The procedure that is required to be followed in order to obtain repairs or replacements;
- (d) A statement as to the time period, following notification to the company, within which the requested repairs will be made or replacements will be provided;
- (e) The specific duration of the preowned home warranty service contract, including an exact termination date that is not contingent upon an unspecified future closing date or other indefinite event;
- (f) A statement as to whether the preowned home warranty service contract is transferable;
- (g) A statement that actions under a preowned home warranty service contract may be covered by the provisions of the "Colorado Consumer Protection Act" or the "Unfair Practices Act", articles 1 and 2 of title 6, C.R.S., and that a party to such a contract may have a right of civil action under such laws, including obtaining the recourse or penalties specified in such laws.

Source: L. 89: Entire section added, p. 744, § 22, effective July 1.

12-61-612. Penalty for violation. Any person who knowingly violates any provision of this part 6 commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. Each instance of violation shall be considered a separate offense.

Source: L. 79: Entire part added, p. 582, § 1, effective June 7. L. 89: Entire section added, p. 743, § 21, effective July 1. L. 2002: Entire section amended, p. 1487, § 117, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-61-613. Rules and regulations. (Repealed)

Source: L. 79: Entire part added, p. 582, § 1, effective June 7. L. 89: Entire section repealed, p. 744, § 25, effective July 1.

12-61-614. Prohibitions. It shall be unlawful for any lending institution to require the purchase of preowned home warranty insurance as a condition for granting financing for the purchase of said home.

Source: L. 79: Entire part added, p. 582, § 1, effective June 7.

12-61-615. Repeal of part. This part 6 is repealed, effective July 1, 2017. Prior to such repeal, the provisions in this part 6 shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 91: Entire section added, p. 686, § 45, effective April 20. L. 99: Entire section amended, p. 719, § 14, effective July 1. L. 2008: Entire section amended, p. 515, § 42, effective April 17.

PART 7

REAL ESTATE APPRAISERS

Cross references: For the federal “Financial Institutions Reform, Recovery, and Enforcement Act of 1989”, see Pub.L. 101-73, 103 Stat. 183 (1989).

Law reviews: For article, “Professional Standards for the Appraiser”, see 22 Colo. Law. 1263 (1993).

12-61-701. Legislative declaration. The general assembly finds, determines, and declares that this part 7 is enacted pursuant to the requirements of the federal “Real Estate Appraisal Reform Amendments”, Title XI of the federal “Financial Institutions Reform, Recovery, and Enforcement Act of 1989”. The general assembly further finds, determines, and declares that this part 7 is intended to implement the minimum requirements of federal law in the least burdensome manner to real estate appraisers.

Editor’s note: This version of this section is effective until July 1, 2013.

12-61-701. Legislative declaration. The general assembly finds, determines, and declares that sections 12-61-702 to 12-61-718 are enacted pursuant to the requirements of the “Real Estate Appraisal Reform Amendments”, Title XI of the federal “Financial Institutions Reform, Recovery, and Enforcement Act of 1989”, as amended. The general assembly further finds, determines, and declares that sections 12-61-702 to 12-61-718 are intended to implement the requirements of federal law in the least burdensome manner to real estate appraisers and appraisal management companies.

Editor’s note: This version of this section is effective July 1, 2013.

Source: **L. 90:** Entire part added, p. 835, § 1, effective July 1. **L. 96:** Entire section amended, p. 1188, § 1, effective July 1. **L. 2012:** Entire section amended, (HB 12-1110), ch. 277, p. 1459, § 1, effective July 1, 2013.

12-61-702. Definitions. As used in this part 7, unless the context otherwise requires:

(1) “Appraisal”, “appraisal report”, or “real estate appraisal” means a written analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate. Such terms include a valuation, which is an opinion of the value of real estate, and an analysis, which is a general study of real estate not specifically performed only to determine value; except that such terms include any valuation completed by any appraiser employee of a county assessor as defined in section 39-1-102 (2), C.R.S. Such terms do not include an analysis, valuation, opinion, conclusion, notation, or compilation of data by an officer, director, or regular salaried employee of a financial institution or its affiliate, made for internal use only by the said financial institution or affiliate, concerning an interest in real estate that is owned or held as collateral by the said financial institution or affiliate which is not represented or deemed to be an appraisal except to the said financial institution, the agencies regulating the said financial institution, and any secondary markets that purchase real estate secured loans. Any such appraisal prepared by an officer, director, or regular salaried employee of said financial institution who is not registered, licensed, or certified under this part 7 shall contain a written notice that the preparer is not registered, licensed, or certified as an appraiser under this part 7.

Editor’s note: This version of subsection (1) is effective until July 1, 2013.

(1) “Appraisal”, “appraisal report”, or “real estate appraisal” means a written or oral analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate that is transmitted to the client upon the completion of an assignment. These terms include a valuation, which is an opinion of the value of real estate, and an analysis, which is a general study of real estate not specifically performed only to determine value; except that the terms include a valuation completed by an appraiser employee of a county assessor as defined in section 39-1-102 (2), C.R.S. The terms do not include an analysis, valuation, opinion, conclusion, notation, or compilation of data by an officer, director, or regular salaried employee of a financial institution or its affiliate, made for internal use only by the financial institution or affiliate, concerning an interest in real estate that is owned or held as collateral by the financial institution or affiliate and that is not represented or deemed to be an appraisal except to the financial institution, the agencies regulating the financial institution, and any secondary markets that purchase real estate secured loans. An appraisal prepared by an officer, director, or regular salaried employee of a financial institution who is not registered, licensed, or certified under this part 7 shall contain a written notice that the preparer is not registered, licensed, or certified as an appraiser under this part 7.

Editor’s note: This version of subsection (1) is effective July 1, 2013.

(1.5) (a) “Appraisal management company” means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor in a consumer credit transaction secured by a consumer’s principal dwelling that oversees a network or panel of licensed or certified appraisers or by an underwriter of, or other principal in, the secondary mortgage markets that oversees a network or panel of licensed or certified appraisers.

(b) “Appraisal management company” does not include:

(I) A corporation, limited liability company, sole proprietorship, or other entity that directly performs appraisal services;

(II) A corporation, limited liability company, sole proprietorship, or other entity that does not contract with appraisers for appraisal services, but solely distributes orders to a client-selected panel of appraisers; and

(III) A mortgage company, or its subsidiary, that manages a panel of appraisers who are engaged to provide appraisal services on mortgage loans either originated by the mortgage company or funded by the mortgage company with its own funds.

Editor's note: Subsection (1.5) is effective July 1, 2013.

(2) "Board" means the board of real estate appraisers created in section 12-61-703.

(2.1) "Client" means the party or parties who engage an appraiser or an appraisal management company for a specific assignment.

Editor's note: Subsection (2.1) is effective July 1, 2013.

(2.3) "Commission" means the conservation easement oversight commission created in section 12-61-721 (1).

(2.5) "Consulting services" means services performed by an appraiser that do not fall within the definition of an "independent appraisal" in subsection (4.5) of this section. "Consulting services" includes, but is not limited to, marketing, financing and feasibility studies, valuations, analyses, and opinions and conclusions given in connection with real estate brokerage, mortgage banking, and counseling and advocacy in regard to property tax assessments and appeals thereof; except that, if in rendering such services the appraiser acts as a disinterested third party, the work shall be deemed an independent appraisal and not a consulting service. Nothing in this subsection (2.5) shall be construed to preclude a person from acting as an expert witness in valuation appeals.

(3) "Director" means the director of the division of real estate.

(4) "Division" means the division of real estate.

(4.3) "Financial institution" means any "bank" or "savings association" as such terms are defined in 12 U.S.C. sec. 1813, any state or industrial bank incorporated under title 11, C.R.S., any state or federally chartered credit union, or any company which has direct or indirect control over any of such entities.

(4.5) "Independent appraisal" means an engagement for which an appraiser is employed or retained to act as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in or aspects of identified real estate.

(5) (a) "Real estate appraiser" or "appraiser" means any person who provides for a fee or a salary an opinion of the nature, quality, value, or utility of an interest in, or aspect of, identified real estate and includes one who estimates value and who possesses the necessary qualifications, ability, and experience to execute or direct the appraisal of real property.

Editor's note: This version of paragraph (a) is effective until July 1, 2013.

(a) "Real estate appraiser" or "appraiser" means a person who provides an estimate of the nature, quality, value, or utility of an interest in, or aspect of, identified real estate and includes one who estimates value and who possesses the necessary qualifications, ability, and experience to execute or direct the appraisal of real property.

Editor's note: This version of paragraph (a) is effective July 1, 2013.

(b) "Real estate appraiser" does not include:

(I) Any person who conducts appraisals strictly of personal property;

(II) Any person licensed as a broker pursuant to part 1 of this article who provides an opinion of value that is not represented as an appraisal and is not used for purposes of obtaining financing;

(III) Any person licensed as a certified public accountant pursuant to article 2 of this title, and otherwise regulated, provided such opinions of value for real estate are not represented as an appraisal;

(IV) Any corporation, which is acting through its officers or regular salaried employees, when conducting a valuation of real estate property rights owned, to be purchased, or sold by the corporation;

(V) Any person who conducts appraisals strictly of water rights or of mineral rights;

(VI) Any right-of-way acquisition agent employed by a public entity who provides an opinion of value that is not represented as an appraisal when the property being valued is five thousand dollars or less;

(VII) Any officer, director, or regular salaried employee of a financial institution or its affiliate who makes, for internal use only by the said financial institution or affiliate, an analysis, evaluation, opinion, conclusion, notation, or compilation of data with respect to an appraisal so long as such person does not make a written adjustment of the appraisal's conclusion as to the value of the subject real property;

(VIII) Any officer, director, or regular salaried employee of a financial institution or its affiliate who makes such an internal analysis, valuation, opinion, conclusion, notation, or compilation of data concerning an interest in real estate that is owned or held as collateral by the financial institution or its affiliate.

(6) (Deleted by amendment, L. 2000, p. 177, § 1, effective August 2, 2000.)

Source: L. 90: Entire part added, p. 835, § 1, effective July 1. L. 92: (5) amended, p. 2060, § 1, effective April 10; (1) and (5) amended and (6) added, p. 2084, § 1, effective July 1. L. 96: (1) and (5) amended, p. 1188, § 2, effective July 1. L. 97: (2.5) and (4.5) added, p. 569, § 1, effective April 29. L. 2000: (4.3) added and (6) amended, p. 177, § 1, effective August 2. L. 2008: (5)(b)(II) amended, p. 508, § 21, effective April 17; (2.3) added, p. 2307, § 2, effective July 1. L. 2012: (1) and (5)(a) amended and (1.5) and (2.1) added, (HB 12-1110), ch. 277, p. 1459, § 2, effective July 1, 2013.

Editor's note: Amendments to subsection (5) by House Bill 92-1177 and House Bill 92-1364 were harmonized.

Cross references: (1) For the legislative declaration contained in the 2008 act enacting subsection (2.3), see section 1 of chapter 448, Session Laws of Colorado 2008.

(2) For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2010, see sections 1 and 10 of chapter 448, Session Laws of Colorado 2008. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

ANNOTATION

This section does not prohibit a person licensed as a real estate broker from testifying as to an opinion of value before the Colorado state board of assessment appeals so long as such opinion is not represented as an appraisal. *Miller v. Boulder County Bd. of Equaliz.*, 990 P.2d 1114 (Colo. App. 1998).

A real estate broker may be qualified as an expert witness before the Colorado state board of assessment appeals as to value of a car dealership so long as such broker's opinion is not represented as an appraisal. *Miller v. Boulder County Bd. of Equaliz.*, 990 P.2d 1114 (Colo. App. 1998).

Based on the comprehensive legislative structure regulating them, real estate appraisers practice a profession involving knowledge or skill, and their conduct should be judged according to the tenets of their

field. Therefore, a buyer's negligence claim against real estate appraisers for inaccurate appraisals involved professional negligence. *Hice v. Lott*, 223 P.3d 139 (Colo. App. 2009).

Establishing a standard of care in a professional negligence case normally requires an expert to explain it because ordinary persons are not conversant with it. The issue of whether a dwelling was a "mobile home" or a "modular home", and the effect of that determination on the dwelling's appraised value, were beyond the experience of ordinary jurors, even when assisted by generally accepted standards of professional appraisal practice. Thus, expert testimony was necessary to establish the standard of care an appraiser must employ when appraising a structure that may be a "mobile home". *Hice v. Lott*, 223 P.3d 139 (Colo. App. 2009).

12-61-703. Board of real estate appraisers - creation - compensation - immunity - repeal of part. (1) There is hereby created in the division a board of real estate appraisers consisting of seven members appointed by the governor with the consent of the senate. Of such members, three shall be licensed or certified appraisers, one of whom shall have expertise in eminent domain matters, one shall be a county assessor in office, one shall be

an officer or employee of a commercial bank experienced in real estate lending, and two shall be members of the public at large not engaged in any of the businesses represented by the other members of the board. Of the members of the board appointed for terms beginning July 1, 1990, the commercial bank member, the county assessor member, and two of the appraiser members shall be appointed for terms of three years, and the public member and the remaining appraiser members shall be appointed for terms of one year. Members of the board appointed after July 1, 1990, shall hold office for a term of three years. The additional public member of the board of real estate appraisers authorized by this subsection (1) shall not be appointed before the earliest date on which one of the four appraiser members' terms expires after July 1, 1996. In the event of a vacancy by death, resignation, removal, or otherwise, the governor shall appoint a member to fill the unexpired term. The governor shall have the authority to remove any member for misconduct, neglect of duty, or incompetence.

Editor's note: This version of subsection (1) is effective until July 1, 2013.

(1) There is hereby created in the division a board of real estate appraisers consisting of seven members appointed by the governor with the consent of the senate. Of the members, three shall be licensed or certified appraisers, one of whom shall have expertise in eminent domain matters, one shall be a county assessor in office, one shall be an officer or employee of a commercial bank experienced in real estate lending, one shall be an officer or employee of an appraisal management company, and one shall be a member of the public at large not engaged in any of the businesses represented by the other members of the board. Members of the board shall hold office for terms of three years. In the event of a vacancy by death, resignation, removal, or otherwise, the governor shall appoint a member to fill the unexpired term. The governor has the authority to remove any member for misconduct, neglect of duty, or incompetence.

Editor's note: This version of subsection (1) is effective July 1, 2013.

(2) The board shall exercise its powers and perform its duties and functions under the division as if transferred thereto by a **type 1** transfer as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(2.5) (a) The general assembly finds, determines, and declares that the organization of the board under the division as a **type 1** agency will provide the autonomy necessary to avoid potential conflicts of interest between the responsibility of the board in the regulation of real estate appraisers and the responsibility of the division in the regulation of real estate brokers and salesmen. The general assembly further finds, determines, and declares that the placement of the board as a **type 1** agency under the division is consistent with the organizational structure of state government.

(b) and (c) (Deleted by amendment, L. 96, p. 1190, § 3, effective July 1, 1996.)

(3) Each member of the board shall receive the same compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of professions and occupations pursuant to section 24-34-102 (13), C.R.S. Payment for all such per diem compensation and expenses shall be made out of annual appropriations from the division of real estate cash fund provided for in section 12-61-705.

(4) Members of the board, consultants, and expert witnesses shall be immune from suit in any civil action based upon any disciplinary proceedings or other official acts they performed in good faith pursuant to this part 7.

(5) A majority of the board shall constitute a quorum for the transaction of all business, and actions of the board shall require a vote of a majority of such members present in favor of the action taken.

(6) This part 7 is repealed, effective July 1, 2013. Prior to such repeal, the board of real estate appraisers shall be reviewed as provided in section 24-34-104, C.R.S.

Source: L. 90: Entire part added, p. 836, § 1, effective July 1. L. 91: (6) amended, p. 686, § 46, effective April 20. L. 96: (1), (2.5)(b), (2.5)(c), and (6) amended, p. 1190, § 3, effective July 1. L. 2002: (6) amended, p. 249, § 3, effective April 12. L. 2012: (1) amended, (HB 12-1110), ch. 277, p. 1460, § 3, effective July 1, 2013.

12-61-704. Powers and duties of the board. (1) In addition to all other powers and duties imposed upon it by law, the board has the following powers and duties:

(a) To promulgate and amend, as necessary, rules and regulations pursuant to article 4 of title 24, C.R.S., for the implementation and administration of this part 7 and as required to comply with the federal “Real Estate Appraisal Reform Amendments”, Title XI of the federal “Financial Institutions Reform, Recovery, and Enforcement Act of 1989”, and with any requirements imposed by amendments to such federal law. The board shall not establish any requirements that are more stringent than the requirements of any applicable federal law.

(b) To charge application, examination, and registration, license, and certificate renewal fees established pursuant to section 12-61-111.5 from all applicants for registration, licensure, certification, examination, and renewal under this part 7. No fees received from applicants seeking registration, licensure, certification, examination, or renewal shall be refunded.

(c) (I) To keep all records of proceedings and activities of the board conducted under authority of this part 7, which records shall be open to public inspection at such time and in such manner as may be prescribed by rules and regulations formulated by the board.

(II) The board shall not be required to maintain or preserve licensing history records of any person licensed or certified under the provisions of this part 7 for any period of time longer than seven years.

Editor’s note: This version of paragraph (c) is effective until July 1, 2013.

(c) (I) (Deleted by amendment, L. 2012.)

(II) The board is not required to maintain or preserve licensing history records of a person licensed or certified under this part 7 for a period of time longer than seven years. Complaints of record in the office of the board and board investigations, including board investigative files, are closed to public inspection. Stipulations and final agency orders are public record and subject to sections 24-72-203 and 24-72-204, C.R.S.

Editor’s note: This version of paragraph (c) is effective July 1, 2013.

(d) Through the department of regulatory agencies and subject to appropriations made to the department of regulatory agencies, to employ administrative law judges on a full-time or part-time basis to conduct any hearings required by this part 7. Such administrative law judges shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S.

(e) To issue, deny, or refuse to renew a registration, license, or certificate pursuant to this part 7;

(f) To take disciplinary actions in conformity with this part 7;

(g) To delegate to the director the administration and enforcement of this part 7 and the authority to act on behalf of the board on such occasions and in such circumstances as the board directs;

(h) (I) To develop, purchase, or contract for any examination required for the administration of this part 7, to offer each such examination at least twice a year or, if demand warrants, at more frequent intervals, and to establish a passing score for each examination that reflects a minimum level of competency;

(II) If study materials are developed by a testing company or other entity, the board shall make such materials available to persons desiring to take examinations pursuant to this part 7. The board may charge fees for such materials to defray any costs associated with making such materials available.

(i) In compliance with the provisions of article 4 of title 24, C.R.S., to make investigations, subpoena persons and documents, which subpoenas may be enforced by a court of competent jurisdiction if not obeyed, hold hearings, and take evidence in all matters relating to the exercise of the board’s power under this part 7;

(j) Pursuant to sec. 1119 (b) of Title XI of the federal “Financial Institutions Reform, Recovery, and Enforcement Act of 1989”, to apply, if necessary, for a federal waiver of the requirement relating to certification or licensing of a person to perform appraisals and to

make the necessary written determinations specified in said section for purposes of making such application.

(k) If the board has reasonable cause to believe that a person, partnership, limited liability company, or corporation is violating this part 7, to enter an order requiring the individual or appraisal management company to cease and desist the violations.

Editor's note: Paragraph (k) is effective July 1, 2013.

Source: **L. 90:** Entire part added, p. 838, § 1, effective July 1. **L. 92:** (1)(h)(I) amended, p. 2060, § 2, effective April 10. **L. 96:** (1)(a), (1)(b), (1)(e), and (1)(h)(I) amended, p. 1191, § 4, effective July 1. **L. 2004:** (1)(h)(I) amended, p. 1254, § 7, effective May 27. **L. 2012:** (1)(c) amended and (1)(k) added, (HB 12-1110), ch. 277, p. 1461, § 4, effective July 1, 2013.

Cross references: For the “Real Estate Appraisal Reform Amendments”, Title XI of the federal “Financial Institutions Recovery, Reform, and Enforcement Act of 1989”, see 12 U.S.C. §§ 3331 - 3351.

12-61-705. Fees, penalties, and fines collected under part 7. All fees, penalties, and fines collected pursuant to this part 7, not including fees retained by contractors pursuant to contracts entered into in accordance with section 12-61-103, 12-61-706, or 24-34-101, C.R.S., shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund, created in section 12-61-111.5.

Source: **L. 90:** Entire part added, p. 839, § 1, effective July 1. **L. 2004:** Entire section amended, p. 1254, § 8, effective May 27.

12-61-706. Qualifications for registration, licensing, and certification of appraisers - continuing education - rules. (1) (a) The board shall, by rule, prescribe requirements for the initial registration, licensing, or certification of persons under this part 7 to meet the requirements of the federal “Real Estate Appraisal Reform Amendments”, Title XI of the federal “Financial Institutions Reform, Recovery, and Enforcement Act of 1989” and shall develop, purchase, or contract for examinations to be passed by applicants. The board shall not establish any requirements for initial registration, licensing, or certification that are more stringent than the requirements of any applicable federal law; except that all applicants shall pass an examination offered by the board. If there is no applicable federal law, the board shall consider and may use as guidelines the most recent available criteria published by the appraiser qualifications board of the appraisal foundation or its successor organization.

Editor's note: This version of paragraph (a) is effective until July 1, 2013.

(a) The board shall, by rule, prescribe requirements for the initial registration, licensing, or certification of persons under this part 7 to meet the requirements of the “Real Estate Appraisal Reform Amendments”, Title XI of the federal “Financial Institutions Reform, Recovery, and Enforcement Act of 1989”, as amended, and shall develop, purchase, or contract for examinations to be passed by applicants. The board shall not establish any requirements for initial registration, licensing, or certification that are more stringent than the requirements of any applicable federal law; except that all applicants shall pass an examination offered by the board. If there is no applicable federal law, the board shall consider and may use as guidelines the most recent available criteria published by the appraiser qualifications board of the appraisal foundation or its successor organization.

Editor's note: This version of paragraph (a) is effective July 1, 2013.

(b) The four levels of appraiser licensure, pursuant to paragraph (a) of this subsection (1), shall be defined as follows:

(I) “Certified general appraiser” means an appraiser meeting the requirements set by the board for general certification;

(II) “Certified residential appraiser” means an appraiser meeting the requirements set by the board for residential certification;

(III) “Licensed appraiser” means an appraiser meeting the requirements set by the board for a license;

(IV) “Registered appraiser” means an appraiser meeting the requirements set by the board for registration.

(2) The board shall, by rule, prescribe continuing education requirements for persons registered, licensed, or certified under this part 7 as needed to meet the requirements of the federal “Real Estate Appraisal Reform Amendments”, Title XI of the federal “Financial Institutions Reform, Recovery, and Enforcement Act of 1989”. The board shall not establish any continuing education requirements that are more stringent than the requirements of any applicable law; except that all persons registered, licensed, or certified under this part 7 shall be subject to continuing education requirements. If there is no applicable federal law, the board shall consider and may use as guidelines the most recent available criteria published by the appraiser qualifications board of the appraisal foundation or its successor organization. The board shall not grant continuing education credits for attendance at the board’s meetings.

Editor’s note: This version of subsection (2) is effective until July 1, 2013.

(2) The board shall, by rule, prescribe continuing education requirements for persons registered, licensed, or certified under this part 7 as needed to meet the requirements of the “Real Estate Appraisal Reform Amendments”, Title XI of the federal “Financial Institutions Reform, Recovery, and Enforcement Act of 1989”, as amended. The board shall not establish any continuing education requirements that are more stringent than the requirements of any applicable law; except that all persons registered, licensed, or certified under this part 7 are subject to continuing education requirements. If there is no applicable federal law, the board shall consider and may use as guidelines the most recent available criteria published by the appraiser qualifications board of the appraisal foundation or its successor organization.

Editor’s note: This version of subsection (2) is effective July 1, 2013.

(3) Any provision of this section to the contrary notwithstanding, the criteria established by the board for the registration, licensing, or certification of appraisers pursuant to this part 7 shall not include membership or lack of membership in any appraisal organization.

(4) (Deleted by amendment, L. 96, p. 1192, § 5, effective July 1, 1996.)

(5) (a) Subject to section 12-61-714 (2), all appraiser employees of county assessors shall be registered, licensed, or certified as provided in subsections (1) and (2) of this section. Obtaining and maintaining a registration, license, or certificate under any one of said subsections (1) and (2) shall entitle an appraiser employee of a county assessor to perform all real estate appraisals required to fulfill such person’s official duties.

(b) Appraiser employees of county assessors who are employed to appraise real property shall be subject to all provisions of this part 7; except that appraiser employees of county assessors who are employed to appraise real property shall not be subject to disciplinary actions by the board on the ground that they have performed appraisals beyond their level of competency when appraising real estate in fulfillment of their official duties. County assessors, if registered, licensed, or certified as provided in subsections (1) and (2) of this section, shall not be subject to disciplinary actions by the board on the ground that they have performed appraisals beyond their level of competency when appraising real estate in fulfillment of their official duties.

(c) All reasonable costs incurred by an appraiser employee of a county assessor to obtain and maintain a registration, license, or certificate pursuant to this section shall be paid by the county.

(6) to (8) (Deleted by amendment, L. 96, p. 1192, § 5, effective July 1, 1996.)

(9) The board shall not issue an appraiser’s license as referenced in subparagraph (III) of paragraph (b) of subsection (1) of this section unless the applicant has at least twelve months appraisal experience.

(10) The board shall not issue a registration, license, or certification until the applicant establishes that he or she is truthful and honest and has good moral character and submits a set of fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. Each person submitting a set of fingerprints shall pay the fee established by the Colorado bureau of investigation for conducting the fingerprint-based criminal history record check to the bureau. Upon completion of the criminal history record check, the bureau shall forward the results to the board. The board may require a name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. The board may deny an application for registration, licensure, or certification based on the outcome of the criminal history record check and may establish criminal history requirements more stringent than those established by any applicable federal law.

Editor's note: Subsection (10) is effective July 1, 2013.

Source: **L. 90:** Entire part added, p. 839, § 1, effective July 1. **L. 92:** Entire section amended, p. 2061, § 3, effective April 10. **L. 96:** Entire section amended, p. 1192, § 5, effective July 1. **L. 97:** (5)(b) amended, p. 367, § 1, effective August 6. **L. 2000:** (1) amended and (9) added, p. 177, § 2, effective August 2. **L. 2002:** (2) amended, p. 250, § 5, effective April 12. **L. 2004:** (1)(a) amended, p. 1255, § 9, effective May 27. **L. 2012:** (1)(a) and (2) amended and (10) added, (HB 12-1110), ch. 277, p. 1461, § 5, effective July 1, 2013.

Cross references: For the "Real Estate Appraisal Reform Amendments", Title XI of the federal "Financial Institutions Recovery, Reform, and Enforcement Act of 1989", see 12 U.S.C. §§ 3331 - 3351.

ANNOTATION

This section is unconstitutional as applied to county assessors. The qualifications for county officers that are specified in article XIV, § 10 of the Colorado Constitution are exclusive. Thus, the general assembly does not have authority to require additional qualifications, including licensure. *Reale v. Bd. of Real Estate Appraisers*, 880 P.2d 1205 (Colo. 1994).

Based on the comprehensive legislative structure regulating them, real estate appraisers practice a profession involving knowledge or skill, and their conduct should be judged according to the tenets of their field. Therefore, a buyer's negligence claim against real estate appraisers for inaccurate appraisals involved professional negligence. *Hice v. Lott*, 223 P.3d 139 (Colo. App. 2009).

Establishing a standard of care in a professional negligence case normally requires an expert to explain it because ordinary persons are not conversant with it. The issue of whether a dwelling was a "mobile home" or a "modular home", and the effect of that determination on the dwelling's appraised value, were beyond the experience of ordinary jurors, even when assisted by generally accepted standards of professional appraisal practice. Thus, expert testimony was necessary to establish the standard of care an appraiser must employ when appraising a structure that may be a "mobile home". *Hice v. Lott*, 223 P.3d 139 (Colo. App. 2009).

12-61-706.3. Appraisal management companies - application for license - exemptions. (1) An applicant shall apply for a license as an appraisal management company, or as a controlling appraiser, to the board in a manner prescribed by the board.

(2) The board may grant appraisal management company licenses to individuals, partnerships, limited liability companies, or corporations. A partnership, limited liability company, or corporation, in its application for a license, shall designate a controlling appraiser who is actively certified in a state recognized by the appraisal subcommittee of the federal financial institutions examinations council or its successor entity. The controlling appraiser is responsible for the licensed practices of the partnership, limited liability company, or corporation and all persons employed by the entity. The application of the partnership, limited liability company, or corporation and the application of the appraiser

designated by it as the controlling appraiser shall be filed with the board. The board has jurisdiction over the appraiser so designated and over the partnership, limited liability company, or corporation.

(3) The board shall not issue a license to any partnership, limited liability company, or corporation unless and until the appraiser designated by the partnership, limited liability company, or corporation as controlling appraiser and each individual that owns more than ten percent of the entity establishes that he or she is truthful and honest and has good moral character and submits a set of fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. Each person submitting a set of fingerprints shall pay the fee established by the Colorado bureau of investigation for conducting the fingerprint-based criminal history record check to the bureau. Upon completion of the criminal history record check, the bureau shall forward the results to the board. The board may require a name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. The board may deny an application for licensure or refuse to renew a license based on the outcome of the criminal history record check. The board may require criminal history requirements more stringent than those established by any applicable federal law.

(4) The board shall not issue a license to any partnership, limited liability company, or corporation if the appraiser designated by the entity as controlling appraiser has previously had, in any state, an appraiser registration, license, or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked. A disciplinary action resulting in refusal, denial, cancellation, surrender in lieu of revocation, or revocation relating to a registration, license, or certification as an appraiser registered, licensed, or certified under this part 7 or any related occupation in any other state, territory, or country for disciplinary reasons is prima facie evidence of grounds for denial of a license by the board.

(5) The board shall not issue a license to any partnership, limited liability company, or corporation if it is owned, in whole or in part, directly or indirectly, by any person who has had, in any state, an appraiser license, registration, or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked. A disciplinary action resulting in refusal, denial, cancellation, surrender in lieu of revocation, or revocation relating to a license, registration, or certification as an appraiser licensed, registered, or certified under this part 7 or any related occupation in any other state, territory, or country for disciplinary reasons is prima facie evidence of grounds for denial of a license by the board.

(6) The board may deny an application for a license for any partnership, limited liability company, or corporation if the partnership, limited liability company, or corporation has previously had a license surrendered in lieu of revocation or revoked. A disciplinary action resulting in the surrender in lieu of revocation or the revocation of a license as an appraisal management company under this part 7 or any related occupation in any other state, territory, or country for disciplinary reasons may be deemed to be prima facie evidence of grounds for denial of a license by the board.

(7) Each appraisal management company must maintain a definite place of business. If the appraisal management company is domiciled in another state, the appraiser designated by the appraisal management company as controlling appraiser is responsible for supervising all licensed activities that occur in Colorado. All licensed actions occurring within the state of Colorado must occur under the name under which the appraisal management company is licensed or its trade name adopted in accordance with Colorado law.

(8) An application that is submitted for an appraisal management company that is:

(a) A partnership must be properly registered with the Colorado department of revenue or properly filed with the Colorado secretary of state and in good standing, proof of which shall be included in the application. If an assumed or trade name is to be used, it must be properly filed with the Colorado department of revenue or filed and accepted by the Colorado secretary of state, proof of which will be included with the application.

(b) A limited liability company must be properly registered with the Colorado secretary of state and in good standing, proof of which must be included with the application. If an

assumed or trade name is to be used, it must be properly filed with the Colorado secretary of state, proof of which must be included with the application.

(c) A corporation must be registered as a foreign corporation or properly incorporated with the Colorado secretary of state and in good standing, proof of which must be included with the application. If an assumed or trade name is to be used, it must be properly filed with the Colorado secretary of state, proof of which must be included with the application.

(9) Financial institutions and appraisal management company subsidiaries that are owned and controlled by the financial institution and regulated by a federal financial institution regulatory agency are not required to register with or be licensed by the board. This exemption includes a panel of appraisers who are engaged to provide appraisal services and are administered by a financial institution regulated by a federal financial regulatory agency.

Editor's note: This section is effective July 1, 2013.

Source: L. 2012: Entire section added, (HB 12-1110), ch. 277, p. 1462, § 6, effective July 1, 2013.

12-61-706.5. Errors and omissions insurance - duties of the division - certificate of coverage - group plan made available - rules. (1) Every licensee under this part 7, except an appraiser who is employed by a state or local governmental entity or an inactive appraiser or appraisal management company, shall maintain errors and omissions insurance to cover all activities contemplated under this part 7. The division shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after a competitive bid process in accordance with article 103 of title 24, C.R.S. A group policy obtained by the division shall be available to all licensees with no right on the part of the insurer to cancel any licensee. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the division.

(2) (a) If the division is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable annual premium, as determined by the division, a licensee shall independently obtain the errors and omissions insurance required by this section.

(b) The division shall solicit and consider information and comments from interested persons when determining the reasonableness of annual premiums.

(3) The division shall determine the terms and conditions of coverage required under this section based on rules promulgated by the board. Each licensee shall be notified of the required terms and conditions at least thirty days before the annual premium renewal date as determined by the division. Each licensee shall file a certificate of coverage showing compliance with the required terms and conditions with the division by the annual premium renewal date, as determined by the division.

(4) In addition to all other powers and duties conferred upon the board by this part 7, the board is authorized and directed to adopt such rules as it deems necessary or proper to carry out the provisions of this section.

Editor's note: This section is effective July 1, 2013.

Source: L. 2012: Entire section added, (HB 12-1110), ch. 277, p. 1465, § 6, effective July 1, 2013.

12-61-706.7. Bond required. (1) An applicant for an appraisal management company license shall post with the board a surety bond in the amount of twenty-five thousand dollars before a license may be issued by the board. A licensed appraisal management company shall maintain the required bond at all times.

(2) The surety bond shall require the surety to provide notice to the board within thirty days if payment is made from the surety bond or if the bond is cancelled.

Editor's note: This section is effective July 1, 2013.

Source: L. 2012: Entire section added, (HB 12-1110), ch. 277, p. 1465, § 6, effective July 1, 2013.

12-61-707. Expiration of licenses - renewal - penalties. (1) (a) All registrations, licenses, or certificates shall expire pursuant to a schedule established by the director and shall be renewed or reinstated pursuant to this section. Upon compliance with this section and any applicable rules of the board regarding renewal, including the payment of a renewal fee plus a reinstatement fee established pursuant to paragraph (b) of this subsection (1), the expired registration, license, or certificate shall be reinstated. No real estate appraiser's registration, license, or certificate that has not been renewed for a period greater than two years shall be reinstated, and such person shall be required to make new application for registration, licensure, or certification.

(b) A person who fails to renew his or her registration, license, or certificate prior to the applicable renewal date may have it reinstated if the person does any one of the following:

Editor's note: This version of the introductory portion to paragraph (b) is effective until July 1, 2013.

(b) A person who fails to renew his or her real estate appraiser's registration, license, or certificate before the applicable renewal date may have it reinstated if the person does any one of the following:

Editor's note: This version of the introductory portion to paragraph (b) is effective July 1, 2013.

(I) Makes proper application, within thirty-one days after the date of expiration, by payment of the regular three-year renewal fee; or

(II) If proper application is made more than thirty-one days, but within one year, after the date of expiration, by payment of the regular three-year renewal fee and payment of a reinstatement fee equal to one-third the regular three-year renewal fee; or

(III) If proper application is made more than one year, but within two years, after the date of expiration, by payment of the regular three-year renewal fee and payment of a reinstatement fee equal to two-thirds the regular three-year renewal fee.

(2) In the event the federal registry fee to be collected by the board and transmitted to the federal financial institutions examination council is adjusted during the period prior to expiration of a license or certificate, the board shall collect the amount of the increase in such fee from the holder of the license or certificate and shall forward such amount to the said council on an annual basis.

(3) (a) If the applicant has complied with this section and any applicable rules and regulations of the board regarding renewal, except for the continuing education requirements pursuant to section 12-61-706, the licensee may renew the license on inactive status. An inactive license may be activated if the licensee submits written certification of compliance with section 12-61-706 for the previous licensing period. The board may adopt rules establishing procedures to facilitate such a reactivation.

(b) The holder of an inactive license shall not perform a real estate appraisal in conjunction with a debt instrument that is federally guaranteed, in the federal secondary market, or regulated pursuant to title 12, U.S.C.

Editor's note: This version of paragraph (b) is effective until July 1, 2013.

(b) The holder of an inactive license shall not perform a real estate appraisal or appraisal management duties in conjunction with a debt instrument that is federally guaranteed, in the federal secondary market, or regulated pursuant to title 12, U.S.C.

Editor's note: This version of paragraph (b) is effective July 1, 2013.

(c) The holder of an inactive license shall not hold himself or herself out as having an active license pursuant to this part 7.

(4) At the time of renewal or reinstatement, every registrant, licensee, and certificate holder, and each person or individual that owns more than ten percent of an appraisal management company, under this part 7 shall submit a set of fingerprints to the Colorado

bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation, if the person has not previously done so for issuance of a registration, license, or certification by the board. Each person submitting a set of fingerprints shall pay the fee established by the Colorado bureau of investigation for conducting the fingerprint-based criminal history record check to the bureau. The bureau shall forward the results to the board. The board may require a name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. The board may refuse to renew or reinstate a registration, license, or certification based on the outcome of the criminal history record check.

Editor's note: Subsection (4) is effective July 1, 2013.

Source: **L. 90:** Entire part added, p. 840, § 1, effective July 1. **L. 92:** Entire section amended, p. 2064, § 4, effective April 10. **L. 97:** (1) amended, p. 367, § 2, effective August 6. **L. 2000:** (3) added, p. 178, § 3, effective August 2. **L. 2006:** (1)(a) and IP(1)(b) amended, p. 51, § 1, effective August 7. **L. 2012:** IP(1)(b) and (3)(b) amended and (4) added, (HB 12-1110), ch. 277, p. 1466, § 7, effective July 1, 2013.

12-61-708. Licensure or certification by endorsement - temporary practice.

(1) The board may issue a license or certification to an appraiser by endorsement to engage in the occupation of real estate appraisal to any applicant who has a license, registration, or certification in good standing as a real estate appraiser under the laws of another jurisdiction if:

(a) The applicant presents proof satisfactory to the board that, at the time of application for a Colorado registration, license, or certificate by endorsement, the applicant possesses credentials and qualifications which are substantially equivalent to the requirements of this part 7; or

(b) The jurisdiction that issued the applicant a license or certificate to engage in the occupation of real estate appraisal has a law similar to this subsection (1) pursuant to which it licenses or certifies persons who are licensed real estate appraisers in this state.

(1.2) The board may specify by rules and regulations what shall constitute substantially equivalent credentials and qualifications and the manner in which credentials and qualifications of an applicant will be reviewed by the board.

(2) Pursuant to section 1122 (a) of Title XI of the federal "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", the board shall recognize, on a temporary basis, the license or certification of an appraiser issued by another state if:

(a) (Deleted by amendment, L. 96, p. 1194, § 6, effective July 1, 1996.)

(b) The appraiser's business is of a temporary nature; and

(c) The appraiser applies for and is granted a temporary practice permit by the board.

Source: **L. 90:** Entire part added, p. 841, § 1, effective July 1. **L. 92:** Entire section amended, p. 2065, § 5, effective April 10. **L. 96:** Entire section amended, p. 1194, § 6, effective July 1.

12-61-709. Denial of registration, license, or certificate - renewal. (1) The board is empowered to determine whether an applicant for registration, licensure, or certification possesses the necessary qualifications for registration, licensure, or certification required by this part 7. The board may consider such qualities as the applicant's truthfulness and honesty and whether the applicant has been convicted of a crime involving moral turpitude.

Editor's note: This version of subsection (1) is effective until July 1, 2013.

(1) The board is empowered to determine whether an applicant for registration, licensure, or certification possesses the necessary qualifications for registration, licensure, or certification required by this part 7. The board may consider such qualities as the

applicant's truthfulness, honesty, and moral character, and whether the applicant has been convicted of a crime. As used in this subsection (1), "applicant" includes any individual who owns, in whole or in part, directly or indirectly, an appraisal management company and any appraiser designated as a controlling appraiser by a partnership, limited liability company, or corporation acting as an appraisal management company.

Editor's note: This version of subsection (1) is effective July 1, 2013.

(2) If the board determines that an applicant does not possess the applicable qualifications required by this part 7, or such applicant has violated any provision of this part 7 or the rules and regulations promulgated by the board or any board order, the board may deny the applicant a registration, license, or certificate or deny the renewal or reinstatement of a registration, license, or certificate pursuant to section 12-61-707; and, in such instance, the board shall provide such applicant with a statement in writing setting forth the basis of the board's determination that the applicant does not possess the qualifications or professional competence required by this part 7. Such applicant may request a hearing on such determination as provided in section 24-4-104 (9), C.R.S.

Source: L. 90: Entire part added, p. 841, § 1, effective July 1. **L. 92:** Entire section amended, p. 2065, § 6, effective April 10. **L. 96:** (1) amended, p. 1195, § 7, effective July 1. **L. 2012:** (1) amended, (HB 12-1110), ch. 277, p. 1466, § 8, effective July 1, 2013.

12-61-710. Prohibited activities - grounds for disciplinary actions - procedures - repeal. (1) A real estate appraiser is in violation of this part 7 if the appraiser:

(a) Has been convicted of a felony or has had accepted by a court a plea of guilty or nolo contendere to a felony if the felony is related to the ability to act as a real property appraiser. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be conclusive evidence of such conviction or plea. In considering the disciplinary action, the board shall be governed by the provisions of section 24-5-101, C.R.S.

(b) Has violated, or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate any provision or term of this part 7 or rule or regulation promulgated pursuant to this part 7 or any order of the board established pursuant to this part 7;

(c) Has accepted any fees, compensation, or other valuable consideration to influence the outcome of an appraisal;

(d) Has used advertising which is misleading, deceptive, or false;

(e) Has used fraud or misrepresentation in obtaining a license or certificate under this part 7;

(f) Has conducted an appraisal in a fraudulent manner or used misrepresentation in any such activity;

(g) Has acted or failed to act in a manner which does not meet the generally accepted standards of professional appraisal practice as adopted by the board by rule and regulation. A certified copy of a malpractice judgment of a court of competent jurisdiction shall be conclusive evidence of such act or omission, but evidence of such act or omission shall not be limited to a malpractice judgment.

(h) Has performed appraisal services beyond his level of competency;

(i) Has been subject to an adverse or disciplinary action in another state, territory, or country relating to a license, certificate, registration, or other authorization to practice as an appraiser. A disciplinary action relating to a registration, license, or certificate as an appraiser registered, licensed, or certified under this part 7 or any related occupation in any other state, territory, or country for disciplinary reasons shall be deemed to be prima facie evidence of grounds for disciplinary action or denial of licensure or certification by the board. This paragraph (i) shall apply only to violations based upon acts or omissions in such other state, territory, or country that are also violations of this part 7.

(j) Has failed to disclose in the appraisal report the fee paid to the appraiser for a residential real property appraisal if the appraiser was engaged by an appraisal management company to complete the assignment.

Editor's note: Paragraph (j) is effective July 1, 2013.

(2) If an applicant, a registrant, a licensee, or a certified person has violated any of the provisions of this section, the board may deny or refuse to renew any registration, license, or certificate, or, as specified in subsections (2.5) and (5) of this section, revoke or suspend any registration, license, or certificate, issue a letter of admonition to a licensee or certified person, place a registrant, licensee, or certified person on probation, or impose public censure.

(2.5) When a complaint or an investigation discloses an instance of misconduct by a registered, licensed, or certified appraiser that in the opinion of the board does not warrant formal action by the board but should not be dismissed as being without merit, the board may send a letter of admonition by certified mail to the appraiser against whom a complaint was made. The letter shall advise the appraiser of the right to make a written request, within twenty days after receipt of the letter of admonition, to the board to begin formal disciplinary proceedings as provided in this section to adjudicate the conduct or acts on which the letter was based.

(3) A proceeding for discipline of a registrant, licensee, or certified person may be commenced when the board has reasonable grounds to believe that a registrant, licensee, or certified person has committed any act or failed to act pursuant to the grounds established in subsection (1) of this section or when a request for a hearing is timely made under subsection (2.5) of this section.

(4) Disciplinary proceedings shall be conducted in the manner prescribed by the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

(5) As authorized in subsection (2) of this section, disciplinary actions by the board may consist of the following:

(a) **Revocation of a registration, license, or certificate.** (I) Revocation of a registration, license, or certificate by the board shall mean that the registered, licensed, or certified person shall surrender his or her registration, license, or certificate immediately to the board.

(II) Any person whose registration, license, or certificate to practice is revoked is rendered ineligible to apply for any registration, license, or certificate issued under this part 7 until more than two years have elapsed from the date of surrender of the registration, license, or certificate. Any reapplication after such two-year period shall be treated as a new application.

(b) **Suspension of a license.** Suspension of a license or certificate by the board shall be for a period to be determined by the board.

(c) **Probationary status.** Probationary status may be imposed by the board. If the board places a licensee or certified person on probation, it may include such conditions for continued practice as the board deems appropriate to assure that the licensee or certified person is otherwise qualified to practice in accordance with generally accepted professional standards of professional appraisal practice as adopted by rule and regulation of the board, including any or all of the following:

(I) The taking by him of such courses of training or education as may be needed to correct deficiencies found in the hearing;

(II) Such review or supervision of his practice as may be necessary to determine the quality of his practice and to correct deficiencies therein; and

(III) The imposition of restrictions upon the nature of his appraisal practice to assure that he does not practice beyond the limits of his capabilities.

(d) (Deleted by amendment, L. 96, p. 1195, § 8, effective July 1, 1996.)

(e) **Public censure.** If after notice and hearing the director or the director's designee determines that the licensee has committed any of the acts specified in this section, the board may impose public censure.

(6) In addition to any other discipline imposed pursuant to this section, any person who violates the provisions of this part 7 or the rules and regulations of the board promulgated pursuant to this article may be penalized by the board upon a finding of a violation pursuant to article 4 of title 24, C.R.S., as follows:

(a) In the first administrative proceeding against any person, a fine of not less than three hundred dollars but not more than five hundred dollars per violation;

(b) In any subsequent administrative proceeding against any person for transactions occurring after a final agency action determining that a violation of this part 7 has occurred, a fine of not less than one thousand dollars but not more than two thousand dollars.

(7) (a) Complaints of record in the office of the board and the results of staff investigations shall be closed to public inspection during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee, except as provided by court order. Complaints of record that are dismissed by the board and the results of investigation of such complaints shall be closed to public inspection, except as provided by court order. The board's records shall be subject to sections 24-72-203 and 24-72-204, C.R.S., regarding public records and confidentiality.

(b) This subsection (7) is repealed, effective July 1, 2013.

(8) Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding before the board pursuant to this article shall be immune from any liability, civil or criminal, that otherwise might result by reason of such action.

(9) (a) Any board member having an immediate personal, private, or financial interest in any matter pending before the board shall disclose the fact to the board and shall not vote upon such matter.

(b) This subsection (9) is repealed, effective July 1, 2013.

(10) Any registrant, licensee, or certified person having direct knowledge that any person has violated any of the provisions of this part 7 shall report such knowledge to the board.

(11) The board, on its own motion or upon application, at any time after the imposition of any discipline as provided in this section may reconsider its prior action and reinstate or restore such registration, license, or certificate or terminate probation or reduce the severity of its prior disciplinary action. The taking of any such further action or the holding of a hearing with respect thereto shall rest in the sole discretion of the board.

Source: **L. 90:** Entire part added, p. 841, § 1, effective July 1. **L. 92:** IP(1), (1)(i), (2), (3), (5)(a), (5)(d), (10), and (11) amended, p. 2066, § 7, effective April 10. **L. 96:** (2), (3), and (5)(d) amended and (2.5) added, p. 1195, § 8, effective July 1. **L. 2000:** (2) amended and (5)(e) added, pp. 178, 179, §§ 4, 5, effective August 2. **L. 2002:** (7) amended, p. 250, § 4, effective April 12. **L. 2012:** (1)(j) added, (HB 12-1110), ch. 277, p. 1466, § 9, effective July 1, 2013; (7)(b) and (9)(b) added by revision, pp. 1466, 1474, §§ 9, 19.

ANNOTATION

Prohibition of disclosure of records during an investigation set forth in subsection (7) does not expressly make such records subject to disclosure when the investigation is complete. Only by negative implication would sub-

section (7) imply a disclosure requirement, and any disclosure is expressly subject to the disclosure provision of the Colorado Open Records Act. *Land Owners United, LLC v. Waters*, __ P.3d __ (Colo. App. 2011).

12-61-710.5. Appraisal management companies - prohibited activities - grounds for disciplinary actions - procedures - rules. (1) The board, upon its own motion, may, and upon the complaint in writing of any person, shall, investigate the activities of a licensed appraisal management company; an appraiser designated as a controlling appraiser by a partnership, limited liability company, or corporation acting as an appraisal management company; or a person or entity who assumes to act in that capacity within the state. The board, upon a finding of a violation, may impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense and censure a licensee, place

the licensee on probation and set the terms of probation, or temporarily suspend or permanently revoke a license when the licensee has performed, is performing, or is attempting to perform any of the following acts:

(a) Failing to exercise due diligence when hiring or engaging a real estate appraiser to ensure that the real estate appraiser is appropriately credentialed by the board and competent to perform the assignment;

(b) Requiring an appraiser to indemnify the appraisal management company against liability, damages, losses, or claims other than those arising out of the services performed by the appraiser, including performance or nonperformance of the appraiser's duties and obligations, whether as a result of negligence or willful misconduct;

(c) Influencing or attempting to influence the development, reporting, result, or review of a real estate appraisal or the engagement of an appraiser through coercion, extortion, collusion, compensation, inducement, intimidation, bribery, or in any other manner. This prohibition shall not be construed as prohibiting an appraisal management company from requesting an appraiser to:

(I) Consider additional, appropriate property information;

(II) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(III) Correct errors in the appraisal report.

(d) Prohibiting an appraiser, in the completion of an appraisal service, from communicating with the client, any intended users, real estate brokers, tenants, property owners, management companies, or any other entities whom the appraiser reasonably believes has information pertinent to the completion of an appraisal assignment; except that this provision does not apply to communications between an appraiser and an appraisal management company's client if such client has adopted an explicit policy prohibiting such communication. If the client has adopted an explicit policy prohibiting communication by the appraiser with the client, communication by an appraiser to the client must be made in writing and submitted to the appraisal management company.

(e) Altering or modifying a completed appraisal report without the authoring appraiser's knowledge and written consent, and the consent of the intended user, except to modify the format of the report solely for transmission to the client and in a manner acceptable to the client;

(f) Requiring an appraiser to provide access to the appraiser's electronic signature to the appraisal management company;

(g) Failing to validate or verify that the work completed by an appraiser who is hired or engaged by the appraisal management company complies with state and federal regulations, including the uniform standards of professional appraisal practice, by conducting an annual audit of a random sample of the appraisals received within the previous year by the appraisal management company. The board shall establish annual appraisal review requirements by rule and shall solicit and consider information and comments from interested persons.

(h) Failing to make payment to an appraiser within sixty days after completion of the appraisal, unless otherwise agreed or unless the appraiser has been notified in writing that a bona fide dispute exists regarding the performance or quality of the appraisal;

(i) Failing to perform the terms of a written agreement with an appraiser hired or engaged to complete an appraisal assignment;

(j) Failing to disclose to an appraiser, at the time of engagement, the identity of the client;

(k) Using an appraisal report for a client other than the one originally contracted with, without the original client's written consent;

(l) Failing to maintain possession of, for future use or inspection by the board, for a period of at least five years or at least two years after final disposition of any judicial proceeding in which a representative of the appraisal management company provided testimony related to the assignment, whichever period expires last, the documents or records prescribed by the rules of the board or to produce such documents or records upon reasonable request by the board;

(m) Having been convicted of, entering a plea of guilty to, entering an Alford plea, or entering a plea of nolo contendere to any misdemeanor or felony relating to the conduct of an appraisal, theft, embezzlement, bribery, fraud, misrepresentation, or deceit, or any other like crime under Colorado law, federal law, or the laws of other states. A certified copy of the judgment of a court of competent jurisdiction of such conviction or other official record indicating that such a plea was entered is conclusive evidence of such conviction or plea in any hearing under this part 7.

(n) Having been the subject of an adverse or disciplinary action in another state, territory, or country relating to a license, registration, certification, or other authorization to practice as an appraisal management company. A disciplinary action relating to a registration, license, or certificate as an appraisal management company under this part 7 or any related occupation in any other state, territory, or country for disciplinary reasons is prima facie evidence of grounds for disciplinary action or denial of a registration, license, or certification by the board. This paragraph (n) applies only to violations based upon acts or omissions in such other state, territory, or country that would violate this part 7 if committed in Colorado.

(o) Violating the “Colorado Consumer Protection Act”, article 1 of title 6, C.R.S.;

(p) Procuring, or attempting to procure, an appraisal management company license or renewing, reinstating, or reactivating, or attempting to renew, reinstate, or reactivate, an appraisal management company license by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for a license;

(q) Knowingly misrepresenting or making false promises through agents, advertising, or otherwise;

(r) Failing to disclose to a client the fee amount paid to the appraiser hired or engaged to complete the appraisal upon completion of the assignment; or

(s) Disregarding, violating, or abetting, directly or indirectly, in the violation of any provision of this part 7, any rule promulgated by the board pursuant to this part 7, or any order of the board established pursuant to this part 7.

(2) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but should not be dismissed as being without merit, the board may send a letter of admonition by certified mail, return receipt requested, to the licensee against whom the complaint was made. The letter shall advise the licensee of the right to make a written request, within twenty days after receipt of the letter of admonition, to the board to begin formal disciplinary proceedings as provided in this section to adjudicate the conduct or acts on which the letter was based.

(3) Disciplinary proceedings shall be conducted in the manner prescribed by the “State Administrative Procedure Act”, article 4 of title 24, C.R.S.

(4) If a partnership, limited liability company, or corporation operating under the license of an appraiser designated and licensed as a controlling appraiser by the partnership, limited liability company, or corporation is guilty of any of the foregoing acts, the board may suspend or revoke the right of the partnership, limited liability company, or corporation to conduct its business under the license of the controlling appraiser, whether or not the controlling appraiser had personal knowledge thereof and whether or not the board suspends or revokes the individual license of the controlling appraiser.

(5) This part 7 shall not be construed to relieve any person from civil liability or criminal prosecution under the laws of this state.

(6) A registrant, licensee, or certified person having direct knowledge that a person or licensed partnership, limited liability company, or corporation has violated this part 7 shall report such knowledge to the board.

(7) The board, on its own motion or upon application, at any time after the imposition of discipline as provided in this section, may reconsider its prior action and reinstate or restore a license or terminate probation or reduce the severity of its prior disciplinary action. The taking of any further action or the holding of a hearing with respect to the action rests in the sole discretion of the board.

Source: L. 2012: Entire section added, (HB 12-1110), ch. 277, p. 1467, § 10, effective July 1, 2013.

12-61-711. Judicial review of final board actions and orders. Final actions and orders of the board under sections 12-61-709 and 12-61-710 appropriate for judicial review shall be judicially reviewed in the court of appeals, in accordance with section 24-4-106 (1), C.R.S.

Source: L. 90: Entire part added, p. 844, § 1, effective July 1.

12-61-712. Unlawful acts. (1) It is unlawful for any person to:

(a) Violate any provision of section 12-61-710 (1) (c), (1) (e), or (1) (f), or to perform a real estate appraisal in conjunction with a debt instrument that is federally guaranteed or in the federal secondary market or regulated pursuant to title 12, U.S.C., without first having obtained a registration, license, or certificate from the board pursuant to this part 7;

(b) Accept a fee for an independent appraisal assignment that is contingent upon:

(I) The reporting of a predetermined analysis, opinion, or conclusion; or

(II) The analysis, opinion, or conclusion reached; or

(III) The consequences resulting from the analysis, opinion, or conclusion;

(c) Misrepresent a consulting service as an independent appraisal;

(d) Fail to disclose, in connection with a consulting service for which a contingent fee is or will be paid, the fact that a contingent fee is or will be paid.

(2) Any person who violates any provision of subsection (1) of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. Any person who subsequently violates any provision of subsection (1) of this section within five years after the date of a conviction for a violation of subsection (1) of this section commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(3) A person who represents property owners as an advocate in tax or valuation protests and appeals pursuant to title 39, C.R.S., shall be exempt from the licensing requirements of this part 7.

Source: L. 90: Entire part added, p. 844, § 1, effective July 1. L. 92: (1) amended, p. 2067, § 8, effective April 10. L. 96: Entire section amended, p. 1196, § 9, effective July 1. L. 97: (1) and (3) amended, p. 570, § 2, effective April 29; (1)(a) amended, p. 368, § 3, effective August 6. L. 2002: (2) amended, p. 1487, § 118, effective October 1. L. 2009: (1)(a) and (2) amended, (HB 09-1183), ch. 429, p. 2390, § 1, effective August 5.

Editor's note: Amendments to subsection (1) by Senate Bill 97-90 and House Bill 97-1056 were harmonized.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Appraiser cannot present expert testimony in a property valuation proceeding under a contingent fee arrangement. City and County of Denver v. Bd. of Assessment Appeals, 947 P.2d 1373 (Colo. 1997).

A contingent fee is prohibited in all property valuation proceedings including proceedings that do not involve a federal transaction. City and County of Denver v. Bd. of Assessment Appeals, 947 P.2d 1373 (Colo. 1997).

A contingent fee is prohibited even if the individual appraiser testifying as an expert witness is a salaried employee of a party to a

contingent fee agreement who did not personally execute the contingent fee agreement and would not receive fees from the agreement. This avoids the absurd result of allowing firms that employ appraisers to accept contingent fees while prohibiting individual appraisers from doing so. City and County of Denver v. Bd. of Assessment Appeals, 947 P.2d 1373 (Colo. 1997).

Proper remedy where an appraiser improperly gives expert testimony pursuant to a contingent fee agreement in a property valuation proceeding before the board of assess-

ment appeals is a remand for de novo proceedings. City and County of Denver v. Bd. of Assessment Appeals, 947 P.2d 1373 (Colo. 1997).

Notwithstanding a contingent fee arrangement, the board of assessment appeals properly admitted documentary evidence and testimony presented by taxpayer's expert

witness as a consulting service. Such evidence was admissible in board of assessment appeals hearings if there has been proper disclosure of the contingent fee arrangement and the nature of the appraiser's work. FirstBank Longmont v. Boulder County Bd. of Equaliz., 990 P.2d 1109 (Colo. App. 1999).

12-61-712.5. Appraisal management company license required - violations - injunction. (1) Except as provided in section 12-61-706.3 (9), it is unlawful for any person, partnership, limited liability company, or corporation to engage in the business of appraisal management in this state without first having obtained a license from the board. No person, partnership, limited liability company, or corporation shall be granted a license until compliance with this part 7 is established.

(2) The board may apply to a court of competent jurisdiction for an order enjoining an act or practice that constitutes a violation of this part 7, and, upon a showing that a person, partnership, limited liability company, or corporation is engaging or intends to engage in any such act or practice, an injunction, restraining order, or other appropriate order shall be granted by the court regardless of the existence of another remedy therefor. Any notice, hearing, or duration of an injunction or restraining order shall be made in accordance with the Colorado rules of civil procedure.

(3) Any person, partnership, limited liability company, or corporation violating this part 7 by acting as an appraisal management company without having obtained a license or by acting as an appraisal management company after the appraisal management company's license has been revoked or during any period for which the license was suspended is guilty of a misdemeanor and, upon conviction thereof, if a natural person, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment and, if an entity, shall be punished by a fine of not more than five thousand dollars. A second violation, if by a natural person, shall be punishable by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Editor's note: This section is effective July 1, 2013.

Source: L. 2012: Entire section added, (HB 12-1110), ch. 277, p. 1470, § 10, effective July 1, 2013.

12-61-713. Injunctive proceedings. (1) The board may, in the name of the people of the state of Colorado, through the attorney general of the state of Colorado, apply for an injunction in any court of competent jurisdiction to perpetually enjoin any person from committing any act prohibited by the provisions of this part 7.

Editor's note: This version of subsection (1) is effective until July 1, 2013.

(1) The board may, in the name of the people of the state of Colorado, through the attorney general of the state of Colorado, apply for an injunction in any court of competent jurisdiction to perpetually enjoin a person or appraisal management company from committing an act prohibited by this part 7.

Editor's note: This version of subsection (1) is effective July 1, 2013.

(2) Such injunctive proceedings shall be in addition to and not in lieu of all penalties and other remedies provided in this part 7.

(3) When seeking an injunction under this section, the board shall not be required to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from a continued violation.

Source: L. 90: Entire part added, p. 844, § 1, effective July 1. L. 2012: (1) amended, (HB 12-1110), ch. 277, p. 1471, § 11, effective July 1, 2013.

12-61-714. Special provision for appraiser employees of county assessors. (1) Except as provided in subsection (2) of this section, unless a federal waiver is applied for and granted pursuant to section 12-61-704 (1) (j), on and after July 1, 1997, any person acting as a real estate appraiser in this state in conjunction with a debt instrument that is federally guaranteed or in the federal secondary market or regulated pursuant to title 12, U.S.C., shall be registered, licensed, or certified as provided in this part 7, and, on and after said date, no person shall practice in conjunction with a debt instrument that is federally guaranteed or in the federal secondary market or regulated pursuant to title 12, U.S.C., without such a registration, license, or certificate or hold himself or herself out to the public as a registered, licensed, or certified real estate appraiser unless registered, licensed, or certified pursuant to this part 7.

(2) Any appraiser employee of any county assessor who is employed to appraise real property shall be registered, licensed, or certified as provided in this part 7 and shall have two years from the date of taking office or the beginning of employment to comply with the provisions of this part 7.

Source: L. 90: Entire part added, p. 844, § 1, effective July 1. L. 96: (2) amended, p. 1196, § 10, effective July 1. L. 97: Entire section amended, p. 368, § 4, effective August 6.

ANNOTATION

This section is unconstitutional as applied to county assessors. The qualifications for county officers that are specified in article XIV, § 10 of the Colorado Constitution are exclusive.

Thus, the general assembly does not have authority to require additional qualifications, including licensure. *Reale v. Bd. of Real Estate Appraisers*, 880 P.2d 1205 (Colo. 1994).

12-61-715. Duties of board under federal law. (1) The board shall:

(a) Transmit to the appraisal subcommittee of the federal financial institutions examinations council, no less than annually, a roster listing individuals who have received a certificate or license as provided in this part 7;

Editor's note: This version of paragraph (a) is effective until July 1, 2013.

(a) Transmit to the appraisal subcommittee of the federal financial institutions examinations council or its successor entity, no less than annually, a roster listing individuals and appraisal management companies who have received a certificate or license as provided in this part 7;

Editor's note: This version of paragraph (a) is effective July 1, 2013.

(b) Collect from individuals who have received a certificate or license as provided in this part 7 an annual registry fee of not more than twenty-five dollars, unless the appraisal subcommittee of the federal financial institutions examinations council adjusts the fee up to a maximum of fifty dollars and transmit such fee to the federal financial institutions examinations council on an annual basis; and

Editor's note: This version of paragraph (b) is effective until July 1, 2013.

(b) Collect from individuals and appraisal management companies that are licensed or certified pursuant to this part 7 an annual registry fee as prescribed by the appraisal subcommittee of the federal financial institutions examinations council or its successor entity and transmit the fee to the federal financial institutions examinations council on an annual basis; and

Editor's note: This version of paragraph (b) is effective July 1, 2013.

(c) Conduct its business and promulgate rules and regulations in a manner not inconsistent with Title XI of the federal “Financial Institutions Reform, Recovery, and Enforcement Act of 1989”, as amended.

Source: **L. 90:** Entire part added, p. 844, § 1, effective July 1. **L. 2012:** (1)(a) and (1)(b) amended, (HB 12-1110), ch. 277, p. 1471, § 12, effective July 1, 2013.

12-61-716. Business entities. (1) A corporation, partnership, bank, savings and loan association, savings bank, credit union, or other business entity may provide appraisal services if such appraisal is prepared by individuals registered, certified, or licensed in accordance with this part 7. An individual who is not a registered, certified, or licensed appraiser may assist in the preparation of an appraisal if:

(a) The assistant is under the direct supervision of a registered, certified, or licensed appraiser; and

(b) The final appraisal document is approved and signed by an individual who is a registered, certified, or licensed appraiser.

Source: **L. 90:** Entire part added, p. 845, § 1, effective July 1. **L. 92:** (1) amended, p. 2067, § 9, effective April 10.

12-61-717. Provisions found not to comply with federal law null and void - severability. If any provision of this part 7 is found by a court of competent jurisdiction or by the appropriate federal agency not to comply with any provision of the federal “Financial Institutions Reform, Recovery, and Enforcement Act of 1989”, such provision shall be null and void, but the remaining provisions of this part 7 shall be valid unless such remaining provisions alone are incomplete and are incapable of being executed in accordance with the legislative intent of this part 7.

Editor’s note: This version of this section is effective until July 1, 2013.

12-61-717. Provisions found not to comply with federal law null and void - severability. (1) If any provision of this part 7 is found by a court of competent jurisdiction or by the appropriate federal agency not to comply with any provision of the federal “Financial Institutions Reform, Recovery, and Enforcement Act of 1989”, as amended, such provision is null and void, but the remaining provisions of this part 7 are valid unless the remaining provisions alone are incomplete and are incapable of being executed in accordance with the legislative intent of this part 7.

(2) If the regulation of appraisal management companies is repealed from Title XI of the federal “Financial Institutions Reform, Recovery, and Enforcement Act of 1989”, as amended, the board’s jurisdiction over these entities is also repealed. Before such repeal, the division shall review the regulation of appraisal management companies as provided in section 24-34-104, C.R.S. If the board’s jurisdiction is repealed, the director shall notify the revisor of statutes of the date of the repeal.

Editor’s note: This version of this section is effective July 1, 2013.

Source: **L. 90:** Entire part added, p. 845, § 1, effective July 1. **L. 2012:** Entire section amended, (HB 12-1110), ch. 277, p. 1471, § 13, effective July 1, 2013.

Cross references: For Title XI of the federal “Financial Institutions Recovery, Reform, and Enforcement Act of 1989”, see 12 U.S.C. §§ 3331 - 3351.

12-61-718. Scope of article - regulated financial institutions - de minimis exemption. (1) (a) This article shall not apply to an appraisal relating to any real estate-related transaction or loan made or to be made by a financial institution or its affiliate if such real

estate-related transaction or loan is excepted from appraisal regulations established by the primary federal regulator of said financial institution and the appraisal is performed by:

(I) An officer, director, or regular salaried employee of the financial institution or its affiliate; or

(II) A real estate broker licensed under this article with whom said institution or affiliate has contracted for performance of the appraisal.

(b) Such appraisal shall not be represented or deemed to be an appraisal except to the said financial institution, the agencies regulating the said financial institution, and any secondary markets that purchase real estate secured loans. Such appraisal shall contain a written notice that the preparer is not registered, licensed, or certified as an appraiser under this part 7. Nothing in this subsection (1) shall be construed to exempt a person registered, licensed, or certified as an appraiser under this part 7 from regulation as provided in this part 7.

(2) Nothing in this article shall be construed to limit the ability of any federal or state regulator of a financial institution to require the financial institution to obtain appraisals as specified by the regulator.

(3) Repealed.

Source: L. 92: Entire section added, p. 2085, § 2, effective July 1. L. 94: (1) amended, p. 938, § 1, effective July 1. L. 96: (3) repealed, p. 1197, § 11, effective July 1. L. 2008: IP(1)(a) and (1)(a)(II) amended, p. 508, § 22, effective April 17.

12-61-719. Conservation easement appraisals - fund created. (1) Any appraiser who conducts an appraisal for a conservation easement shall submit a copy of the completed appraisal to the division within thirty days following the completion of the appraisal. For purposes of this section, "completion of the appraisal" shall mean that the certification page, as defined in the uniform standards for professional appraisal practice, promulgated by the appraisal standards board, shall have been signed by the appraiser and the appraisal has been delivered to the client of the appraiser. The appraisal shall be accompanied by an affidavit from the appraiser that includes, but is not limited to, the following:

(a) A statement specifying the value of the unencumbered property and the total value of the conservation easement in gross along with details of what methods the appraiser used to determine these values;

(b) If the appraisal separately allocates the values of sand and gravel, minerals, water, or improvements, a statement of the separate value of the sand and gravel, minerals, water, or improvements before and after the conservation easement in gross is granted;

(c) An acknowledgment specifying whether a subdivision analysis was used to establish the conservation value in the appraisal;

(d) A statement clarifying whether or not the landowner or a family member as defined in section 267 (c) (4) of the federal "Internal Revenue Code of 1986", as amended, owns other property contiguous to the property encumbered by the appraised conservation easement or owns other property, of which the value may be increased by the donation of the property encumbered by the appraised conservation easement, whether contiguous or not, owned by the landowner or related person as defined in section 267 (b) of the federal "Internal Revenue Code of 1986", as amended;

(e) A statement specifying how the appraiser satisfies the qualified appraiser and licensing requirements set forth in section 39-22-522 (3.3), C.R.S.;

(f) A statement verifying the date and method by which the appraiser has met any specified classroom education requirements established by the board for conservation easement appraisals pursuant to subsection (7) of this section; and

(g) A statement specifying the number of previous conservation easement appraisals conducted by the appraiser.

(2) An affidavit submitted in accordance with the provisions of this section shall be in a form approved by the board. The board shall have the authority to promulgate rules concerning the form and content of the affidavit. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S. A copy of the affidavit and the completed appraisal shall be provided to the landowner.

(3) The division shall review the information submitted in accordance with this section to ensure that it is complete and shall record and maintain the information submitted as part of the affidavit in an electronic database. The division shall have the authority to share the information with the department of revenue. Notwithstanding the provisions of part 2 of article 72 of title 24, C.R.S., the division's custodian of records shall deny the right of inspection of any appraisal, affidavit, or other record related to information submitted in accordance with the provision of this section unless and until such time as the division files a notice of charges related to the information.

(4) The board in its discretion may, or upon receiving a written complaint from any person shall, investigate the activities of any appraiser who submits any information in accordance with the provisions of this section. The investigation shall consider whether the appraiser complied with the uniform standards of professional appraisal practice and any other provision of law. In conducting the investigation, the division shall have the authority to consult with the commission.

(5) If the board determines that a material violation of the uniform standards of professional appraisal practice or a substantial misstatement of value has occurred in any appraisal submitted in accordance with this section, the board shall notify the department of revenue regarding the appraisal and provide the department with a copy of the appraisal and a summary of the division's findings.

(6) If an appraiser fails to file an appraisal, affidavit, or other information as required by this section, the board shall have the authority to take disciplinary action as provided in section 12-61-710.

(7) The board shall have the authority to establish classroom education and experience requirements for an appraiser who prepares an appraisal for a conservation easement pursuant to section 39-22-522, C.R.S. Such requirements shall be established to ensure that appraisers have a sufficient amount of training and expertise to accurately prepare appraisals that comply with the uniform standards of professional appraisal practice and any other provision of law related to the appraisal of conservation easements. A credit for a conservation easement shall not be allowed unless the appraiser who prepared the appraisal of the easement met all requirements established in accordance with this subsection (7) in effect at the time the appraisal was completed.

(8) Any appraiser who submits a copy of an appraisal to the division in accordance with the requirements of this section shall pay the division a fee as prescribed by the division. The fee shall cover the costs of the division in administering the requirements of this section. The division shall have the authority to accept and expend gifts, grants, and donations for the purposes of this section. The state treasurer shall credit fees, gifts, grants, and donations to the conservation easement appraisal review fund, which fund is hereby created in the state treasury. Moneys in the fund shall be annually appropriated to the division for the purposes of implementing and administering this section and shall not revert to the general fund at the end of any fiscal year. The fund shall be maintained in accordance with section 24-75-402, C.R.S. On or before January 1, 2009, and on or before each January 1 thereafter, the division shall certify to the general assembly the amount of the fee prescribed by the division pursuant to this subsection (8).

Source: **L. 2008:** Entire section added, p. 2307, § 3, effective July 1. **L. 2009:** (8) amended, (HB 09-1014), ch. 1, p. 1, § 1, effective August 5.

Cross references: (1) For the legislative declaration contained in the 2008 act enacting this section, see section 1 of chapter 448, Session Laws of Colorado 2008.

(2) For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2010, see sections 1 and 10 of chapter 448, Session Laws of Colorado 2008. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

12-61-720. Certification of conservation easement holders - fund created - rules - repeal. (1) The division shall, in consultation with the commission created in section 12-61-721, establish and administer a certification program for qualified organizations

under section 170 (h) of the federal “Internal Revenue Code of 1986”, as amended, that hold conservation easements for which a tax credit is claimed pursuant to section 39-22-522, C.R.S. The purpose of the program shall be to:

(a) Establish minimum qualifications for certifying organizations that hold conservation easements to encourage professionalism and stability; and

(b) Identify fraudulent or unqualified applicants as defined by the rules of the division to prevent them from becoming certified by the program.

(2) The certification program shall be established and commence accepting applications for certification no later than January 1, 2009. The division shall conduct a review of each application and consider the recommendations of the commission before making a final determination to grant or deny certification. In reviewing an application and in granting certification, the division and the commission may consider:

(a) The applicant’s process for reviewing, selecting, and approving a potential conservation easement;

(b) The applicant’s stewardship practices and capacity, including the ability to maintain, monitor, and defend the purposes of the easement;

(c) An audit of the applicant’s financial records;

(d) The applicant’s system of governance and ethics regarding conflicts of interest and transactions with related parties as described in section 267 (b) of the federal “Internal Revenue Code of 1986”, as amended, donors, board members, and insiders. For purposes of this paragraph (d), “insiders” means board and staff members, substantial contributors, parties related to those above, those who have an ability to influence decisions of the organization, and those with access to information not available to the general public.

(e) Any other information deemed relevant by the division or the commission; and

(f) The unique circumstances of the different entities to which this certification applies as set forth in subsection (4) of this section.

(3) At the time of submission of an application, and each year the entity is certified pursuant to this section, the applicant shall pay the division a fee as prescribed by the division. The fee shall cover the costs of the division and the commission in administering the certification program for entities that hold conservation easements for which tax credits are claimed pursuant to section 39-22-522, C.R.S. The division shall have the authority to accept and expend gifts, grants, and donations for the purposes of this section. The state treasurer shall credit fees, gifts, grants, and donations collected pursuant to this subsection (3) to the conservation easement holder certification fund, which fund is hereby created in the state treasury. Moneys in the fund shall be annually appropriated to the division for the purposes of implementing and administering this section and shall not revert to the general fund at the end of any fiscal year. The fund shall be maintained in accordance with section 24-75-402, C.R.S. On or before January 1, 2009, and on or before each January 1 thereafter, the division shall certify to the general assembly the amount of the fee prescribed by the division pursuant to this subsection (3).

(4) The certification program shall apply to:

(a) Nonprofit entities holding easements on property with conservation values consisting of recreation or education, protection of environmental systems, or preservation of open space;

(b) Nonprofit entities holding easements on property for historic preservation; and

(c) The state and any municipality, county, city and county, special district, or other political subdivision of the state that holds an easement.

(5) The certification program may contain a provision allowing for the expedited or automatic certification of an entity that is currently accredited by national land conservation organizations that are broadly accepted by the conservation industry.

(6) The commission shall meet at least quarterly and make recommendations to the division regarding the certification program. The division shall have the authority to determine whether an applicant for certification possesses the necessary qualifications for certification required by the rules adopted by the division. If the division determines that an applicant does not possess the applicable qualifications for certification or that the applicant has violated any provision of this part 7, the rules promulgated by the division, or any division order, the division may deny the applicant a certification or deny the renewal of a

certification; and, in such instance, the division shall provide the applicant with a statement in writing setting forth the basis of the division's determination. The applicant may request a hearing on the determination as provided in section 24-4-104 (9), C.R.S. The division shall notify successful applicants in writing. An applicant that is not certified may reapply for certification in accordance with procedures established by the division.

(7) The division shall implement the certification program in a manner that either commences accepting applications for certification:

(a) At the same time for all types of entities that hold conservation easements; or

(b) During the first year of the program for entities described in paragraph (a) of subsection (4) of this section and during the second year of the program for entities described in paragraphs (b) and (c) of subsection (4) of this section, and other entities.

(8) Beginning one year after the division commences accepting applications to certify the type of entity that holds a conservation easement in accordance with the provisions of subsection (7) of this section, a tax credit may be claimed for the easement pursuant to section 39-22-522, C.R.S., only if the entity has been certified in accordance with the provisions of this section at the time the donation of the easement is made. The division shall make information available to the public concerning the date that it commences accepting applications for entities that hold conservation easements and the requirements of this subsection (8).

(9) (Deleted by amendment, L. 2009, (HB 09-1014), ch. 1, p. 1, § 2, effective August 5, 2009.)

(10) The division shall maintain and update an online list that can be accessed by the public of the organizations that have applied for certification and whether each has been certified, rejected for certification, or had its certification revoked or suspended in accordance with the provisions of this section.

(11) The division shall have the authority to investigate the activities of any entity that is required to be certified pursuant to this section and to impose discipline for noncompliance, including but not limited to the suspension or revocation of a certification or the imposition of fines. The division shall have the authority to promulgate rules for the certification program and discipline authorized by this section. Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(12) Nothing in this section shall be construed to:

(a) Affect any tax credit that was claimed pursuant to section 39-22-522, C.R.S., prior to the time certification was required by this section; or

(b) Require the certification of an entity that holds a conservation easement for which a tax credit is not claimed pursuant to section 39-22-522, C.R.S.

(13) This section is repealed, effective July 1, 2018.

Source: L. 2008: Entire section added, p. 2307, § 3, effective July 1. L. 2009: (3) and (9) amended, (HB 09-1014), ch. 1, p. 1, § 2, effective August 5.

Cross references: (1) For the legislative declaration contained in the 2008 act enacting this section, see section 1 of chapter 448, Session Laws of Colorado 2008.

(2) For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2010, see sections 1 and 10 of chapter 448, Session Laws of Colorado 2008. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

12-61-721. Conservation easement oversight commission - created - repeal.

(1) There is hereby created in the division a conservation easement oversight commission consisting of nine members as follows:

(a) One member representing the great outdoors Colorado program shall be appointed by and serve at the pleasure of the state board of the great outdoors Colorado trust fund established in article XXVII of the state constitution;

(b) One member representing the department of natural resources shall be appointed by and serve at the pleasure of the executive director of the department;

(c) One member representing the department of agriculture shall be appointed by and serve at the pleasure of the executive director of the department;

(d) Six members appointed by the governor as follows with at least one member with the following qualifications or representing the following interests:

(I) A local land trust;

(II) A statewide or national land trust;

(III) A local government open space or land conservation agency;

(IV) An historic preservation organization with experience in easements on properties of historical significance;

(V) A certified general appraiser with experience in conservation easements who meets any classroom education and experience requirements established by the board in accordance with section 12-61-719; and

(VI) A landowner that has donated a conservation easement in Colorado.

(2) In making appointments to the commission, the governor shall consult with the three members of the commission appointed pursuant to paragraphs (a) to (c) of subsection (1) of this section and with appropriate organizations representing the particular interest or area of expertise that the appointee represents. Not more than three of the governor's appointees serving at the same time shall be from the same political party. In making the initial appointments, the governor shall appoint three members for terms of two years. All other appointments by the governor shall be for a term of three years. No member shall serve more than two consecutive terms. In the event of a vacancy by death, resignation, removal, or otherwise, the governor shall appoint a member to fill the unexpired term. The governor shall have the authority to remove any member for misconduct, neglect of duty, or incompetence.

(3) (a) The commission shall advise the division and the department of revenue regarding conservation easements for which a state income tax credit is claimed pursuant to section 39-22-522, C.R.S. At the request of the division or the department, the commission shall review conservation easement transactions, applications, and other documents and advise the division and the department regarding conservation values consistent with section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, the capacity of conservation easement holders, and the integrity and accuracy of conservation easement transactions related to the tax credits.

(b) On or before July 1, 2011, and on a quarterly basis thereafter, the commission shall provide a report to the joint budget committee and the finance committees of the general assembly describing the number of credits for which the executive director of the department of revenue has sought the advice of the commission pursuant to paragraph (a) of this subsection (3), the date any such advice was sought, the number of credits for which the commission provided advice to the executive director, and the date any such advice was provided.

(4) The commission shall meet not less than once each quarter to review applications for conservation easement holder certification submitted in accordance with section 12-61-720 and to review any other issues referred to the commission by the division, the department of revenue, or any other state entity. The division shall convene the meetings of the commission and provide staff support as requested by the commission. A majority of the members of the commission shall constitute a quorum for the transaction of all business, and actions of the commission shall require a vote of a majority of such members present in favor of the action taken.

(5) On or before January 1, 2009, the commission shall establish a conflict of interest policy to ensure that any member of the commission shall be disqualified from performing any act that conflicts with a private pecuniary interest of the member or from participating in the deliberation or decision-making process for certification for an applicant represented by such member.

(6) Each member of the commission shall receive the same compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of professions and occupations pursuant to section 24-34-102 (13), C.R.S. Payment for all such per diem compensation and expenses shall be made out of annual appropriations from the conservation easement holder certification fund created in section 12-61-720 (3).

(6.5) Commission members shall be immune from liability in accordance with the provisions of the “Colorado Governmental Immunity Act”, article 10 of title 24, C.R.S.

(7) This section is repealed, effective July 1, 2018. Prior to such repeal, the commission shall be reviewed as provided in section 24-34-104, C.R.S.

Source: L. 2008: Entire section added, p. 2307, § 3, effective July 1. **L. 2011:** (3) amended and (6.5) added, (HB 11-1300), ch. 193, p. 752, § 2, effective May 19.

Cross references: (1) For the legislative declaration contained in the 2008 act enacting this section, see section 1 of chapter 448, Session Laws of Colorado 2008.

(2) For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2010, see sections 1 and 10 of chapter 448, Session Laws of Colorado 2008. To obtain a copy of the review, once completed, view Colorado Legislative Council’s web site.

12-61-722. Conservation easement tax credit certificates. (1) The division shall receive claims from and issue certificates to certified conservation easement holders for income tax credits for conservation easements donated during the 2011, 2012, and 2013 calendar years in accordance with the provisions of section 39-22-522 (2.5), C.R.S. Nothing in this section shall be construed to restrict or limit the authority of the division to enforce the provisions of this part 7. The division may promulgate rules in accordance with article 4 of title 24, C.R.S., for the issuance of the certificates. In promulgating any such rules, the division may include but shall not be limited to provisions governing the following:

- (a) The review of the tax credit certificate;
- (b) The administration and financing of the certification process;
- (c) The notification to the public regarding the aggregate amount of certificates that have been issued and that are on the wait list;
- (d) The notification to the taxpayer, the entity to which the easement was granted, and the department of revenue regarding the certificates issued; and
- (e) Any other matters related to administering the provisions of section 39-22-522 (2.5), C.R.S.

Source: L. 2010: Entire section added, (HB 10-1197), ch. 175, p. 636, § 5, effective August 11.

PART 8

BROKERAGE RELATIONSHIPS

Law reviews: For article, “The New Brokerage Legislation: The Demise of ‘Agency By Surprise’”, see 22 Colo. Law. 1919 (1993); for article, “Designated Brokerage: Colorado Real Estate Agency Law Evolves Again”, see 32 Colo. Law. 11 (March 2003).

12-61-801. Legislative declaration. (1) The general assembly finds, determines, and declares that the public will best be served through a better understanding of the public’s legal and working relationships with real estate brokers and by being able to engage any such real estate broker on terms and under conditions that the public and the real estate broker find acceptable. This includes engaging a broker as a single agent or transaction-broker. Individual members of the public should not be exposed to liability for acts or omissions of real estate brokers that have not been approved, directed, or ratified by such individuals. Further, the public should be advised of the general duties, obligations, and responsibilities of the real estate broker they engage.

(2) This part 8 is enacted to govern the relationships between real estate brokers and sellers, landlords, buyers, and tenants in real estate transactions.

Source: L. 93: Entire part added, p. 979, § 1, effective January 1, 1994. **L. 2002:** (1) amended, p. 1056, § 1, effective January 1, 2003.

ANNOTATION

With this statute, Colorado was the first state to create a non-agent real estate broker. *Sussman v. Stoner*, 143 F. Supp. 2d 1232 (D. Colo. 2001).

By its terms, the statute does not impose upon a transaction-broker a duty to keep track of land or water values once land is under contract, or a duty to inform a seller that his land or water is worth more than the asking price. *Sussman v. Stoner*, 143 F. Supp. 2d 1232 (D. Colo. 2001).

Nor does it require that a transaction-broker advise a party that it is not in his or her best interest to accept a given offer. Such requirements are in conflict with the plain terms of the statute. *Sussman v. Stoner*, 143 F. Supp. 2d 1232 (D. Colo. 2001).

Section 12-61-807(1) clearly states that the transaction-broker is not an agent for either party, nor, according § 12-61-802(6), an advocate for the interests of any party to the transaction. *Sussman v. Stoner*, 143 F. Supp. 2d 1232 (D. Colo. 2001); *Hoff & Leigh, Inc. v. Byler*, 62 P.3d 1077 (Colo. App. 2002).

The statute also specifically forbids the broker from disclosing certain information that would give either side a negotiation advantage. Consequently, the broker may not disclose that a buyer is willing to accept less than stated, that a seller is willing to pay more than offered, motivating factors for the purchase or sale, or financing terms which a party might accept. *Sussman v. Stoner*, 143 F. Supp. 2d 1232 (D. Colo. 2001).

12-61-802. Definitions. As used in this part 8, unless the context otherwise requires:

(1) “Broker” shall have the same meaning as set forth in section 12-61-101 (2), except as otherwise specified in this part 8.

(1.3) “Customer” means a party to a real estate transaction with whom the broker has no brokerage relationship because such party has not engaged or employed a broker.

(1.5) “Designated broker” means an employing broker or employed broker who is designated in writing by an employing broker to serve as a single agent or transaction-broker for a seller, landlord, buyer, or tenant in a real estate transaction. “Designated broker” does not include a real estate brokerage firm that consists of only one licensed natural person.

(2) “Dual agent” means a broker who, with the written informed consent of all parties to a contemplated real estate transaction, is engaged as a limited agent for both the seller and buyer or both the landlord and tenant.

(3) “Limited agent” means an agent whose duties and obligations to a principal are only those set forth in section 12-61-804 or 12-61-805, with any additional duties and obligations agreed to pursuant to section 12-61-803 (5).

(4) “Single agent” means a broker who is engaged by and represents only one party in a real estate transaction. A single agent includes the following:

(a) “Buyer’s agent”, which means a broker who is engaged by and represents the buyer in a real estate transaction;

(b) “Landlord’s agent”, which means a broker who is engaged by and represents the landlord in a leasing transaction;

(c) “Seller’s agent”, which means a broker who is engaged by and represents the seller in a real estate transaction; and

(d) “Tenant’s agent”, which means a broker who is engaged by and represents the tenant in a leasing transaction.

(5) “Subagent” means a broker engaged to act for another broker in performing brokerage tasks for a principal. The subagent owes the same obligations and responsibilities to the principal as does the principal’s broker.

(6) “Transaction-broker” means a broker who assists one or more parties throughout a contemplated real estate transaction with communication, interposition, advisement, negotiation, contract terms, and the closing of such real estate transaction without being an agent or advocate for the interests of any party to such transaction. Upon agreement in writing pursuant to section 12-61-803 (2) or a written disclosure pursuant to section 12-61-808 (2) (d), a transaction-broker may become a single agent.

Source: L. 93: Entire part added, p. 979, § 1, effective January 1, 1994. L. 2002: (1.3) and (1.5) added and (3) and (6) amended, p. 1056, § 2, effective January 1, 2003. L. 2008: (1) amended, p. 508, § 23, effective April 17.

ANNOTATION

Although this statute still allows a broker to act as an agent for a buyer or seller, unless a different relationship is established by the parties in writing, it is presumed that a bro-

ker is acting as a nonagent transaction-broker. *Sussman v. Stoner*, 143 F. Supp. 2d 1232 (D. Colo. 2001); *Hoff & Leigh, Inc. v. Byler*, 62 P.3d 1077 (Colo. App. 2002).

12-61-803. Relationships between brokers and the public. (1) When engaged in any of the activities enumerated in section 12-61-101 (2), a broker may act in any transaction as a single agent or transaction-broker. The broker's general duties and obligations arising from that relationship shall be disclosed to the seller and the buyer or to the landlord and the tenant pursuant to section 12-61-808.

(2) A broker shall be considered a transaction-broker unless a single agency relationship is established through a written agreement between the broker and the party or parties to be represented by such broker.

(3) A broker may work with a single party in separate transactions pursuant to different relationships including, but not limited to, selling one property as a seller's agent and working with that seller in buying another property as a transaction-broker or buyer's agent, but only if the broker complies with this part 8 in establishing the relationships for each transaction.

(4) A broker licensed pursuant to part 1 of this article, whether acting as a single agent or transaction-broker, may complete standard forms including those promulgated by the Colorado real estate commission and may advise the parties as to effects thereof if the broker is performing the activities enumerated or referred to in section 12-61-101 (2) in the transaction in which the forms are to be used. In any such transaction, the broker shall advise the parties that the forms have important legal consequences and that the parties should consult legal counsel before signing such forms.

(5) Nothing contained in this section shall prohibit the public from entering into written contracts with any broker which contain duties, obligations, or responsibilities which are in addition to those specified in this part 8.

(6) (a) If a real estate brokerage firm has more than one licensed natural person, the employing broker or an individual broker employed or engaged by that employing broker shall be designated to work with the seller, landlord, buyer, or tenant as a designated broker. The employing broker may designate more than one of its individual brokers to work with a seller, landlord, buyer, or tenant.

(b) The brokerage relationship established between the seller, landlord, buyer, or tenant and a designated broker, including the duties, obligations, and responsibilities of that relationship, shall not extend to the employing broker nor to any other broker employed or engaged by that employing broker who has not been so designated and shall not extend to the firm, partnership, limited liability company, association, corporation, or other entity that employs such broker.

(c) A real estate broker may have designated brokers working as single agents for a seller or landlord and a buyer or tenant in the same real estate transaction without creating dual agency for the employing real estate broker, or any broker employed or engaged by that employing real estate broker.

(d) An individual broker may be designated to work for both a seller or landlord and a buyer or tenant in the same transaction as a transaction-broker for both, as a single agent for the seller or landlord treating the buyer or tenant as a customer, or as a single agent for a buyer or tenant treating the seller or landlord as a customer, but not as a single agent for both. The applicable designated broker relationship shall be disclosed in writing to the seller or landlord and buyer or tenant in a timely manner pursuant to rules promulgated by the real estate commission.

(e) A designated broker may work with a seller or landlord in one transaction and work with a buyer or tenant in another transaction.

(f) When a designated broker serves as a single agent pursuant to section 12-61-804 or 12-61-805, there shall be no imputation of knowledge to the employing or employed broker who has not been so designated.

(g) The extent and limitations of the brokerage relationship with the designated broker shall be disclosed to the seller, landlord, buyer, or tenant working with that designated broker pursuant to section 12-61-808.

(7) No seller, buyer, landlord, or tenant shall be vicariously liable for a broker's acts or omissions that have not been approved, directed, or ratified by such seller, buyer, landlord, or tenant.

(8) Nothing in this section shall be construed to limit the employing broker's or firm's responsibility to supervise licensees employed by such broker or firm nor to shield such broker or firm from vicarious liability.

Source: L. 93: Entire part added, p. 980, § 1, effective January 1, 1994. **L. 2002:** (1) to (4) amended and (6) to (8) added, p. 1057, § 3, effective January 1, 2003. **L. 2008:** (1) and (4) amended, p. 509, § 24, effective April 17.

ANNOTATION

Although this statute still allows a broker to act as an agent for a buyer or seller, unless a different relationship is established by the parties in writing, it is presumed that a broker is acting as a nonagent transaction-broker. *Sussman v. Stoner*, 143 F. Supp. 2d 1232 (D. Colo. 2001); *Hoff & Leigh, Inc. v. Byler*, 62 P.3d 1077 (Colo. App. 2002).

The commission's standardized forms set forth the basic contractual rights and remedies for buyers and sellers of real property in Colorado. *Albright v. McDermond*, 14 P.3d 318 (Colo. 2000).

12-61-804. Single agent engaged by seller or landlord. (1) A broker engaged by a seller or landlord to act as a seller's agent or a landlord's agent is a limited agent with the following duties and obligations:

- (a) To perform the terms of the written agreement made with the seller or landlord;
- (b) To exercise reasonable skill and care for the seller or landlord;
- (c) To promote the interests of the seller or landlord with the utmost good faith, loyalty, and fidelity, including, but not limited to:
 - (I) Seeking a price and terms which are acceptable to the seller or landlord; except that the broker shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;
 - (II) Presenting all offers to and from the seller or landlord in a timely manner regardless of whether the property is subject to a contract for sale or a lease or letter of intent to lease;
 - (III) Disclosing to the seller or landlord adverse material facts actually known by the broker;
 - (IV) Counseling the seller or landlord as to any material benefits or risks of a transaction which are actually known by the broker;
 - (V) Advising the seller or landlord to obtain expert advice as to material matters about which the broker knows but the specifics of which are beyond the expertise of such broker;
 - (VI) Accounting in a timely manner for all money and property received; and
 - (VII) Informing the seller or landlord that such seller or landlord shall not be vicariously liable for the acts of such seller's or landlord's agent that are not approved, directed, or ratified by such seller or landlord.
- (d) To comply with all requirements of this article and any rules promulgated pursuant to this article; and
- (e) To comply with any applicable federal, state, or local laws, rules, regulations, or ordinances including fair housing and civil rights statutes or regulations.

(2) The following information shall not be disclosed by a broker acting as a seller's or landlord's agent without the informed consent of the seller or landlord:

- (a) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;
- (b) What the motivating factors are for the party selling or leasing the property;

(c) That the seller or landlord will agree to financing terms other than those offered;
(d) Any material information about the seller or landlord unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing; or

(e) Any facts or suspicions regarding circumstances which may psychologically impact or stigmatize any real property pursuant to section 38-35.5-101, C.R.S.

(3) (a) A broker acting as a seller's or landlord's agent owes no duty or obligation to the buyer or tenant; except that a broker shall, subject to the limitations of section 38-35.5-101, C.R.S., concerning psychologically impacted property, disclose to any prospective buyer or tenant all adverse material facts actually known by such broker. Such adverse material facts may include but shall not be limited to adverse material facts pertaining to the title and the physical condition of the property, any material defects in the property, and any environmental hazards affecting the property which are required by law to be disclosed.

(b) A seller's or landlord's agent owes no duty to conduct an independent inspection of the property for the benefit of the buyer or tenant and owes no duty to independently verify the accuracy or completeness of any statement made by such seller or landlord or any independent inspector.

(4) A seller's or landlord's agent may show alternative properties not owned by such seller or landlord to prospective buyers or tenants and may list competing properties for sale or lease and not be deemed to have breached any duty or obligation to such seller or landlord.

(5) A designated broker acting as a seller's or landlord's agent may cooperate with other brokers but may not engage or create any subagents.

Source: L. 93: Entire part added, p. 981, § 1, effective January 1, 1994. **L. 2002:** (1)(c)(VII) and (5) amended, p. 1059, § 4, effective January 1, 2003.

ANNOTATION

Broker breached its duty of loyalty by pressuring its principal to sell the property subject to the parties' listing contract and by failing to disclose information material to the contract. *Mabry v. Tom Stanger & Co.*, 33 P.3d 1206 (Colo. App. 2001).

Certificate of review required by § 13-20-602 is not a prerequisite to a lawsuit based on

a licensed real estate broker's alleged violation of subsection (3)(a) of this section. Expert testimony would not ordinarily be necessary to prove such a claim. *Baumgarten v. Coppage*, 15 P.3d 304 (Colo. App. 2000).

12-61-805. Single agent engaged by buyer or tenant. (1) A broker engaged by a buyer or tenant to act as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations:

(a) To perform the terms of the written agreement made with the buyer or tenant;
(b) To exercise reasonable skill and care for the buyer or tenant;
(c) To promote the interests of the buyer or tenant with the utmost good faith, loyalty, and fidelity, including, but not limited to:

(I) Seeking a price and terms which are acceptable to the buyer or tenant; except that the broker shall not be obligated to seek other properties while the buyer is a party to a contract to purchase property or while the tenant is a party to a lease or letter of intent to lease;

(II) Presenting all offers to and from the buyer or tenant in a timely manner regardless of whether the buyer is already a party to a contract to purchase property or the tenant is already a party to a contract or a letter of intent to lease;

(III) Disclosing to the buyer or tenant adverse material facts actually known by the broker;

(IV) Counseling the buyer or tenant as to any material benefits or risks of a transaction which are actually known by the broker;

(V) Advising the buyer or tenant to obtain expert advice as to material matters about which the broker knows but the specifics of which are beyond the expertise of such broker;

(VI) Accounting in a timely manner for all money and property received; and

(VII) Informing the buyer or tenant that such buyer or tenant shall not be vicariously liable for the acts of such buyer's or tenant's agent that are not approved, directed, or ratified by such buyer or tenant;

(d) To comply with all requirements of this article and any rules promulgated pursuant to this article; and

(e) To comply with any applicable federal, state, or local laws, rules, regulations, or ordinances including fair housing and civil rights statutes or regulations.

(2) The following information shall not be disclosed by a broker acting as a buyer's or tenant's agent without the informed consent of the buyer or tenant:

(a) That a buyer or tenant is willing to pay more than the purchase price or lease rate for the property;

(b) What the motivating factors are for the party buying or leasing the property;

(c) That the buyer or tenant will agree to financing terms other than those offered;

(d) Any material information about the buyer or tenant unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing; or

(e) Any facts or suspicions regarding circumstances which would psychologically impact or stigmatize any real property pursuant to section 38-35.5-101, C.R.S.

(3) (a) A broker acting as a buyer's or tenant's agent owes no duty or obligation to the seller or landlord; except that such broker shall disclose to any prospective seller or landlord all adverse material facts actually known by the broker including but not limited to adverse material facts concerning the buyer's or tenant's financial ability to perform the terms of the transaction and whether the buyer intends to occupy the property to be purchased as a principal residence.

(b) A buyer's or tenant's agent owes no duty to conduct an independent investigation of the buyer's or tenant's financial condition for the benefit of the seller or landlord and owes no duty to independently verify the accuracy or completeness of statements made by such buyer or tenant or any independent inspector.

(4) A buyer's or tenant's agent may show properties in which the buyer or tenant is interested to other prospective buyers or tenants without breaching any duty or obligation to such buyer or tenant. Nothing in this section shall be construed to prohibit a buyer's or tenant's agent from showing competing buyers or tenants the same property and from assisting competing buyers or tenants in attempting to purchase or lease a particular property.

(5) A broker acting as a buyer's or tenant's agent owes no duty to conduct an independent inspection of the property for the benefit of the buyer or tenant and owes no duty to independently verify the accuracy or completeness of statements made by the seller, landlord, or independent inspectors; except that nothing in this subsection (5) shall be construed to limit the broker's duties and obligations imposed pursuant to subsection (1) of this section.

(6) A broker acting as a buyer's or tenant's agent may cooperate with other brokers but may not engage or create any subagents.

Source: L. 93: Entire part added, p. 983, § 1, effective January 1, 1994. **L. 2002:** (1)(c)(VII) amended and (5) and (6) added, p. 1059, § 5, effective January 1, 2003.

12-61-806. Dual agent. (1) A broker shall not establish dual agency with any seller, landlord, buyer, or tenant.

(2) to (6) (Deleted by amendment, L. 2002, p. 1060, § 6, effective January 1, 2003.)

Source: L. 93: Entire part added, p. 985, § 1, effective January 1, 1994. **L. 2002:** Entire section amended, p. 1060, § 6, effective January 1, 2003.

12-61-807. Transaction-broker. (1) A broker engaged as a transaction-broker is not an agent for either party.

(2) A transaction-broker shall have the following obligations and responsibilities:

(a) To perform the terms of any written or oral agreement made with any party to the transaction;

(b) To exercise reasonable skill and care as a transaction-broker, including, but not limited to:

(I) Presenting all offers and counteroffers in a timely manner regardless of whether the property is subject to a contract for sale or lease or letter of intent;

(II) Advising the parties regarding the transaction and suggesting that such parties obtain expert advice as to material matters about which the transaction-broker knows but the specifics of which are beyond the expertise of such broker;

(III) Accounting in a timely manner for all money and property received;

(IV) Keeping the parties fully informed regarding the transaction;

(V) Assisting the parties in complying with the terms and conditions of any contract including closing the transaction;

(VI) Disclosing to all prospective buyers or tenants any adverse material facts actually known by the broker including but not limited to adverse material facts pertaining to the title, the physical condition of the property, any defects in the property, and any environmental hazards affecting the property required by law to be disclosed;

(VII) Disclosing to any prospective seller or landlord all adverse material facts actually known by the broker including but not limited to adverse material facts pertaining to the buyer's or tenant's financial ability to perform the terms of the transaction and the buyer's intent to occupy the property as a principal residence; and

(VIII) Informing the parties that as seller and buyer or as landlord and tenant they shall not be vicariously liable for any acts of the transaction-broker;

(c) To comply with all requirements of this article and any rules promulgated pursuant to this article; and

(d) To comply with any applicable federal, state, or local laws, rules, regulations, or ordinances including fair housing and civil rights statutes or regulations.

(3) The following information shall not be disclosed by a transaction-broker without the informed consent of all parties:

(a) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

(b) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(c) What the motivating factors are for any party buying, selling, or leasing the property;

(d) That a seller, buyer, landlord, or tenant will agree to financing terms other than those offered;

(e) Any facts or suspicions regarding circumstances which may psychologically impact or stigmatize any real property pursuant to section 38-35.5-101, C.R.S.; or

(f) Any material information about the other party unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing.

(4) A transaction-broker has no duty to conduct an independent inspection of the property for the benefit of the buyer or tenant and has no duty to independently verify the accuracy or completeness of statements made by the seller, landlord, or independent inspectors.

(5) A transaction-broker has no duty to conduct an independent investigation of the buyer's or tenant's financial condition or to verify the accuracy or completeness of any statement made by the buyer or tenant.

(6) A transaction-broker may do the following without breaching any obligation or responsibility:

(a) Show alternative properties not owned by the seller or landlord to a prospective buyer or tenant;

(b) List competing properties for sale or lease;

(c) Show properties in which the buyer or tenant is interested to other prospective buyers or tenants; and

(d) Serve as a single agent or transaction-broker for the same or for different parties in other real estate transactions.

(7) There shall be no imputation of knowledge or information between any party and the transaction-broker or among persons within an entity engaged as a transaction-broker.

(8) A transaction-broker may cooperate with other brokers but shall not engage or create any subagents.

Source: L. 93: Entire part added, p. 986, § 1, effective January 1, 1994. L. 2002: (6)(d) and (8) amended, p. 1061, § 7, effective January 1, 2003.

ANNOTATION

A transaction-broker has certain statutory obligations and responsibilities as expressed in subsections (2) and (3). Hoff & Leigh, Inc. v. Byler, 62 P.3d 1077 (Colo. App. 2002).

Although the statute enumerates the obligations and responsibilities of a transaction-broker, it does not prescribe a remedy for nonperformance of these obligations. Hoff & Leigh, Inc. v. Byler, 62 P.3d 1077 (Colo. App. 2002).

A transaction broker has no duty to investigate whether an assertion is true. The statute clearly states that a transaction broker is under no duty to independently verify the accuracy or completeness of statements made by the seller or independent inspectors for the benefit of the buyer. Barfield v. Hall Realty, Inc., 232 P.3d 286 (Colo. App. 2010).

12-61-808. Broker disclosures. (1) (a) Any person, firm, partnership, limited liability company, association, or corporation acting as a broker shall adopt a written office policy that identifies and describes the relationships offered to the public by such broker.

(b) A broker shall not be required to offer or engage in any one or in all of the brokerage relationships enumerated in section 12-61-804, 12-61-805, or 12-61-807.

(c) Written disclosures and written agreements required by subsection (2) of this section shall contain a statement to the seller, landlord, buyer, or tenant that different brokerage relationships are available that include buyer agency, seller agency, or status as a transaction-broker. Should the seller, landlord, buyer, or tenant request information or ask questions concerning a brokerage relationship not offered by the broker pursuant to the broker's written office policy enumerated in subsection (1) (a) of this section, the broker shall provide to the party a written definition of that brokerage relationship that has been promulgated by the Colorado real estate commission.

(d) Disclosures made in accordance with this part 8 shall be sufficient to disclose brokerage relationships to the public.

(2) (a) (I) Prior to engaging in any of the activities enumerated in section 12-61-101 (2), a transaction-broker shall disclose in writing to the party to be assisted that such broker is not acting as agent for such party and that such broker is acting as a transaction-broker.

(II) As part of each relationship entered into by a broker pursuant to subparagraph (I) of this paragraph (a), written disclosure shall be made which shall contain a signature block for the buyer, seller, landlord, or tenant to acknowledge receipt of such disclosure. Such disclosure and acknowledgment, by itself, shall not constitute a contract with the broker. If such buyer, seller, landlord, or tenant chooses not to sign the acknowledgment, the broker shall note that fact on a copy of the disclosure and shall retain such copy.

(III) If the transaction-broker undertakes any obligations or responsibilities in addition to or different from those set forth in section 12-61-807, such obligations or responsibilities shall be disclosed in a writing which shall be signed by the involved parties.

(b) Prior to engaging in any of the activities enumerated in section 12-61-101 (2), a broker intending to establish a single agency relationship with a seller, landlord, buyer, or tenant shall enter into a written agency agreement with the party to be represented. Such agreement shall disclose the duties and responsibilities specified in section 12-61-804 or 12-61-805, as applicable. Notice of the single agency relationship shall be furnished to any prospective party to the proposed transaction in a timely manner.

(c) (Deleted by amendment, L. 2002, p. 1061, § 8, effective January 1, 2003.)

(d) (I) Prior to engaging in any of the activities enumerated in section 12-61-101 (2), a broker intending to work with a buyer or tenant as an agent of the seller or landlord shall provide a written disclosure to such buyer or tenant that shall contain the following:

(A) A statement that the broker is an agent for the seller or landlord and is not an agent for the buyer or tenant;

(B) A list of the tasks that the agent intends to perform for the seller or landlord with the buyer or tenant; and

(C) A statement that the buyer or tenant shall not be vicariously liable for the acts of the agent unless the buyer or tenant approves, directs, or ratifies such acts.

(II) The written disclosure required pursuant to subparagraph (I) of this paragraph (d), shall contain a signature block for the buyer or tenant to acknowledge receipt of such disclosure. Such disclosure and acknowledgment, by itself, shall not constitute a contract with the broker. If the buyer or tenant does not sign such disclosure, the broker shall note that fact on a copy of such disclosure and retain such copy.

(e) (Deleted by amendment, L. 2002, p. 1061, § 8, effective January 1, 2003.)

(f) A broker who has already established a relationship with one party to a proposed transaction shall advise at the earliest reasonable opportunity any other potential parties or their agents of such established relationship.

(g) (I) Prior to engaging in any of the activities enumerated in section 12-61-101 (2), the seller, buyer, landlord, or tenant shall be advised in any written agreement with a broker that the brokerage relationship exists only with the designated broker, does not extend to the employing broker or to any other brokers employed or engaged by the employing broker who are not so designated, and does not extend to the brokerage company.

(II) Nothing in this paragraph (g) shall be construed to limit the employing broker's or firm's responsibility to supervise licensees employed by such broker or firm nor to shield such broker or firm from vicarious liability.

Source: L. 93: Entire part added, p. 988, § 1, effective January 1, 1994. L. 2002: (1)(a) to (1)(c), (2)(b), (2)(c), (2)(d)(I), and (2)(e) amended and (2)(g) added, p. 1061, § 8, effective January 1, 2003. L. 2008: (2)(a)(I), (2)(b), IP(2)(d)(I), and (2)(g)(I) amended, p. 509, § 25, effective April 17.

12-61-809. Duration of relationship. (1) (a) The relationships set forth in this part 8 shall commence at the time that the broker is engaged by a party and shall continue until performance or completion of the agreement by which the broker was engaged.

(b) If the agreement by which the broker was engaged is not performed or completed for any reason, the relationship shall end at the earlier of the following:

(I) Any date of expiration agreed upon by the parties;

(II) Any termination or relinquishment of the relationship by the parties; or

(III) One year after the date of the engagement.

(2) (a) Except as otherwise agreed to in writing and pursuant to paragraph (b) of this subsection (2), a broker engaged as a seller's agent or buyer's agent owes no further duty or obligation after termination or expiration of the contract or completion of performance.

(b) Notwithstanding paragraph (a) of this subsection (2), a broker shall be responsible after termination or expiration of the contract or completion of performance for the following:

(I) Accounting for all moneys and property related to and received during the engagement; and

(II) Keeping confidential all information received during the course of the engagement which was made confidential by request or instructions from the engaging party unless:

(A) The engaging party grants written consent to disclose such information;

(B) Disclosure of such information is required by law; or

(C) The information is made public or becomes public by the words or conduct of the engaging party or from a source other than the broker.

(3) Except as otherwise agreed to in writing, a transaction-broker owes no further obligation or responsibility to the engaging party after termination or expiration of the

contract for performance or completion of performance; except that such broker shall account for all moneys and property related to and received during the engagement.

Source: L. 93: Entire part added, p. 990, § 1, effective January 1, 1994. L. 2002: (2)(a) amended, p. 1062, § 9, effective January 1, 2003.

ANNOTATION

The terms of a brokerage agreement govern the duration of the relationship between the parties to the agreement, and the one-year limitation applies only to those agreements as to which there has not been completion of performance in accordance with their terms. Where performance had begun and was continuing at the end of the first year of an agreement structured with a one-year term and two automatic renewal periods, completion of performance within the terms of the agreement was still capable of being achieved. Only in the absence of completion of performance within

the terms of the agreement do statutory alternatives apply. *Prop. Asset Brokerage, LLC v. Magna Assocs. Liquidating Trust*, 992 P.2d 654 (Colo. App. 1999).

Broker's obligations extended past the expiration of the exclusive listing agreement and continued until the performance or completion of the agreement; thus, the broker's relationship to the engaging party was not converted to a transaction-broker and the broker continued to owe the engaging party the duties owed by a seller's agent. *Mabry v. Tom Stanger & Co.*, 33 P.3d 1206 (Colo. App. 2001).

12-61-810. Compensation. (1) In any real estate transaction, the broker's compensation may be paid by the seller, the buyer, the landlord, the tenant, a third party, or by the sharing or splitting of a commission or compensation between brokers.

(2) Payment of compensation shall not be construed to establish an agency relationship between the broker and the party who paid such compensation.

(3) A seller or landlord may agree that a transaction-broker or single agent may share the commission or other compensation paid by such seller or landlord with another broker.

(4) A buyer or tenant may agree that a single agent or transaction-broker may share the commission or other compensation paid by such buyer or tenant with another broker.

(5) A buyer's or tenant's agent shall obtain the written approval of such buyer or tenant before such agent may propose to the seller's or landlord's agent that such buyer's or tenant's agent be compensated by sharing compensation paid by such seller or landlord.

(6) Prior to entering into a brokerage or listing agreement or a contract to buy, sell, or lease, the identity of those parties, persons, or entities paying compensation or commissions to any broker shall be disclosed to the parties to the transaction.

(7) A broker may be compensated by more than one party for services in a transaction, if those parties have consented in writing to such multiple payments prior to entering into a contract to buy, sell, or lease.

Source: L. 93: Entire part added, p. 991, § 1, effective January 1, 1994. L. 94: (6) amended, p. 496, § 1, effective March 31. L. 2002: (3) and (4) amended, p. 1063, § 10, effective January 1, 2003.

12-61-811. Violations. The violation of any provision of this part 8 by a broker constitutes an act pursuant to section 12-61-113 (1) (k) for which the real estate commission may investigate and take administrative action against any such broker pursuant to sections 12-61-113 and 12-61-114.

Source: L. 93: Entire part added, p. 991, § 1, effective January 1, 1994. L. 2008: Entire section amended, p. 510, § 26, effective April 17.

PART 9

MORTGAGE LOAN ORIGINATORS

12-61-901. Short title. This part 9 shall be known and may be cited as the "Mortgage Loan Originator Licensing and Mortgage Company Registration Act".

Source: L. 2006: Entire part added, p. 1581, § 1, effective July 1. **L. 2007:** Entire section amended, p. 1731, § 3, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1611, § 1, effective August 5. **L. 2010:** Entire section amended, (HB 10-1141), ch. 280, p. 1283, § 2, effective August 11.

12-61-902. Definitions. As used in this part 9, unless the context otherwise requires:

(1) “Affiliate” means a person who, directly or indirectly, through intermediaries controls, is controlled by, or is under the common control of another person addressed by this part 9.

(1.2) “Affordable housing dwelling unit” means an affordable housing dwelling unit as defined in section 29-26-102, C.R.S.

(1.3) “Board” means the board of mortgage loan originators created in section 12-61-902.5.

(1.5) “Borrower” means any person who consults with or retains a mortgage loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

(1.7) “Community development organization” means any community housing development organization or community land trust as defined by the federal “Cranston-Gonzalez National Affordable Housing Act of 1990” or a community-based development organization as defined by the federal “Housing and Community Development Act of 1974”, that is also either a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal “Internal Revenue Code of 1986” pursuant to section 501 (c) of the federal “Internal Revenue Code of 1986”, 26 U.S.C. sec. 501 (a) and 501 (c), and that receives funding from the United States department of housing and urban development, Colorado division of housing, Colorado housing and finance authority, or United States department of agriculture rural development, or through a grantee of the United States department of housing and urban development, purely for the purpose of community housing development activities.

(2) “Depository institution” has the same meaning as set forth in the “Federal Deposit Insurance Act”, 12 U.S.C. sec. 1813 (c), and includes a credit union.

(3) “Director” means the director of the division of real estate.

(4) “Division” means the division of real estate.

(4.3) “Dwelling” shall have the same meaning as set forth in the federal “Truth in Lending Act”, 15 U.S.C. sec. 1602 (v).

(4.5) “Federal banking agency” means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, or the federal deposit insurance corporation.

(4.6) “HUD-approved housing counseling agency” means an agency that is either a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal “Internal Revenue Code of 1986” pursuant to section 501 (c) of the federal “Internal Revenue Code of 1986”, 26 U.S.C. sec. 501 (a) and 501 (c), and approved by the United States department of housing and urban development, in accordance with the housing counseling program handbook section 7610.1 and 24 CFR 214.

(4.7) “Individual” means a natural person.

(4.9) (a) “Loan processor or underwriter” means an individual who performs clerical or support duties at the direction of, and subject to supervision by, a state-licensed loan originator or a registered loan originator.

(b) As used in this subsection (4.9), “clerical or support duties” includes duties performed after receipt of an application for a residential mortgage loan, including:

(I) The receipt, collection, distribution, and analysis of information commonly used for the processing or underwriting of a residential mortgage loan; and

(II) Communicating with a borrower to obtain the information necessary to process or underwrite a loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

(5) "Mortgage company" means a person other than an individual who, through employees or other individuals, takes residential loan applications or offers or negotiates terms of a residential mortgage loan.

(5.5) "Mortgage lender" means a lender who is in the business of making residential mortgage loans if:

(a) The lender is the payee on the promissory note evidencing the loan; and

(b) The loan proceeds are obtained by the lender from its own funds or from a line of credit made available to the lender from a bank or other entity that regularly loans money to lenders for the purpose of funding mortgage loans.

(6) (a) "Mortgage loan originator" means an individual who:

(I) Takes a residential mortgage loan application; or

(II) Offers or negotiates terms of a residential mortgage loan.

(b) "Mortgage loan originator" does not include:

(I) An individual engaged solely as a loan processor or underwriter;

(II) A person that only performs real estate brokerage or sales activities and is licensed or registered pursuant to part 1 of this article, unless the person is compensated by a mortgage lender or a mortgage loan originator;

(III) A person solely involved in extensions of credit relating to time share plans, as defined in 11 U.S.C. sec. 101 (53D);

(IV) An individual who is servicing a mortgage loan; or

(V) A person that only performs the services and activities of a dealer, as defined in section 24-32-3302, C.R.S.

(6.3) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed pursuant to the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5101 et seq., to track the licensing and registration of mortgage loan originators and that is established and maintained by:

(a) The conference of state bank supervisors and the American association of residential mortgage regulators, or their successor entities; or

(b) The secretary of the United States department of housing and urban development.

(6.5) "Nontraditional mortgage product" means a mortgage product other than a thirty-year, fixed-rate mortgage.

(7) "Originate a mortgage" means to act, directly or indirectly, as a mortgage loan originator.

(7.5) "Person" means a natural person, corporation, company, limited liability company, partnership, firm, association, or other legal entity.

(7.6) "Quasi-government agency" means an agency that is either a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal "Internal Revenue Code of 1986" pursuant to section 501 (c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (a) and 501 (c), and was created to operate in accordance with article 4 of title 29, C.R.S., as a public housing authority.

(7.7) "Real estate brokerage activity" means an activity that involves offering or providing real estate brokerage services to the public, including, without limitation:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than matters related to financing for the transaction;

(d) Engaging in an activity for which a person engaged in the activity is required under applicable law to be registered or licensed as a real estate agent or real estate broker; or

(e) Offering to engage in any activity, or act in any capacity related to such activity, described in this subsection (7.7).

(8) "Residential mortgage loan" means a loan that is primarily for personal, family, or household use and that is secured by a mortgage, deed of trust, or other equivalent, consensual security interest on a dwelling or residential real estate upon which is con-

structed or intended to be constructed a single-family dwelling or multiple-family dwelling of four or fewer units.

(9) "Residential real estate" means any real property upon which a dwelling is or will be constructed.

(9.5) "Self-help housing organization" means a private or public nonprofit organization that is exempt from taxation under section 501 (a) of the federal "Internal Revenue Code of 1986" pursuant to section 501 (c) of the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501 (a) and 501 (c), and that purely originates residential mortgage loans with interest rates no greater than zero percent for borrowers who have provided part of the labor to construct the dwelling securing the loan or that receives funding from the United States department of agriculture rural development section 502 mutual self-help housing program for borrowers that have provided part of the labor to construct the dwelling securing the loan.

(10) "Servicing a mortgage loan" means collecting, receiving, or obtaining the right to collect or receive payments on behalf of a mortgage lender, including payments of principal, interest, escrow amounts, and other amounts due on obligations due and owing to the mortgage lender.

(11) "State-licensed loan originator" means an individual who is:

(a) A mortgage loan originator or engages in the activities of a mortgage loan originator;

(b) Not an employee of a depository institution or a subsidiary that is:

(I) Owned and controlled by a depository institution; and

(II) Regulated by a federal banking agency;

(c) Licensed or required to be licensed pursuant to this part 9; and

(d) Registered as a state-licensed loan originator with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

(12) "Unique identifier" means a number or other identifier assigned to a mortgage loan originator pursuant to protocols established by the nationwide mortgage licensing system and registry.

Source: L. 2006: Entire part added, p. 1581, § 1, effective July 1. L. 2007: (1.5) and (8) added and (5), IP(6), and (7) amended, p. 1715, § 1, effective June 1. L. 2009: Entire part amended, (HB 09-1085), ch. 303, p. 1611, § 1, effective August 5. L. 2010: (1.3) and (5.5) added and (5) amended, (HB 10-1141), ch. 280, p. 1283, § 3, effective August 11. L. 2011: (1.2), (1.7), (4.6), (7.6), and (9.5) added, (SB 11-206), ch. 253, p. 1096, § 2, effective June 2.

Cross references: For the legislative declaration in the 2011 act adding subsections (1.2), (1.7), (4.6), (7.6), and (9.5), see section 1 of chapter 253, Session Laws of Colorado 2011.

12-61-902.5. Board of mortgage loan originators - creation - compensation - enforcement of part after board creation - immunity. (1) There is hereby created in the division a board of mortgage loan originators, consisting of five members appointed by the governor with the consent of the senate. Of the members, three shall be licensed mortgage loan originators and two shall be members of the public at large not engaged in mortgage loan origination or mortgage lending. Of the members of the board appointed for terms beginning on and after August 11, 2010, two of the members appointed as mortgage loan originators and one of the members appointed as a member of the public at large shall be appointed for terms of two years, and one of the members appointed as a mortgage loan originator and one of the members appointed as a member of the public at large shall serve for terms of four years. Thereafter, members of the board shall hold office for a term of four years. In the event of a vacancy by death, resignation, removal, or otherwise, the governor shall appoint a member to fill the unexpired term. The governor shall have the authority to remove any member for misconduct, neglect of duty, or incompetence.

(2) (a) The board shall exercise its powers and perform its duties and functions under the department of regulatory agencies as if transferred to the department by a **type 1**

transfer, as such transfer is defined in the “Administrative Organization Act of 1968”, article 1 of title 24, C.R.S.

(b) Notwithstanding any other provision of this part 9, on and after the creation of the board by this section, the board shall exercise all of the rule-making, enforcement, and administrative authority of the director set forth in this part 9. The board has the authority to delegate to the director any enforcement and administrative authority under this part 9 that the board deems necessary and appropriate. If the board delegates any enforcement or administrative authority under this part 9 to the director, the director shall only be entitled to exercise such authority as specifically delegated in writing to the director by the board.

(3) Each member of the board shall receive the same compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of professions and occupations pursuant to section 24-34-102 (13), C.R.S. Payment for all per diem compensation and expenses shall be made out of annual appropriations from the mortgage loan originator licensing cash fund created in section 12-61-908.

(4) Members of the board, consultants, and expert witnesses shall be immune from suit in any civil action based upon any disciplinary proceedings or other official acts they performed in good faith pursuant to this part 9.

(5) A majority of the board shall constitute a quorum for the transaction of all business, and actions of the board shall require a vote of a majority of the members present in favor of the action taken.

(6) (a) All rules promulgated by the director prior to August 11, 2010, shall remain in full force and effect until repealed or modified by the board. The board shall have the authority to enforce any previously promulgated rules of the director under this part 9 and any rules promulgated by the board.

(b) Nothing in this section shall affect any action taken by the director prior to August 11, 2010. No person who, on or before August 11, 2010, holds a license issued under this part 9 shall be required to secure an additional license under this part 9, but shall otherwise be subject to all the provisions of this part 9. A license previously issued shall, for all purposes, be considered a license issued by the board under this part 9.

Source: L. 2010: Entire section added, (HB 10-1141), ch. 280, p. 1284, § 4, effective August 11.

12-61-903. License required - rules. (1) (a) On or after August 5, 2009, unless licensed by the board, an individual shall not originate a mortgage, offer to originate a mortgage, act as a mortgage loan originator, or offer to act as a mortgage loan originator. On or after December 31, 2010, unless licensed by the board and registered with the nationwide mortgage licensing system and registry as a state-licensed loan originator, an individual shall not originate or offer to originate a mortgage or act or offer to act as a mortgage loan originator.

(b) On and after January 1, 2010, a licensed mortgage loan originator shall apply for license renewal in accordance with subsection (4) of this section every calendar year as determined by the board by rule.

(c) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1615, § 1, effective August 5, 2009.)

(1.5) An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless the independent contractor is a state-licensed loan originator.

(2) An applicant for initial licensing as a mortgage loan originator shall submit to the board the following:

(a) A criminal history record check in compliance with subsection (5) of this section;

(b) A disclosure of all administrative discipline taken against the applicant concerning the categories listed in section 12-61-905 (1) (c); and

(c) The application fee established by the board in accordance with section 12-61-908.

(3) (a) In addition to the requirements imposed by subsection (2) of this section, on or after August 5, 2009, each individual applicant for initial licensing as a mortgage loan originator shall have satisfactorily completed a mortgage lending fundamentals course

approved by the board and consisting of at least nine hours of instruction in subjects related to mortgage lending. In addition, the applicant shall have satisfactorily completed a written examination approved by the board.

(b) The board may contract with one or more independent testing services to develop, administer, and grade the examinations required by paragraph (a) of this subsection (3) and to maintain and administer licensee records. The contract may allow the testing service to recover from applicants its costs incurred in connection with these functions. The board may contract separately for these functions and may allow the costs to be collected by a single contractor for distribution to other contractors.

(c) The board may publish reports summarizing statistical information prepared by the nationwide mortgage licensing system and registry relating to mortgage loan originator examinations.

(4) An applicant for license renewal shall submit to the board the following:

(a) A disclosure of all administrative discipline taken against the applicant concerning the categories listed in section 12-61-905 (1) (c); and

(b) The renewal fee established by the board in accordance with section 12-61-908.

(5) (a) Prior to submitting an application for a license, an applicant shall submit a set of fingerprints to the Colorado bureau of investigation. Upon receipt of the applicant's fingerprints, the Colorado bureau of investigation shall use the fingerprints to conduct a state and national criminal history record check using records of the Colorado bureau of investigation and the federal bureau of investigation. All costs arising from such criminal history record check shall be borne by the applicant and shall be paid when the set of fingerprints is submitted. Upon completion of the criminal history record check, the bureau shall forward the results to the board. The board may acquire a name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable.

(b) If the board determines that the criminal background check provided by the nationwide mortgage licensing system and registry is a sufficient method of screening license applicants to protect Colorado consumers, the board may, by rule, authorize the use of that criminal background check instead of the criminal history record check otherwise required by this subsection (5).

(5.5) (a) On and after January 1, 2010, in connection with an application for a license as a mortgage loan originator, the applicant shall furnish information concerning the applicant's identity to the nationwide mortgage licensing system and registry. The applicant shall furnish, at a minimum, the following:

(I) Fingerprints for submission to the federal bureau of investigation and any government agency or entity authorized to receive fingerprints for a state, national, or international criminal history record check; and

(II) Personal history and experience, in a form prescribed by the nationwide mortgage licensing system and registry, including submission of authorization for the nationwide mortgage licensing system and registry to obtain:

(A) An independent credit report from the consumer reporting agency described in the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681a (p); and

(B) Information related to any administrative, civil, or criminal findings by a government jurisdiction.

(b) An applicant is responsible for paying all costs arising from a criminal history record check and shall pay such costs upon submission of fingerprints.

(c) The board may acquire a name-based criminal history record check for an applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable.

(5.7) Any individual who obtains a license pursuant to this part 9 prior to January 1, 2010, shall furnish at least the following information concerning the individual's identity to the nationwide mortgage licensing system and registry:

(a) Fingerprints for submission to the federal bureau of investigation and any government agency or entity authorized to receive fingerprints for a state, national, or international criminal history record check; and

(b) Personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including submission of authorization for the nationwide mortgage licensing system and registry to obtain:

(I) An independent credit report from the consumer reporting agency described in the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681a (p); and

(II) Information related to any administrative, civil, or criminal findings by a government jurisdiction.

(6) Before granting a license to an applicant, the board shall require the applicant to post a bond as required by section 12-61-907.

(7) The board shall issue or deny a license within sixty days after:

(a) The applicant has submitted the requisite information to the board and the nationwide mortgage licensing system and registry, including, but not limited to, the completed application, the application fee, and proof that the applicant has posted a surety bond and obtained errors and omissions insurance; and

(b) The board receives the completed criminal history record check and all other relevant information or documents necessary to reasonably ascertain facts underlying the applicant's criminal history.

(8) (a) The board may require, as a condition of license renewal on or after January 1, 2009, continuing education of licensees for the purpose of enhancing the professional competence and professional responsibility of all licensees.

(b) Continuing professional education requirements shall be determined by the board by rule; except that licensees shall be required to complete at least eight credit hours of continuing education each year. The board may contract with one or more independent service providers to develop, review, or approve continuing education courses. The contract may allow the independent service provider to recover from licensees its costs incurred in connection with these functions. The board may contract separately for these functions and may allow the costs to be collected by a single contractor for distribution to other contractors.

(9) (a) The board may require contractors and prospective contractors for services under subsections (3) and (8) of this section to submit, for the board's review and approval, information regarding the contents and materials of proposed courses and other documentation reasonably necessary to further the purposes of this section.

(b) The board may set fees for the initial and continuing review of courses for which credit hours will be granted. The initial filing fee for review of materials shall not exceed five hundred dollars, and the fee for continued review shall not exceed two hundred fifty dollars per year per course offered.

(10) The board may adopt reasonable rules to implement this section. The board may adopt rules necessary to implement provisions required in the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5101 et seq., and for participation in the nationwide mortgage licensing system and registry.

(11) In order to fulfill the purposes of this part 9, the board may establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this part 9.

(12) The board may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from or distributing information to the department of justice, a government agency, or any other source.

Source: L. 2006: Entire part added, p. 1582, § 1, effective July 1. L. 2007: Entire section amended, p. 1732, § 4, effective January 1, 2008. L. 2009: Entire part amended, (HB 09-1085), ch. 303, p. 1615, § 1, effective August 5. L. 2010: (1)(a), (1)(b), IP(2), (2)(c), (3), IP(4), (4)(b), (5), (5.5)(c), and (6) to (12) amended, (HB 10-1141), ch. 280, p. 1285, § 5, effective August 11.

12-61-903.1. Registration required - rules. (1) On or after January 1, 2011, each mortgage company shall register with the nationwide mortgage licensing system and

registry, unless exempted by rule by the board, and shall renew such registration each calendar year based on the following criteria:

- (a) (I) The mortgage company is legally operating in the state of Colorado in accordance with standards determined and administered by the Colorado secretary of state; and
- (II) The mortgage company is not legally barred from operating in Colorado.
- (b) Sole proprietors, general partnerships, and other mortgage companies not otherwise required to register with the secretary of state shall register using a trade name.

Source: L. 2010: Entire section added, (HB 10-1141), ch. 280, p. 1288, § 6, effective August 11.

12-61-903.3. License or registration inactivation. (1) The board may inactivate a state license or a registration with the nationwide mortgage licensing system and registry when a licensee has failed to:

- (a) Comply with the surety bond requirements of sections 12-61-903 (6) and 12-61-907;
- (b) Comply with the errors and omissions insurance requirement in section 12-61-903.5 or any rule of the board that directly or indirectly addresses errors and omissions insurance requirements;
- (c) Maintain current contact information, surety bond information, or errors and omissions insurance information as required by this part 9 or by any rule of the board that directly or indirectly addresses such requirements;
- (d) Respond to an investigation or examination;
- (e) Comply with any of the education or testing requirements set forth in this part 9 or in any rule of the board that directly or indirectly addresses education or testing requirements; or
- (f) Register with and provide all required information to the nationwide mortgage licensing system and registry.

Source: L. 2009: Entire part amended, (HB 09-1085), ch. 303, p. 1619, § 1, effective August 5. **L. 2010:** IP(1), (1)(b), (1)(c), and (1)(e) amended, (HB 10-1141), ch. 280, p. 1288, § 7, effective August 11.

12-61-903.5. Errors and omissions insurance - duties of the board - certificate of coverage - when required - group plan made available - effect. (1) (a) Every licensee under this part 9 shall maintain errors and omissions insurance to cover all activities contemplated under this part 9.

- (b) The requirements of this subsection (1) shall not apply to:
 - (I) A mortgage loan originator with an inactive license or registration; or
 - (II) An attorney licensed as a loan originator who maintains a policy of professional malpractice insurance that provides coverage for errors and omissions for activities of the attorney licensee regulated by this part 9.
- (2) The board shall determine the terms and conditions of coverage required under this section, including the minimum limits of coverage, the permissible deductible, and permissible exemptions. Each licensee subject to the requirements of this section shall maintain evidence of coverage, in a manner satisfactory to the board, demonstrating continuing compliance with the required terms.

Editor's note: This version of this section is effective until July 1, 2013.

12-61-903.5. Errors and omissions insurance - duties of the board - certificate of coverage - when required - group plan made available - effect - rules. (1) Every licensee under this part 9, except an inactive mortgage loan originator or an attorney licensee who maintains a policy of professional malpractice insurance that provides coverage for errors and omissions insurance for their activities as a licensee under this part 9, shall maintain errors and omissions insurance to cover all activities contemplated under

this part 9. The division shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after a competitive bid process in accordance with article 103 of title 24, C.R.S. A group policy obtained by the division must be available to all licensees with no right on the part of the insurer to cancel a licensee. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the division.

(2) (a) If the division is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable annual premium, as determined by the division, a licensee shall independently obtain the errors and omissions insurance required by this section.

(b) The division shall solicit and consider information and comments from interested persons when determining the reasonableness of annual premiums.

(3) The division shall determine the terms and conditions of coverage required under this section based on rules promulgated by the board. Each licensee shall be notified of the required terms and conditions at least thirty days before the annual premium renewal date as determined by the division. Each licensee shall file a certificate of coverage showing compliance with the required terms and conditions with the division by the annual premium renewal date, as determined by the division.

(4) In addition to all other powers and duties conferred upon the board by this part 9, the board shall adopt such rules as it deems necessary or proper to carry out this section.

Editor's note: This version of this section is effective July 1, 2013.

Source: **L. 2007:** Entire section added, p. 1734, § 5, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1619, § 1, effective August 5. **L. 2010:** (2) amended, (HB 10-1141), ch. 280, p. 1289, § 8, effective August 11. **L. 2012:** Entire section R&RE, (HB 12-1110), ch. 277, p. 1473, § 16, effective July 1, 2013.

12-61-903.7. License renewal. (1) In order for a licensed mortgage loan originator to renew a license issued pursuant to this part 9, the mortgage loan originator shall:

(a) Continue to meet the minimum standards for issuance of a license pursuant to this part 9;

(b) Satisfy the annual continuing education requirements set forth in section 12-61-903 (8) and in rules adopted by the board; and

(c) Pay applicable license renewal fees.

(2) If a licensed mortgage loan originator fails to satisfy the requirements of subsection (1) of this section for license renewal, the mortgage loan originator's license shall expire. The board shall adopt rules to establish procedures for the reinstatement of an expired license consistent with the standards established by the nationwide mortgage licensing system and registry.

Source: **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1620, § 1, effective August 5. **L. 2010:** (1)(b) and (2) amended, (HB 10-1141), ch. 280, p. 1289, § 9, effective August 11.

12-61-904. Exemptions - rules. (1) Except as otherwise provided in section 12-61-911, this part 9 does not apply to the following, unless otherwise determined by the federal bureau of consumer financial protection or the United States department of housing and urban development:

(a) (Deleted by amendment, L. 2010, (HB 10-1141), ch. 280, p. 1289, § 10, effective August 11, 2010.)

(b) With respect to a residential mortgage loan, a person, estate, or trust that provides mortgage financing for the sale of no more than three properties in any twelve-month period to purchasers of such properties, each of which is owned by such person, estate, or trust and serves as security for the loan;

(c) A bank and a savings association as these terms are defined in the "Federal Deposit Insurance Act", a subsidiary that is owned and controlled by a bank or savings association,

employees of a bank or savings association, employees of a subsidiary that is owned and controlled by a bank or savings association, credit unions, and employees of credit unions;

(d) An attorney who renders services in the course of practice, who is licensed in Colorado, and who is not primarily engaged in the business of negotiating residential mortgage loans;

(e) (Deleted by amendment, L. 2007, p. 1716, § 2, effective June 1, 2007, and p. 1734, § 6, effective January 1, 2008.)

(f) A person who:

(I) Funds a residential mortgage loan that has been originated and processed by a licensed person or by an exempt person;

(II) Does not solicit borrowers in Colorado for the purpose of making residential mortgage loans; and

(III) Does not participate in the negotiation of residential mortgage loans with the borrower, except for setting the terms under which a person may buy or fund a residential mortgage loan originated by a licensed or exempt person;

(g) A loan processor or underwriter who is not an independent contractor and who does not represent to the public that the individual can or will perform any activities of a mortgage loan originator. As used in this paragraph (g), "represent to the public" means communicating, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual is able to provide a particular service or activity for a consumer.

(h) To the extent that it is providing programs benefitting affordable housing dwelling units, an agency of the federal government, the Colorado government, or any of Colorado's political subdivisions or employees of an agency of the federal government, of the Colorado government, or of any of Colorado's political subdivisions;

(i) Quasi-government agencies, HUD-approved housing counseling agencies, or employees of quasi-government agencies or HUD-approved housing counseling agencies;

(j) Community development organizations or employees of community development organizations;

(k) Self-help housing organizations or employees of self-help housing organizations or volunteers acting as an agent of self-help housing organizations.

(2) The exemptions in subsection (1) of this section shall not apply to persons acting beyond the scope of such exemptions.

(3) The board may adopt reasonable rules modifying the exemptions in this section in accordance with rules adopted by the federal bureau of consumer financial protection or the United States department of housing and urban development.

Source: L. 2006: Entire part added, p. 1583, § 1, effective July 1. L. 2007: IP(1) and (1)(e) amended, p. 1716, § 2, effective June 1; (1)(e), (1)(f)(I), and (1)(f)(III) amended, p. 1734, § 6, effective January 1, 2008. L. 2009: Entire part amended, (HB 09-1085), ch. 303, p. 1620, § 1, effective August 5. L. 2010: (1)(a), (1)(b), and (1)(c) amended, (HB 10-1141), ch. 280, p. 1289, § 10, effective August 11. L. 2011: IP(1) and (1)(b) amended, (HB 11-1022), ch. 6, p. 12, § 2, effective March 1; IP(1) amended and (1)(h) to (1)(k) and (3) added, (SB11-206), ch. 253, pp. 1097, 1098, §§ 3, 4, effective June 2.

Editor's note: Amendments to the introductory portion to subsection (1) by Senate Bill 11-206 and House Bill 11-1022 were harmonized.

Cross references: For the legislative declaration in the 2011 act amending the introductory portion to subsection (1) and subsection (1)(b), see section 1 of chapter 6, Session Laws of Colorado 2011. For the legislative declaration in the 2011 act amending the introductory portion to subsection (1) and adding subsections (1)(h) to (1)(k) and (3), see section 1 of chapter 253, Session Laws of Colorado 2011.

12-61-904.5. Originator's relationship to borrower - rules. (1) A mortgage loan originator shall have a duty of good faith and fair dealing in all communications and transactions with a borrower. Such duty includes, but is not limited to:

(a) The duty to not recommend or induce the borrower to enter into a transaction that does not have a reasonable, tangible net benefit to the borrower, considering all of the circumstances, including the terms of a loan, the cost of a loan, and the borrower's circumstances;

(b) The duty to make a reasonable inquiry concerning the borrower's current and prospective income, existing debts and other obligations, and any other relevant information and, after making such inquiry, to make his or her best efforts to recommend, broker, or originate a residential mortgage loan that takes into consideration the information submitted by the borrower, but the mortgage loan originator shall not be deemed to violate this section if the borrower conceals or misrepresents relevant information; and

(c) The duty not to commit any acts, practices, or omissions in violation of section 38-40-105, C.R.S.

(2) For purposes of implementing subsection (1) of this section, the board may adopt rules defining what constitutes a reasonable, tangible net benefit to the borrower.

(3) A violation of this section constitutes a deceptive trade practice under the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.

Source: L. 2007: Entire section added, p. 1716, § 3, effective June 1; entire section added, p. 1745, § 2, effective July 1. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1621, § 1, effective August 5. **L. 2010:** (2) amended, (HB 10-1141), ch. 280, p. 1290, § 11, effective August 11.

12-61-905. Powers and duties of the board. (1) The board may deny an application for a license, refuse to renew, or revoke the license of an applicant or licensee who has:

(a) Filed an application with the board containing material misstatements of fact or omitted any disclosure required by this part 9;

(b) Within the last five years, been convicted of or pled guilty or nolo contendere to a crime involving fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty, except as otherwise set forth in this part 9;

(c) Except as otherwise set forth in this part 9, within the last five years, had a license, registration, or certification issued by Colorado or another state revoked or suspended for fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty, and such discipline denied the person authorization to practice as:

(I) A mortgage broker or a mortgage loan originator;

(II) A real estate broker, as defined by section 12-61-101 (2);

(III) A real estate salesperson;

(IV) A real estate appraiser, as defined by section 12-61-702 (5);

(V) An insurance producer, as defined by section 10-2-103 (6), C.R.S.;

(VI) An attorney;

(VII) A securities broker-dealer, as defined by section 11-51-201 (2), C.R.S.;

(VIII) A securities sales representative, as defined by section 11-51-201 (14), C.R.S.;

(IX) An investment advisor, as defined by section 11-51-201 (9.5), C.R.S.; or

(X) An investment advisor representative, as defined by section 11-51-201 (9.6), C.R.S.;

(d) Been enjoined within the immediately preceding five years under the laws of this or any other state or of the United States from engaging in deceptive conduct relating to the brokering of or originating a mortgage loan;

(e) Been found to have violated the provisions of section 12-61-910.2;

(f) Been found to have violated the provisions of section 12-61-911;

(g) Had a mortgage loan originator license or similar license revoked in any jurisdiction; except that a revocation that was subsequently formally nullified shall not be deemed a revocation for purposes of this section;

(h) At any time preceding the date of application for a license or registration, been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering; except that, if the individual obtains a pardon of the conviction, the individual shall not be deemed convicted for purposes of this paragraph (h);

(i) Been convicted of, or pled guilty or nolo contendere to, a felony within the seven years immediately preceding the date of application for a license or registration;

(j) Not demonstrated financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the individual will operate honestly, fairly, and efficiently, consistent with the purposes of this part 9;

(k) Not completed the prelicense education requirements set forth in section 12-61-903 and any applicable rules of the board; or

(l) Not passed a written examination that meets the requirements set forth in section 12-61-903 and any applicable rules of the board.

(2) The board may investigate the activities of a licensee or other person that present grounds for disciplinary action under this part 9 or that violate section 12-61-910 (1).

(3) (a) If the board has reasonable grounds to believe that a mortgage loan originator is no longer qualified under subsection (1) of this section, the board may summarily suspend the mortgage loan originator's license pending a hearing to revoke the license. A summary suspension shall conform to article 4 of title 24, C.R.S.

(b) The board shall suspend the license of a mortgage loan originator who fails to maintain the bond required by section 12-61-907 until the licensee complies with such section.

(4) The board or an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., shall conduct disciplinary hearings concerning mortgage loan originators and mortgage companies. Such hearings shall conform to article 4 of title 24, C.R.S.

(5) (a) Except as provided in paragraph (b) of this subsection (5), an individual whose license has been revoked shall not be eligible for licensure for two years after the effective date of the revocation.

(b) If the board or an administrative law judge determines that an application contained a misstatement of fact or omitted a required disclosure due to an unintentional error, the board shall allow the applicant to correct the application. Upon receipt of the corrected and completed application, the board or administrative law judge shall not bar the applicant from being licensed on the basis of the unintentional misstatement or omission.

(6) (a) The board or an administrative law judge may administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing or investigation conducted by the board or an administrative law judge. The board may request any information relevant to the investigation, including, but not limited to, independent credit reports obtained from a consumer reporting agency described in the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681a (p).

(b) Upon failure of a witness to comply with a subpoena or process, the district court of the county in which the subpoenaed witness resides or conducts business may issue an order requiring the witness to appear before the board or administrative law judge; produce the relevant papers, books, records, documentary evidence, testimony, or materials in question; or both. Failure to obey the order of the court may be punished as a contempt of court. The board or an administrative law judge may apply for such order.

(c) The licensee or individual who, after an investigation under this part 9, is found to be in violation of a provision of this part 9 shall be responsible for paying all reasonable and necessary costs of the division arising from subpoenas or requests issued pursuant to this subsection (6), including court costs for an action brought pursuant to paragraph (b) of this subsection (6).

(7) (a) If the board has reasonable cause to believe that an individual is violating this part 9, including but not limited to section 12-61-910 (1), the board may enter an order requiring the individual to cease and desist such violations.

(b) The board, upon its own motion, may, and, upon the complaint in writing of any person, shall, investigate the activities of any licensee or any individual who assumes to act in such capacity within the state. In addition to any other penalty that may be imposed pursuant to this part 9, any individual violating any provision of this part 9 or any rules promulgated pursuant to this article may be fined upon a finding of misconduct by the board as follows:

(I) In the first administrative proceeding, a fine not in excess of one thousand dollars per act or occurrence;

(II) In a second or subsequent administrative proceeding, a fine not less than one thousand dollars nor in excess of two thousand dollars per act or occurrence.

(c) All fines collected pursuant to this subsection (7) shall be transferred to the state treasurer, who shall credit such moneys to the mortgage company and loan originator licensing cash fund created in section 12-61-908.

(8) The board shall keep records of the individuals licensed as mortgage loan originators and of disciplinary proceedings. The records kept by the board shall be open to public inspection in a reasonable time and manner determined by the board.

(9) (a) The board shall maintain a system, which may include, without limitation, a hotline or web site, that gives consumers a reasonably easy method for making complaints about a mortgage loan originator.

(b) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1621, § 1, effective August 5, 2009.)

(10) The board shall promulgate rules to allow licensed mortgage loan originators to hire unlicensed mortgage loan originators under temporary licenses. If an unlicensed mortgage loan originator has initiated the application process for a license, he or she shall be assigned a temporary license for a reasonable period until a license is approved or denied. The licensed mortgage loan originator who employs an unlicensed mortgage loan originator shall be held responsible under all applicable provisions of law, including without limitation this part 9 and section 38-40-105, C.R.S., for the actions of the unlicensed mortgage loan originator to whom a temporary license has been assigned under this subsection (10).

Source: L. 2006: Entire part added, p. 1583, § 1, effective July 1. L. 2007: IP(1)(c) and (7) amended and (1)(d) and (1)(f) added, p. 1717, § 4, effective June 1; IP(1)(c) and (7) amended and (1)(d) and (1)(e) added, p. 1726, § 1, effective June 1; IP(1), (2), (3), (5), (7), and (8) amended and (10) added and IP(7)(b) amended, p. 1734, 1731, §§ 7, 1, effective January 1, 2008. L. 2008: (1)(c)(III) amended, p. 510, § 27, effective April 17. L. 2009: Entire part amended, (HB 09-1085), ch. 303, p. 1621, § 1, effective August 5. L. 2010: IP(1), (1)(a), (1)(g), (1)(k), (1)(l), (2), (3), (4), (5)(b), (6)(a), (6)(b), (7)(a), IP(7)(b), (7)(c), (8), (9)(a), and (10) amended, (HB 10-1141), ch. 280, p. 1290, § 12, effective August 11.

Editor's note: (1) Amendments to the introductory portion to subsection (7)(b) by House Bill 07-1322 and Senate Bill 07-085 were harmonized. Amendments to subsection (7)(c) by House Bill 07-1322 and Senate Bill 07-085 were harmonized.

(2) Subsection (7) was amended by House Bill 07-1322, Senate Bill 07-085, and Senate Bill 07-203. Amendments to the introductory portion to subsection (7)(b) in section 7 of Senate Bill 07-203 were superseded by amendments in section 1 of Senate Bill 07-203. Amendments to subsection (7)(b)(II) in House Bill 07-1322 and Senate Bill 07-085 were superseded by amendments in Senate Bill 07-203, effective January 1, 2008.

12-61-905.1. Powers and duties of the board over mortgage companies - fines - rules. (1) With respect to mortgage companies, the board may deny an application for registration; refuse to renew, suspend, or revoke the registration; enter cease-and-desist orders; and impose fines as set forth in this section as follows:

(a) If the board has reasonable cause to believe a person is acting without a license or registration;

(b) If the mortgage company fails to maintain possession, for future use or inspection by an authorized representative of the board, for a period of four years, of the documents or records prescribed by the rules of the board or to produce such documents or records upon reasonable request by the board or by an authorized representative of the board;

(c) If the mortgage company employs or acts through individuals subject to its control who are unlicensed at the time of hire and not in the process of becoming licensed, who are required to be licensed pursuant to this part 9, or if the mortgage company, after notice,

continues to employ or act through individuals subject to its control whose required licenses are not valid; or

(d) If the mortgage company directs, makes, or causes to be made, in any manner, a false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, engages in bait and switch advertising as that term is used in section 6-1-105 (1) (n), C.R.S., or violates any rule of the board that directly or indirectly addresses advertising requirements.

(2) (a) The board upon its own motion or upon the complaint in writing of any person may investigate the activities of any registered mortgage company or any mortgage company that is acting in a capacity that requires registration pursuant to this part 9.

(b) The board may fine a mortgage company that has violated this section or any rules promulgated pursuant to this section as follows:

(I) In the first administrative proceeding, a fine not in excess of one thousand dollars per act or occurrence;

(II) In a second or subsequent administrative proceeding, a fine not in excess of two thousand dollars per act or occurrence.

(c) All fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit such moneys to the mortgage company and loan originator licensing cash fund created in section 12-61-908.

(3) The board may adopt reasonable rules for implementing this section.

(4) Nothing in this section automatically imputes a violation to the mortgage company if a licensed agent or employee, or an individual agent or employee who is required to be licensed, violates any other provision of this part 9.

Source: L. 2010: Entire section added, (HB 10-1141), ch. 280, p. 1292, § 13, effective August 11.

12-61-905.5. Disciplinary actions - grounds - procedures - rules. (1) The board, upon its own motion or upon the complaint in writing of any person, may investigate the activities of any mortgage loan originator. The board has the power to impose an administrative fine in accordance with section 12-61-905, deny a license, censure a licensee, place the licensee on probation and set the terms of probation, order restitution, order the payment of actual damages, or suspend or revoke a license when the board finds that the licensee or applicant has performed, is performing, or is attempting to perform any of the following acts:

(a) Knowingly making any misrepresentation or knowingly making use of any false or misleading advertising;

(b) Making any promise that influences, persuades, or induces another person to detrimentally rely on such promise when the licensee could not or did not intend to keep such promise;

(c) Knowingly misrepresenting or making false promises through agents, salespersons, advertising, or otherwise;

(d) Violating any provision of the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S., and, if the licensee has been assessed a civil or criminal penalty or been subject to an injunction under said act, the board shall revoke the licensee's license;

(e) Acting for more than one party in a transaction without disclosing any actual or potential conflict of interest or without disclosing to all parties any fiduciary obligation or other legal obligation of the mortgage loan originator to any party;

(f) Representing or attempting to represent a mortgage loan originator other than the licensee's principal or employer without the express knowledge and consent of that principal or employer;

(g) In the case of a licensee in the employ of another mortgage loan originator, failing to place, as soon after receipt as is practicably possible, in the custody of that licensed mortgage loan originator-employer any deposit money or other money or fund entrusted to the employee by any person dealing with the employee as the representative of that licensed mortgage loan originator-employer;

(h) Failing to account for or to remit, within a reasonable time, any moneys coming into his or her possession that belong to others, whether acting as a mortgage loan originator, real estate broker, salesperson, or otherwise, and failing to keep records relative to said moneys, which records shall contain such information as may be prescribed by the rules of the board relative thereto and shall be subject to audit by the board;

(i) Converting funds of others, diverting funds of others without proper authorization, commingling funds of others with the licensee's own funds, or failing to keep such funds of others in an escrow or a trustee account with a bank or recognized depository in this state, which account may be any type of checking, demand, passbook, or statement account insured by an agency of the United States government, and to keep records relative to the deposit that contain such information as may be prescribed by the rules of the board relative thereto, which records shall be subject to audit by the board;

(j) Failing to provide the parties to a residential mortgage loan transaction with such information as may be prescribed by the rules of the board;

(k) Unless an employee of a duly registered mortgage company, failing to maintain possession, for future use or inspection by an authorized representative of the board, for a period of four years, of the documents or records prescribed by the rules of the board or to produce such documents or records upon reasonable request by the board or by an authorized representative of the board;

(l) Paying a commission or valuable consideration for performing any of the functions of a mortgage loan originator, as described in this part 9, to any person who is not licensed under this part 9 or is not registered in compliance with the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", 12 U.S.C. sec. 5101 et seq.;

(m) Disregarding or violating any provision of this part 9 or any rule adopted by the board pursuant to this part 9; violating any lawful orders of the board; or aiding and abetting a violation of any rule, order of the board, or provision of this part 9;

(n) Conviction of, entering a plea of guilty to, or entering a plea of nolo contendere to any crime in article 3 of title 18, C.R.S., in parts 1 to 4 of article 4 of title 18, C.R.S., in article 5 of title 18, C.R.S., in part 3 of article 8 of title 18, C.R.S., in article 15 of title 18, C.R.S., in article 17 of title 18, C.R.S., or any other like crime under Colorado law, federal law, or the laws of other states. A certified copy of the judgment of a court of competent jurisdiction of such conviction or other official record indicating that such plea was entered shall be conclusive evidence of such conviction or plea in any hearing under this part 9.

(o) Violating or aiding and abetting in the violation of the Colorado or federal fair housing laws;

(p) Failing to immediately notify the board in writing of a conviction, plea, or violation pursuant to paragraph (n) or (o) of this subsection (1);

(q) Having demonstrated unworthiness or incompetency to act as a mortgage loan originator by conducting business in such a manner as to endanger the interest of the public;

(r) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1625, § 1, effective August 5, 2009.)

(s) Procuring, or attempting to procure, a mortgage loan originator's license or renewing, reinstating, or reactivating, or attempting to renew, reinstate, or reactivate, a mortgage loan originator's license by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for such license;

(t) Claiming, arranging for, or taking any secret or undisclosed amount of compensation, commission, or profit or failing to reveal to the licensee's principal or employer the full amount of such licensee's compensation, commission, or profit in connection with any acts for which a license is required under this part 9;

(u) Exercising an option to purchase in any agreement authorizing or employing such licensee to sell, buy, or exchange real estate for compensation or commission except when such licensee, prior to or coincident with election to exercise such option to purchase, reveals in writing to the licensee's principal or employer the full amount of the licensee's profit and obtains the written consent of such principal or employer approving the amount of such profit;

(v) Fraud, misrepresentation, deceit, or conversion of trust funds that results in the payment of any claim pursuant to this part 9 or that results in the entry of a civil judgment for damages;

(w) Any other conduct, whether of the same or a different character than specified in this subsection (1), that evinces a lack of good faith and fair dealing;

(x) Having had a mortgage loan originator's license suspended or revoked in any jurisdiction or having had any disciplinary action taken against the mortgage loan originator in any other jurisdiction. A certified copy of the order of disciplinary action shall be prima facie evidence of such disciplinary action.

(2) (Deleted by amendment, L. 2009, (HB 09-1085), ch. 303, p. 1625, § 1, effective August 5, 2009.)

(3) Upon request of the board, when any mortgage loan originator is a party to any suit or proceeding, either civil or criminal, arising out of any transaction involving a residential mortgage loan and the mortgage loan originator participated in the transaction in his or her capacity as a licensed mortgage loan originator, the mortgage loan originator shall supply to the board a copy of the complaint, indictment, information, or other initiating pleading and the answer filed, if any, and advise the board of the disposition of the case and of the nature and amount of any judgment, verdict, finding, or sentence that may be made, entered, or imposed therein.

(4) This part 9 shall not be construed to relieve any person from civil liability or criminal prosecution under the laws of this state.

(5) Complaints of record in the office of the board and the results of staff investigations shall be closed to public inspection during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee, except as provided by court order. Complaints of record that are dismissed by the board and the results of investigation of such complaints shall be closed to public inspection, except as provided by court order. The board's records shall be subject to sections 24-72-203 and 24-72-204, C.R.S., regarding public records and confidentiality.

Editor's note: This version of subsection (5) is effective until July 1, 2013.

(5) Complaints of record in the office of the board and board investigations, including board investigative files, are closed to public inspection. Stipulations and final agency orders are public record and subject to sections 24-72-203 and 24-72-204, C.R.S.

Editor's note: This version of subsection (5) is effective July 1, 2013.

(6) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, the board may send a letter of admonition by certified mail, return receipt requested, to the licensee against whom a complaint was made and a copy of the letter of admonition to the person making the complaint, but the letter shall advise the licensee that the licensee has the right to request in writing, within twenty days after proven receipt, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

(7) All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the mortgage company and loan originator licensing cash fund created in section 12-61-908.

(8) (a) The board shall not consider an application for licensure from an individual whose license has been revoked until two years after the date of revocation.

(b) If an individual's license was suspended or revoked due to conduct that resulted in financial loss to another person, no new license shall be granted, nor shall a suspended license be reinstated, until full restitution has been made to the person suffering such financial loss. The amount of restitution shall include interest, reasonable attorney fees, and costs of any suit or other proceeding undertaken in an effort to recover the loss.

(9) When the board or the division becomes aware of facts or circumstances that fall within the jurisdiction of a criminal justice or other law enforcement authority upon investigation of the activities of a licensee, the board or division shall, in addition to the exercise of its authority under this part 9, refer and transmit such information, which may include originals or copies of documents and materials, to one or more criminal justice or other law enforcement authorities for investigation and prosecution as authorized by law.

Source: **L. 2007:** Entire section added, p. 1736, § 8, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1625, § 1, effective August 5. **L. 2010:** IP(1), (1)(d), (1)(h) to (1)(k), (1)(m), (1)(p), (3), (5), (6), (7), (8)(a), and (9) amended, (HB 10-1141), ch. 280, p. 1293, § 14, effective August 11. **L. 2012:** (5) amended, (HB 12-1110), ch. 277, p. 1474, § 17, effective July 1, 2013.

12-61-905.6. Hearing - administrative law judge - review - rules. (1) Except as otherwise provided in this section, all proceedings before the board with respect to disciplinary actions and denial of licensure under this part 9, at the discretion of the board, may be conducted by an authorized representative of the board or an administrative law judge pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(2) Proceedings shall be held in the county where the board has its office or in such other place as the board may designate. If the licensee is employed by another licensed mortgage loan originator or by a real estate broker, the board shall also notify the licensee's employer by mailing, by first-class mail, a copy of the written notice required under section 24-4-104 (3), C.R.S., to the employer's last-known business address.

(3) The board, an authorized representative of the board, or an administrative law judge shall conduct all hearings for denying, suspending, or revoking a license or certificate on behalf of the board, subject to appropriations made to the department of personnel. Each administrative law judge shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S. The administrative law judge shall conduct the hearing in accordance with sections 24-4-104 and 24-4-105, C.R.S. No license shall be denied, suspended, or revoked until the board has made its decision.

(4) The decision of the board in any disciplinary action or denial of licensure under this section is subject to judicial review by the court of appeals. In order to effectuate the purposes of this part 9, the board has the power to promulgate rules pursuant to article 4 of title 24, C.R.S.

(5) In a judicial review proceeding, the court may stay the execution or effect of any final order of the board; but a hearing shall be held affording the parties an opportunity to be heard for the purpose of determining whether the public health, safety, and welfare would be endangered by staying the board's order. If the court determines that the order should be stayed, it shall also determine at the hearing the amount of the bond and adequacy of the surety, which bond shall be conditioned upon the faithful performance by such petitioner of all obligations as a mortgage loan originator and upon the prompt payment of all damages arising from or caused by the delay in the taking effect of or enforcement of the order complained of and for all costs that may be assessed or required to be paid in connection with such proceedings.

(6) In any hearing conducted by the board or an authorized representative of the board in which there is a possibility of the denial, suspension, or revocation of a license because of the conviction of a felony or of a crime involving moral turpitude, the board or its authorized representative shall be governed by section 24-5-101, C.R.S.

Source: **L. 2007:** Entire section added, p. 1740, § 8, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1629, § 1, effective August 5. **L. 2010:** Entire section amended, (HB 10-1141), ch. 280, p. 1295, § 15, effective August 11.

12-61-905.7. Subpoena - misdemeanor. (1) The board or the administrative law judge appointed for hearings may issue subpoenas, as described in section 12-61-905 (6),

which shall be served in the same manner as subpoenas issued by district courts and shall be issued without discrimination between public or private parties requiring the attendance of witnesses or the production of documents at hearings.

(2) Any person who willfully fails or neglects to appear and testify or to produce books, papers, or records required by subpoena, duly served upon him or her in any matter conducted under this part 9, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of one hundred dollars or imprisonment in the county jail for not more than thirty days for each such offense, or by both such fine and imprisonment. Each day such person so refuses or neglects constitutes a separate offense.

Source: L. 2007: Entire section added, p. 1741, § 8, effective January 1, 2008. L. 2009: Entire part amended, (HB 09-1085), ch. 303, p. 1630, § 1, effective August 5. L. 2010: (1) amended, (HB 10-1141), ch. 280, p. 1296, § 16, effective August 11.

12-61-906. Immunity. A person participating in good faith in the filing of a complaint or report or participating in an investigation or hearing before the board or an administrative law judge pursuant to this part 9 shall be immune from any liability, civil or criminal, that otherwise might result by reason of such action.

Source: L. 2006: Entire part added, p. 1586, § 1, effective July 1. L. 2009: Entire part amended, (HB 09-1085), ch. 303, p. 1630, § 1, effective August 5. L. 2010: Entire section amended, (HB 10-1141), ch. 280, p. 1296, § 17, effective August 11.

12-61-907. Bond required. (1) Before receiving a license, an applicant shall post with the board a surety bond in the amount of twenty-five thousand dollars or such other amount as may be prescribed by the board by rule. A licensed mortgage loan originator shall maintain the required bond at all times.

(2) The surety shall not be required to pay a person making a claim upon the bond until a final determination of fraud, forgery, criminal impersonation, or fraudulent representation has been made by a court with jurisdiction.

(3) The surety bond shall require the surety to provide notice to the board within thirty days if payment is made from the surety bond or if the bond is cancelled.

Source: L. 2006: Entire part added, p. 1586, § 1, effective July 1. L. 2007: (1) amended, p. 1741, § 9, effective January 1, 2008. L. 2009: Entire part amended, (HB 09-1085), ch. 303, p. 1630, § 1, effective August 5. L. 2010: (1) and (3) amended, (HB 10-1141), ch. 280, p. 1296, § 18, effective August 11.

12-61-908. Fees - cash fund - created. (1) The board may set the fees for issuance and renewal of licenses and registrations under this part 9. The fees shall be set in amounts that offset the direct and indirect costs of implementing this part 9 and section 38-40-105, C.R.S. The moneys collected pursuant to this section shall be transferred to the state treasurer, who shall credit them to the mortgage company and loan originator licensing cash fund.

(2) There is hereby created in the state treasury the mortgage company and loan originator licensing cash fund. Moneys in the fund shall be spent only to implement this part 9 and section 38-40-105, C.R.S., and shall not revert to the general fund at the end of the fiscal year. The fund shall be subject to annual appropriation by the general assembly.

(3) For the 2009-10 fiscal year, the division is authorized to expend up to one hundred twelve thousand dollars or such other amount as may be appropriated by the general assembly from the mortgage company and loan originator licensing cash fund for purposes of paying the development costs assessed by the conference of state bank supervisors, or its successor organization, for participating in the nationwide mortgage licensing system and registry. However, the board shall use its discretion in determining whether expenditure of these moneys is necessary for compliance with the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" or participation in the nationwide mortgage licensing system and registry.

Source: **L. 2006:** Entire part added, p. 1586, § 1, effective July 1. **L. 2007:** (1) amended, p. 1727, § 2, effective June 1; (1) amended, p. 1746, § 3, effective July 1; entire section amended, p. 1741, § 10, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1630, § 1, effective August 5. **L. 2010:** Entire section amended, (HB 10-1141), ch. 280, p. 1296, § 19, effective August 11.

Editor's note: Amendments to this section and subsection (1) by Senate Bill 07-203, Senate Bill 07-216, and Senate Bill 07-085 were harmonized.

Cross references: For the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008", see 12 U.S.C. § 5101 et seq.

12-61-909. Attorney general - district attorney - jurisdiction. The attorney general shall have concurrent jurisdiction with the district attorneys of this state to investigate and prosecute allegations of criminal violations of this part 9.

Source: **L. 2006:** Entire part added, p. 1586, § 1, effective July 1. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1631, § 1, effective August 5.

12-61-910. Violations - injunctions. (1) (a) Any individual violating this part 9 by acting as a mortgage loan originator in this state without having obtained a license or by acting as a mortgage loan originator after that individual's license has been revoked or during any period for which said license may have been suspended is guilty of a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.; except that, if the violator is not a natural person, the violator shall be punished by a fine of not more than five thousand dollars.

(b) Each residential mortgage loan negotiated or offered to be negotiated by an unlicensed person shall be a separate violation of this subsection (1).

(2) (Deleted by amendment, L. 2007, p. 1742, 11, effective January 1, 2008.)

(3) The board may request that an action be brought in the name of the people of the state of Colorado by the attorney general or the district attorney of the district in which the violation is alleged to have occurred to enjoin a person from engaging in or continuing the violation or from doing any act that furthers the violation. In such an action, an order or judgment may be entered awarding such preliminary or final injunction as is deemed proper by the court. The notice, hearing, or duration of an injunction or restraining order shall be made in accordance with the Colorado rules of civil procedure.

(4) A violation of this part 9 shall not affect the validity or enforceability of any mortgage.

Source: **L. 2006:** Entire part added, p. 1586, § 1, effective July 1. **L. 2007:** (1) and (2) amended, p. 1742, § 11, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1631, § 1, effective August 5. **L. 2010:** (3) amended, (HB 10-1141), ch. 280, p. 1297, § 20, effective August 11.

12-61-910.2. Prohibited conduct - influencing a real estate appraisal. (1) A mortgage loan originator shall not, directly or indirectly, compensate, coerce, or intimidate an appraiser, or attempt, directly or indirectly, to compensate, coerce, or intimidate an appraiser, for the purpose of influencing the independent judgment of the appraiser with respect to the value of a dwelling offered as security for repayment of a residential mortgage loan. This prohibition shall not be construed as prohibiting a mortgage loan originator from requesting an appraiser to:

(a) Consider additional, appropriate property information;

(b) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(c) Correct errors in the appraisal report.

Source: **L. 2007:** Entire section added, p. 1727, § 3, effective June 1. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1631, § 1, effective August 5.

12-61-910.3. Rule-making authority. The board has the authority to promulgate rules as necessary to enable the board to carry out the board's duties under this part 9.

Source: **L. 2007:** Entire section added, p. 1717, § 5, effective June 1; entire section added, p. 1727, § 3, effective June 1; entire section added and amended, pp. 1736, 1731, §§ 8, 2, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1632, § 1, effective August 5. **L. 2010:** Entire section amended, (HB 10-1141), ch. 280, p. 1297, § 21, effective August 11.

Editor's note: (1) Amendments to this section by House Bill 07-1322, Senate Bill 07-203, and Senate Bill 07-085 were harmonized.

(2) This section was amended in section 2 of Senate Bill 07-203. Those amendments were superseded by the enactment of the section in House Bill 07-1322, Senate Bill 07-085, and section 8 of Senate Bill 07-203 to reflect the intent of the General Assembly.

12-61-910.4. Nontraditional mortgage products - consumer protections - rules - incorporation of federal interagency guidance. The board shall adopt rules governing the marketing of nontraditional mortgage products by mortgage loan originators. In adopting such rules, the board shall incorporate appropriate provisions of the final "Interagency Guidance on Nontraditional Mortgage Product Risks" released on September 29, 2006, by the office of the comptroller of the currency and the office of thrift supervision in the federal department of the treasury, the board of governors of the federal reserve system, the federal deposit insurance corporation, and the national credit union administration, as such publication may be amended.

Source: **L. 2007:** Entire section added, p. 1745, § 2, effective July 1. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1632, § 1, effective August 5. **L. 2010:** Entire section amended, (HB 10-1141), ch. 280, p. 1297, § 22, effective August 11.

12-61-911. Prohibited conduct - fraud - misrepresentation - conflict of interest - rules. (1) A mortgage loan originator, including a mortgage loan originator otherwise exempted from this part 9 by section 12-61-904 (1) (b), shall not:

(a) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(b) Engage in any unfair or deceptive practice toward any person;

(c) Obtain property by fraud or misrepresentation;

(d) Solicit or enter into a contract with a borrower that provides in substance that the mortgage loan originator may earn a fee or commission through the mortgage loan originator's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(e) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting from a lender with whom the mortgage loan originator maintains a written correspondent or loan agreement under section 12-61-913;

(f) Fail to make a disclosure to a loan applicant or a noninstitutional investor as required by section 12-61-914 and any other applicable state or federal law;

(g) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in "bait and switch" advertising;

(h) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage loan originator or in connection with any investigation conducted by the division;

(i) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by such rate of interest;

(j) Fail to comply with any requirement of the federal “Truth in Lending Act”, 15 U.S.C. sec. 1601 and Regulation Z, 12 CFR 226; the “Real Estate Settlement Procedures Act of 1974”, 12 U.S.C. sec. 2601 and Regulation X, 24 CFR 3500; the “Equal Credit Opportunity Act”, 15 U.S.C. sec. 1691 and Regulation B, 12 CFR 202.9, 202.11, and 202.12; Title V, Subtitle A of the financial services modernization act of 1999 (known as the “Gramm-Leach-Bliley Act”), 12 U.S.C. secs. 6801 to 6809; the federal trade commission’s privacy rules, 16 CFR 313-314, mandated by the “Gramm-Leach-Bliley Act”; the “Home Mortgage Disclosure Act of 1975”, 12 U.S.C. sec. 2801 et seq. and Regulation C, home mortgage disclosure, 12 CFR 203; the “Federal Trade Commission Act”, 15 U.S.C. sec. 45(a); the “Telemarketing and Consumer Fraud and Abuse Prevention Act”, 15 U.S.C. secs. 6101 to 6108; and the federal trade commission telephone sales rule, 16 CFR 310, as amended, in any advertising of residential mortgage loans or any other applicable mortgage loan originator activities covered by the acts. The board may adopt rules requiring mortgage loan originators to comply with other applicable federal statutes and regulations.

(k) Fail to pay a third-party provider, no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service;

(l) Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by section 12-61-914 or 12-61-915; or

(m) Fail to comply with any provision of this part 9 or any rule adopted pursuant to this part 9.

Source: **L. 2006:** Entire part added, p. 1587, § 1, effective July 1. **L. 2007:** Entire section R&RE, p. 1718, § 6, effective June 1; (1) and (2) amended, p. 1742, § 12, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1632, § 1, effective August 5. **L. 2010:** (1)(j) amended, (HB 10-1141), ch. 280, p. 1298, § 23, effective August 11. **L. 2011:** (1)(j) amended, (HB 11-1303), ch. 264, p. 1152, § 17, effective August 10.

Editor’s note: Subsections (1) and (2) were amended by Senate Bill 07-203. Those amendments were superseded by the repeal and reenactment of the section in House Bill 07-1322.

12-61-911.5. Acts of employee - mortgage loan originator’s liability. An unlawful act or violation of this part 9 upon the part of an agent or employee of a licensed mortgage loan originator shall not be cause for disciplinary action against a mortgage loan originator unless it appears that the mortgage loan originator knew or should have known of the unlawful act or violation or had been negligent in the supervision of the agent or employee.

Source: **L. 2007:** Entire section added, p. 1742, § 13, effective January 1, 2008. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1633, § 1, effective August 5.

12-61-912. Dual status as real estate broker - requirements. (1) Unless a mortgage loan originator complies with both subsections (2) and (3) of this section, he or she shall not act as a mortgage loan originator in any transaction in which:

(a) The mortgage loan originator acts or has acted as a real estate broker or salesperson; or

(b) Another person doing business under the same licensed real estate broker acts or has acted as a real estate broker or salesperson.

(2) Before providing mortgage-related services to the borrower, a mortgage loan originator shall make a full and fair disclosure to the borrower, in addition to any other disclosures required by this part 9 or other laws, of all material features of the loan product and all facts material to the transaction.

(3) (a) A real estate broker or salesperson licensed under part 1 of this article who also acts as a mortgage loan originator shall carry on such mortgage loan originator business activities and shall maintain such person's mortgage loan originator business records separate and apart from the real estate broker or sales activities conducted pursuant to part 1 of this article. Such activities shall be deemed separate and apart even if they are conducted at an office location with a common entrance and mailing address if:

- (I) Each business is clearly identified by a sign visible to the public;
- (II) Each business is physically separated within the office facility; and
- (III) No deception of the public as to the separate identities of the broker business firms results.

(b) This subsection (3) shall not require a real estate broker or salesperson licensed under part 1 of this article who also acts as a mortgage loan originator to maintain a physical separation within the office facility for the conduct of its real estate broker or sales and mortgage loan originator activities if the board determines that maintaining such physical separation would constitute an undue financial hardship upon the mortgage loan originator and is unnecessary for the protection of the public.

Source: L. 2007: Entire section added, p. 1719, § 7, effective June 1. **L. 2008:** (1), IP(3)(a), and (3)(b) amended, p. 510, § 28, effective April 17. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1634, § 1, effective August 5. **L. 2010:** (3)(b) amended, (HB 10-1141), ch. 280, p. 1298, § 24, effective August 11.

12-61-913. Written contract required - effect. (1) Every contract between a mortgage loan originator and a borrower shall be in writing and shall contain the entire agreement of the parties.

(2) A mortgage loan originator shall have a written correspondent or loan agreement with a lender before any solicitation of, or contracting with, any member of the public.

Source: L. 2007: Entire section added, p. 1720, § 7, effective June 1. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1634, § 1, effective August 5.

12-61-914. Written disclosure of fees and costs - contents - limits on fees - lock-in agreement terms - rules. (1) Within three business days after receipt of a loan application or any moneys from a borrower, a mortgage loan originator shall provide to each borrower a full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, specifying the fee or fees that inure to the benefit of the mortgage loan originator. A good-faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not determinable. Except as required by paragraph (c) of subsection (2) of this section, this subsection (1) shall not be construed to require disclosure of the distribution or breakdown of loan fees, discounts, or points between the mortgage loan originator and any mortgage lender or investor.

(2) The written disclosure shall contain the following information:

(a) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest, and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan. If the interest rate is variable, the written disclosure shall clearly describe the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase.

(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan;

(c) If applicable, the amount of any commission or other compensation to be paid to the mortgage loan originator, including the manner in which the commission or other compen-

sation is calculated and the relationship of the commission or other compensation to the cost of the loan received by the borrower;

(d) If applicable, the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, whether the lock-in agreement is guaranteed by the mortgage loan originator or lender, and, if a lock-in agreement has not been entered, disclosure in a form acceptable to the board that the disclosed interest rate and terms are subject to change;

(e) A statement that, if the borrower is unable to obtain a loan for any reason, the mortgage loan originator must, within five days after a written request by the borrower, give copies of each appraisal, title report, and credit report paid for by the borrower to the borrower and transmit the appraisal, title report, or credit report to any other mortgage loan originator or lender to whom the borrower directs the documents to be sent;

(f) Whether and under what conditions any lock-in fees are refundable to the borrower; and

(g) A statement providing that moneys paid by the borrower to the mortgage loan originator for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded.

(3) If, after the written disclosure is provided under this section, a mortgage loan originator enters into a lock-in agreement with a borrower or represents to the borrower that the borrower has entered into a lock-in agreement, the mortgage loan originator shall deliver or send by first-class mail to the borrower a written confirmation of the terms of the lock-in agreement within three days, including Saturdays, after the agreement is entered or the representation is made. The written confirmation shall include a copy of the disclosure made under paragraph (d) of subsection (2) of this section.

(4) (a) Except as otherwise provided in paragraph (b) of this subsection (4), a mortgage loan originator shall not charge any fee that inures to the benefit of the mortgage loan originator and that exceeds the fee disclosed on the written disclosure pursuant to this section unless:

(I) The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and

(II) The mortgage loan originator has provided to the borrower, at least three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.

(b) If the borrower's closing costs on the final settlement statement, excluding prepaid escrowed costs of ownership as defined by the board by rule, do not exceed the total closing costs in the most recent good-faith estimate, excluding prepaid escrowed costs of ownership, no other disclosures shall be required by this subsection (4).

Source: L. 2007: Entire section added, p. 1720, § 7, effective June 1. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1634, § 1, effective August 5. **L. 2010:** (2)(d) and (4)(b) amended, (HB 10-1141), ch. 280, p. 1298, § 25, effective August 11.

12-61-915. Fee, commission, or compensation - when permitted - amount. (1) Except as otherwise permitted by subsection (2) or (3) of this section, a mortgage loan originator shall not receive a fee, commission, or compensation of any kind in connection with the preparation or negotiation of a residential mortgage loan unless a borrower actually obtains a loan from a lender on the terms and conditions agreed to by the borrower and mortgage loan originator.

(2) If the mortgage loan originator has obtained for the borrower a written commitment from a lender for a loan on the terms and conditions agreed to by the borrower and the mortgage loan originator, and the borrower fails to close on the loan through no fault of the mortgage loan originator, the mortgage loan originator may charge a fee, not to exceed three hundred dollars, for services rendered, preparation of documents, or transfer of documents in the borrower's file that were prepared or paid for by the borrower if the fee is not otherwise prohibited by the federal "Truth in Lending Act", 15 U.S.C. sec. 1601, and Regulation Z, 12 CFR 226, as amended.

(3) A mortgage loan originator may solicit or receive fees for third-party provider goods or services in advance. Fees for any goods or services not provided shall be refunded to the borrower, and the mortgage loan originator may not charge more for the goods and services than the actual costs of the goods or services charged by the third-party provider.

Source: **L. 2007:** Entire section added, p. 1722, § 7, effective June 1. **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1636, § 1, effective August 5.

12-61-916. Confidentiality. (1) Except as otherwise provided in the federal “Secure and Fair Enforcement for Mortgage Licensing Act of 2008”, 12 U.S.C. sec. 5111, the requirements under any federal law or law of this state regarding privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law, including the rules of any federal or state court with respect to such information or material, shall apply to the information or material after it has been disclosed to the nationwide mortgage licensing system and registry. The information or material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or confidentiality protections provided by federal or state law.

(2) The board may enter into agreements with other government agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing government agencies as established by rule.

(3) Information or material that is subject to privilege or confidentiality pursuant to subsection (1) of this section shall not be subject to the following:

(a) Disclosure under a federal or state law governing the disclosure to the public of information held by an officer or agency of the federal government or the respective state; or

(b) Subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to a privilege held by the nationwide mortgage licensing system and registry regarding the information or material, the person to whom the information or material pertains waives the privilege, in whole or in part.

Source: **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1637, § 1, effective August 5. **L. 2010:** (2) amended, (HB 10-1141), ch. 280, p. 1299, § 26, effective August 11.

12-61-917. Mortgage call reports - reports of violations. (1) The board may require each licensee or registrant to submit to the nationwide mortgage licensing system and registry mortgage call reports, which shall be in the form and contain the information required by the nationwide mortgage licensing system and registry.

(2) The board may report violations of this part 9, enforcement actions, and other relevant information to the nationwide mortgage licensing system and registry.

Source: **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1637, § 1, effective August 5. **L. 2010:** Entire section amended, (HB 10-1141), ch. 280, p. 1299, § 27, effective August 11.

12-61-918. Unique identifier - clearly displayed. Each person required to be licensed or registered shall show his or her or the entity's unique identifier clearly on all residential mortgage loan application forms and any other documents as specified by the board by rule or order.

Source: **L. 2009:** Entire part amended, (HB 09-1085), ch. 303, p. 1637, § 1, effective August 5. **L. 2010:** Entire section amended, (HB 10-1141), ch. 280, p. 1299, § 28, effective August 11.

12-61-919. Repeal of part. (1) This part 9 is repealed, effective July 1, 2013.

(2) Prior to its repeal, the department of regulatory agencies shall review the licensing of mortgage loan originators and the registration of mortgage companies in accordance with section 24-34-104, C.R.S. The department shall include in its review of mortgage loan originators and mortgage companies an analysis of the number and types of complaints made about mortgage loan originators and mortgage companies and whether the licensing of mortgage loan originators and the registration of mortgage companies correlates with public protection from fraudulent activities in the residential mortgage loan industry.

Source: L. 2009: Entire part amended, (HB 09-1085), ch. 303, p. 1638, § 1, effective August 5. L. 2010: Entire section amended, (HB 10-1141), ch. 280, p. 1300, § 30, effective August 11.

ARTICLE 62

Sanitarians

12-62-101 to 12-62-115. (Repealed)

Source: L. 78: Entire article repealed, p. 260, § 36, effective July 1, 1978.

Editor's note: This article was numbered as article 14 of chapter 66, C.R.S. 1963. For amendments to this article prior to its repeal in 1978, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 63

Shorthand Reporters

12-63-101 to 12-63-118. (Repealed)

Source: L. 77: Entire article repealed, p. 779, § 2, effective June 19.

Editor's note: This article was numbered as article 1 of chapter 126, C.R.S. 1963. For amendments to this article prior to its repeal in 1977, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 63.5

Social Workers

12-63.5-101 to 12-63.5-121. (Repealed)

Source: L. 88: Entire article repealed, p. 569, § 9, effective July 1.

Editor's note: This article was added in 1975. For amendments to this article prior to its repeal in 1988, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For present provisions relating to social workers, see part 4 of article 43 of this title.

ARTICLE 64

Veterinarians

Editor's note: This article was numbered as article 1 of chapter 145, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1967, resulting in the addition, relocation, and

elimination of sections as well as subject matter. For amendments to this article prior to 1967, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

Cross references: For the manufacture of animal biological products, see § 35-51-101.

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12-64-101. Short title. This article shall be known and may be cited as the “Colorado Veterinary Practice Act”.

Source: L. 67: R&RE, p. 357, § 1. C.R.S. 1963: § 145-1-2.

12-64-102. Legislative declaration. This article is enacted as an exercise of the police powers of the state to promote the public health, safety, and welfare by safeguarding the people of this state against incompetent, dishonest, or unprincipled practitioners of veterinary medicine. It is hereby declared that the practice of veterinary medicine is a privilege conferred upon persons possessed of the personal and professional qualifications specified in this article.

Source: L. 67: R&RE, p. 357, § 1. C.R.S. 1963: § 145-1-1. L. 73: p. 1509, § 1. L. 79: Entire section R&RE, p. 583, § 1, effective June 15.

12-64-103. Definitions. As used in this article, unless the context otherwise requires:

- (1) “Animal” means any animal other than human, and said term includes fowl, birds, amphibians, fish, and reptiles, wild or domestic, living or dead.

- (2) (Deleted by amendment, L. 91, p. 1467, § 1, effective July 1, 1991.)

- (3) “Artificial insemination” means the collection of semen and the fertilization of, or attempted fertilization of, the ova of the female animal by placing or implanting, by artificial means, in the genital tract of the female animal the semen obtained from the male animal which will subsequently be used, or attempted to be used, to impregnate the female.

- (4) “Board” means the state board of veterinary medicine.

- (4.3) “Client” means the patient’s owner, the owner’s agent, or a person responsible for the patient.

- (4.5) “Complainant” means the board or any other person who initiates a proceeding.

- (5) “Direct supervision” means the supervising licensed veterinarian is readily available on the premises where the patient is being treated.

(5.1) "Dispense" means to provide a drug or device, other than by distribution, bearing a label stating the name of the veterinarian, the date dispensed, directions for use, all cautionary statements, withdrawal time, if appropriate, the identity of the animal, and the owner's name.

(5.2) "Distribute" or "distribution" means to provide a drug or device in the manufacturer's original package to the client-patient.

(6) "Hearing" means any proceeding initiated before the board in which the legal rights, duties, privileges, or immunities of a specific party or parties are determined.

(6.5) "Immediate supervision" means the supervising licensed veterinarian and any person being supervised are in direct contact with the patient.

(7) "License" means any grant of authority issued by the board to a person to engage in the practice of veterinary medicine.

(8) (Deleted by amendment, L. 91, p. 1467, § 1, effective July 1, 1991.)

(9) "Licensed veterinarian" means a person licensed pursuant to this article.

(9.5) "Ova transplantation" means a technique by which fertilized embryos are collected from a donor female and transferred to a recipient female that serves as a surrogate mother for the remainder of the pregnancy.

(9.7) "Patient" means an animal that is examined or treated by a licensed veterinarian and includes herds, flocks, litters, and other groups of animals.

(10) "Practice of veterinary medicine" means any of the following:

(a) The diagnosing, treating, correcting, changing, relieving, or preventing of animal disease, deformity, defect, injury, or other physical or mental conditions, including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique and the use of any manual or mechanical procedure for artificial insemination, for ova transplantation, for testing for pregnancy, or for correcting sterility or infertility or to render advice or recommendation with regard thereto;

(b) The representation, directly or indirectly, publicly or privately, of an ability and willingness to do an act described in paragraph (a) of this subsection (10);

(c) The use of any title, words, abbreviation, or letters in a manner or under circumstances which induce the belief that a person using them is qualified to do any act described in paragraph (a) of this subsection (10);

(d) The application of principles of environmental sanitation, food inspection, environmental pollution control, animal nutrition, zoonotic disease control, and disaster medicine as applied to an act described in paragraph (a) of this subsection (10).

(11) "Respondent" means any person against whom a proceeding is initiated.

(12) "Rule" means any regulation, standard, or statement of policy adopted by the board to implement, interpret, or clarify the law which it enforces and administers and which governs its duties, functions, organization, and procedure.

(13) "School of veterinary medicine" means any veterinary school or department of a legally organized college or university whose course of study in the art and science of veterinary medicine has been approved by the board.

(14) "Unprofessional or unethical conduct" includes, but is not limited to, conduct of a character likely to deceive or defraud the public, false or misleading advertising, obtaining any fee or compensation by fraud or misrepresentation, sharing office space with any person illegally practicing veterinary medicine, employing either indirectly or directly any unlicensed person to practice veterinary medicine or to render any veterinary services except as provided in this article, or the violation of any rules adopted by the board which provide a code of professional ethics to be followed and carried out by persons licensed under this article.

(15) "Veterinarian" means a person who has received a doctor's degree in veterinary medicine, or its equivalent, from a school of veterinary medicine.

(15.5) "Veterinarian-client-patient relationship" means that relationship established when:

(a) The veterinarian has assumed the responsibility for making medical judgments regarding the health of an animal and the need for medical treatment, and the owner or other caretaker has agreed to follow the instruction of the veterinarian;

(b) There is sufficient knowledge of an animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal, which means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal or by medically appropriate and timely visits to the premises where the animal is kept; and

(c) The practicing veterinarian is readily available, or has arranged for emergency coverage, for follow-up evaluation in the event of adverse reactions or failure of the treatment regimen.

(16) "Veterinary medicine" includes veterinary surgery, obstetrics, dentistry, and all other branches or specialties of animal medicine.

(17) "Veterinary premises" or "premises" means any veterinary office, hospital, clinic, or temporary location in which veterinary medicine is being practiced by or under the direct or immediate supervision of a licensed veterinarian.

(18) "Veterinary student" is a veterinary medical student who is enrolled in a school of veterinary medicine.

(19) "Veterinary student preceptor" is a veterinary medical student enrolled in a preceptor program in a school of veterinary medicine which has such a program.

(20) (Deleted by amendment, L. 2011, (SB 11-091), ch. 207, p. 891, § 11, effective July 1, 2011.)

Source: L. 67: R&RE, pp. 357, 571, §§ 1, 1. C.R.S. 1963: § 145-1-3. L. 73: p. 1509, § 2. L. 79: Entire section R&RE, p. 583, § 2, effective June 15. L. 91: (2) and (8) amended and (5.1), (5.2), (9.5), (15.5), and (20) added, p. 1467, § 1, effective July 1. L. 2007: (9) amended, p. 1588, § 1, effective July 1. L. 2011: (4.3), (4.5), (6.5), and (9.7) added and (5), (7), (9), (15.5)(c), (17), and (20) amended, (SB 11-091), ch. 207, p. 891, § 11, effective July 1.

12-64-104. License requirements and exceptions - definitions - rules. (1) No person may practice veterinary medicine in this state if the person is not a licensed veterinarian. No person may practice artificial insemination or ova transplantation of cattle or other animal species in this state except in accordance with section 12-64-105 (9) (c). This article does not prohibit:

(a) An employee of the federal, state, or local government from performing his or her official duties;

(b) A person who is a regular student in an approved school of veterinary medicine from performing duties or actions assigned by his or her instructors or working under the direct supervision of a licensed veterinarian;

(c) A person from advising with respect to, or performing acts which are, accepted livestock management practices;

(d) A veterinarian regularly licensed in another state from consulting with a licensed veterinarian in this state;

(e) Any merchant or manufacturer from selling, at his or her regular place of business, medicines, feed, appliances, or other products used in the prevention or treatment of animal diseases;

(f) (I) Except as provided in subparagraph (II) of this paragraph (f) and subject to subsection (2) of this section, the owner of an animal and the owner's employees from caring for and treating the animal belonging to such owner.

(II) Subparagraph (I) of this paragraph (f) does not apply in cases where the ownership of the animal was transferred for purposes of circumventing this article or where the primary reason for hiring the employee is to circumvent this article.

(g) A person from lecturing or giving instructions or demonstrations at a school of veterinary medicine or in connection with a continuing education course or seminar for veterinarians;

(h) Any person from selling or applying any pesticide, insecticide, or herbicide;

(i) Any person from engaging in bona fide scientific research which reasonably requires experimentation involving animals or commercial production of biologics or animal medicines;

(j) Any person from performing duties other than diagnosis, prescription, surgery, or initiating treatment under the direction and supervision of a licensed veterinarian who shall be responsible for such person's performance;

(k) A veterinary student or veterinary student preceptor from performing those acts permitted by this article;

(l) Any person otherwise appropriately licensed or approved by the state from performing the functions described in section 12-64-103 (10) (d);

(m) (Deleted by amendment, L. 2011, (SB 11-091), ch. 207, p. 883, § 4, effective July 1, 2011.)

(n) (Deleted by amendment, L. 91, p. 1468, § 2, effective July 1, 1991.)

(o) Any person from performing massage on an animal in accordance with section 12-35.5-110 (1) (f);

(p) The practice of animal chiropractic pursuant to section 12-33-127;

(q) The practice of animal physical therapy pursuant to section 12-41-113 (4);

(r) Any person from assisting in a surgical procedure under the immediate supervision of a licensed veterinarian, who is responsible for the person's performance.

(2) (a) Notwithstanding paragraph (f) of subsection (1) of this section and except as permitted by paragraph (j) of subsection (1) of this section, a person who is not a licensed veterinarian shall not administer, distribute, dispense, or prescribe prescription drugs. Except as provided in paragraph (b) of this subsection (2), a licensed veterinarian must have a veterinarian-client-patient relationship with the animal and its owner or other caretaker in order to administer, distribute, dispense, or prescribe prescription drugs to or for an animal.

(b) (I) In an emergency situation where a licensed veterinarian who has a veterinarian-client-patient relationship prescribes a prescription drug that the licensed veterinarian does not have in stock and is not available at a local pharmacy, another licensed veterinarian who does not have a veterinarian-client-patient relationship with the animal and owner or other caretaker may administer, distribute, or dispense the prescription drug to the animal based on the examining veterinarian's expertise and veterinarian-client-patient relationship.

(II) The board shall adopt rules defining what constitutes an emergency situation under which this paragraph (b) would apply, including a requirement that failure to administer, distribute, or dispense the prescription drug threatens the health and well-being of the animal and requiring detailed records documenting the emergency circumstances that include at least the following:

(A) A requirement that the examining veterinarian with the veterinarian-client-patient relationship document the emergency and the immediate need for the prescription drug;

(B) A requirement that the examining veterinarian with the veterinarian-client-patient relationship document his or her efforts to obtain the prescription drug from a local pharmacy, including documentation of contact with at least one pharmacy in the general proximity of the examination location that does not have the prescription drug immediately available; and

(C) A requirement that the licensed veterinarian who administers, distributes, or dispenses the prescription drug document the date the prescription is administered, distributed, or dispensed.

(III) A veterinarian who administers, distributes, dispenses, or prescribes a prescription drug in accordance with this paragraph (b) is not subject to discipline pursuant to section 12-64-111 (1) (aa) if the veterinarian satisfies the requirements of this paragraph (b) and the rules adopted by the board.

Source: L. 67: R&RE, pp. 358, 571, §§ 1, 2. **C.R.S. 1963:** § 145-1-4. **L. 73:** p. 1511, § 3. **L. 79:** Entire section R&RE, p. 585, § 3, effective June 15. **L. 91:** IP(1), (1)(b), (1)(f), (1)(j), and (1)(n) amended, p. 1468, § 2, effective July 1. **L. 2007:** (1)(g) amended, p. 1588, § 2, effective July 1. **L. 2008:** (1)(o) added, p. 285, § 1, effective August 5. **L. 2009:** (1)(p) added, (SB 09-167), ch. 366, p. 1923, § 10, effective June 1. **L. 2011:** IP(1), (1)(a), (1)(b), (1)(e), (1)(f), (1)(j), (1)(m), and (1)(o) amended and (1)(q), (1)(r), and (2) added, (SB 11-091), ch. 207, pp. 883, 884, §§ 4, 5, effective July 1.

12-64-105. Board of veterinary medicine - creation - powers. (1) The governor shall appoint a state board of veterinary medicine consisting of seven members. Each member shall be appointed for a term of four years. The governor shall appoint members of the board from qualified persons as described in subsection (2) of this section. The governor shall appoint members to fill vacancies on the board caused by death, resignation, or removal for the balance of the unexpired term. No person shall serve more than two consecutive four-year terms. A person appointed to serve out the balance of an unexpired term may be reappointed for an additional consecutive four-year term. Members of the board may remain on the board until a successor is appointed.

(2) The governor shall appoint five members to the board who are graduates of a school of veterinary medicine, who are residents of this state, and who have been licensed to practice veterinary medicine in this state for the five years preceding the time of the appointment. The governor shall appoint two members to the board from the public at large who have no financial or professional association with the veterinary profession.

(3) Repealed.

(4) (Deleted by amendment, L. 91, p. 1469, § 3, effective July 1, 1991.)

(5) The governor may remove a member of the board for misconduct, incompetence, or neglect of duty or other sufficient cause.

(6) The board shall meet at least once each quarter during the year at a time and place fixed by the board. Other meetings may be called from time to time by the president of the board. Except as otherwise provided, a majority of the board constitutes a quorum. Meetings shall be conducted as provided in article 6 of title 24, C.R.S.

(7) (Deleted by amendment, L. 91, p. 1469, § 3, effective July 1, 1991.)

(8) All moneys collected or received by the board, except as provided in section 12-64-111 (4), shall be transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for the expenditures of the board incurred in the performance of its duties under this article, which expenditures shall be made from such appropriations upon vouchers and warrants drawn pursuant to law.

(9) The board has the power to:

(a) Examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine in this state;

(b) Issue, renew, deny, suspend, or revoke licenses to practice veterinary medicine in the state or otherwise discipline or fine, or both, licensees consistent with this article and the rules adopted by the board under this article;

(c) Regulate artificial insemination and ova transplantation of cattle or other animal species by establishing rules and regulations for standards of practice, including rules relating to methods and procedures for safe artificial insemination and ova transplantation;

(d) Establish, pursuant to section 24-34-105, C.R.S., and publish annually a schedule of fees for licensing and registration of veterinarians. The board shall base the fee on its anticipated financial requirements for the year.

(e) (I) Conduct investigations;

(II) Administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board pursuant to paragraph (f) of this subsection (9).

(III) Upon failure of a witness to comply with a subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board and with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(f) Hold hearings on all matters properly brought before the board. An administrative law judge may conduct all hearings for denying, suspending, or revoking a license or for

any other similar matter properly brought before the board and assigned by the board to the administrative law judge, subject to appropriations made to the department of personnel. An administrative law judge shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S. Disciplinary and punitive actions of the board shall be made public.

(g) (Deleted by amendment, L. 91, p. 1469, § 3, effective July 1, 1991.)

(h) (Deleted by amendment, L. 2011, (SB 11-091), ch. 207, p. 889, § 9, effective July 1, 2011.)

(i) Bring proceedings in the courts for the enforcement of this article or any regulations made by the board;

(j) Adopt, amend, or repeal rules necessary for the administration and enforcement of this article. The board shall adopt rules to establish a uniform system and schedule of fines that it may impose on licensees for violations of this article or of rules adopted pursuant to this article.

(k) (Deleted by amendment, L. 91, p. 1469, § 3, effective July 1, 1991.)

(l) Issue a cease-and-desist order;

(m) Impose fines against corporations in accordance with section 12-64-123 (2).

(10) The board may, at any time, inspect veterinary premises to assure that they are clean and sanitary.

(11) The powers of the board are granted to enable the board to effectively supervise the practice of veterinary medicine and are to be construed liberally to accomplish this objective.

(12) (Deleted by amendment, L. 91, p. 1469, § 3, effective July 1, 1991.)

(13) The board shall consult with the state physical therapy board created in section 12-41-103.3 concerning rules that the director intends to adopt with regard to physical therapy of animals.

Source: L. 67: R&RE, pp. 359, 571, §§ 1, 1. C.R.S. 1963: § 145-1-5. L. 73: pp. 1378, 1511-1513, §§ 46, 4-6. L. 76: (9)(f) R&RE, p. 582, § 11, effective May 24; (12) added, p. 582, § 35, effective July 1. L. 78: (9)(f) amended, p. 260, § 37, effective June 15. L. 79: (2), (3), (8), (9)(b), (9)(c), (9)(d), (9)(f), (9)(g), (9)(h), and (10) amended and (4), (7), and (9)(e) R&RE, pp. 586, 587, §§ 4, 5, effective June 15; (3) repealed, p. 912, § 16, effective July 1; (7)(e) amended, p. 440, § 26, effective July 1; (8) amended, p. 1659, § 115, effective July 1. L. 80: (4) amended, p. 794, § 46, effective June 5. L. 83: (6) and (7)(a) amended, p. 595, § 1, effective July 1. L. 87: (9)(f) amended, p. 952, § 54, effective March 13; (1) amended, p. 905, § 10, effective June 15. L. 91: (2), (4), (5), (7), (9)(b), (9)(c), (9)(e), (9)(g), (9)(k), and (12) amended and (9)(l) added, p. 1469, § 3, effective July 1. L. 95: (9)(f) amended, p. 638, § 23, effective July 1. L. 2001: (1), (2), and (9)(l) amended, p. 475, § 1, effective July 1. L. 2004: (8) and (9)(e) amended, p. 1857, § 116, effective August 4. L. 2006: (9)(l) amended, p. 818, § 42, effective July 1. L. 2007: (13) added, p. 1589, § 3, effective July 1. L. 2011: (1), (2), (5), (9)(b), (9)(d), (9)(e)(III), (9)(h), and (9)(j) amended and (9)(m) added, (SB 11-091), ch. 207, pp. 889, 893, §§ 9, 14, effective July 1; (13) amended, (SB11-169), ch. 172, p. 631, § 33, effective July 1.

Editor's note: Amendments to subsection (7) and (7)(e) by Senate Bill 79-293 and House Bill 79-1338 were harmonized.

12-64-105.5. Immunity from civil process. Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in

lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: **L. 91:** Entire section added, p. 1470, § 4, effective July 1. **L. 2004:** Entire section amended, p. 1858, § 117, effective August 4.

12-64-106. Status of persons previously licensed. A person holding a valid license to practice veterinary medicine in this state on July 1, 1973, is recognized as a licensed veterinarian and is entitled to retain this status as long as he or she complies with this article and rules adopted pursuant to this article, including compliance with the requirement to renew the license according to the schedule established pursuant to section 12-64-110.

Source: **L. 67:** R&RE, p. 361, § 1. **C.R.S. 1963:** § 145-1-6. **L. 73:** p. 1513, § 7. **L. 2011:** Entire section amended, (SB 11-091), ch. 207, p. 893, § 15, effective July 1.

12-64-107. Application for license - qualifications. (1) Any person twenty-one years of age or older desiring a license to practice veterinary medicine in this state shall apply for the license in a manner approved by the board.

(2) (Deleted by amendment, L. 91, p. 1470, 5, effective July 1, 1991.)

(3) In the application for licensure, the applicant shall demonstrate that he or she has:

(a) (I) Graduated from an accredited school of veterinary medicine; or

(II) Graduated from a nonaccredited school of veterinary medicine and received a certificate from a national program approved by the board that assesses educational equivalency of graduates from nonaccredited schools of veterinary medicine; and

(b) Passed an examination approved by the board by rule.

(c) (Deleted by amendment, L. 2011, (SB 11-091), ch. 207, p. 893, § 16, effective July 1, 2011.)

(4) The board may deny a license or may grant a license subject to terms of probation if the board determines that an applicant for a license:

(a) Does not possess the qualifications required by this article;

(b) Has engaged in conduct that constitutes grounds for discipline pursuant to section 12-64-111 (1);

(c) Has been disciplined in another state or jurisdiction with respect to his or her license to practice veterinary medicine in that state or jurisdiction; or

(d) Has not actively practiced veterinary medicine for the two-year period immediately preceding the date of receipt of the application or has not otherwise maintained continued competence, as determined by the board.

(5) If the board denies a license to an applicant or grants a license subject to terms of probation, the applicant may seek review of the board's decision pursuant to section 24-4-104 (9), C.R.S.; except that, by accepting a license that is subject to probationary terms, the applicant waives any remedies available pursuant to section 24-4-104 (9), C.R.S.

Source: **L. 67:** R&RE, p. 361, § 1. **C.R.S. 1963:** § 145-1-7. **L. 73:** pp. 531, 1513, §§ 79, 8. **L. 77:** (1) amended, p. 644, § 12, effective March 16. **L. 79:** Entire section R&RE, p. 588, § 6, effective June 15. **L. 83:** Entire section R&RE, p. 595, § 2, effective July 1. **L. 89:** (3)(b) amended, p. 746, § 1, effective July 1. **L. 91:** (1), (2), IP(3), (3)(a), (3)(c), and (4) amended, p. 1470, § 5, effective July 1. **L. 2001:** (4) amended, p. 476, § 2, effective July 1. **L. 2011:** Entire section amended, (SB 11-091), ch. 207, p. 893, § 16, effective July 1.

12-64-107.5. Academic license. (1) A veterinarian who is employed at a school of veterinary medicine in this state and who practices veterinary medicine in the course of his or her employment responsibilities shall either apply, in a manner approved by the board, for an academic license in accordance with this section or shall otherwise become licensed pursuant to sections 12-64-107 and 12-64-108.

(2) A person who applies for an academic license shall submit proof to the board that he or she:

(a) Graduated from a school of veterinary medicine located in the United States or another country; and

(b) Is employed by an accredited school of veterinary medicine in this state.

(3) An applicant for an academic license shall not be required to comply with the requirements of sections 12-64-107 and 12-64-108.

(4) An academic license shall authorize the licensee to practice veterinary medicine only while engaged in the performance of his or her official duties as a university employee. An academic licensee may not use an academic license to practice veterinary medicine outside of his or her academic responsibilities.

(5) In addition to the requirements of this section, an applicant for an academic license shall complete all procedures for academic licensing established by the board to become licensed.

Source: L. 2007: Entire section added, p. 1589, § 4, effective January 1, 2008. **L. 2011:** (1) and (3) amended, (SB 11-091), ch. 207, p. 894, § 17, effective July 1.

12-64-108. License by endorsement - rules. The board may issue a license by endorsement to engage in the practice of veterinary medicine in this state to an applicant who has a license in good standing as a veterinarian in another jurisdiction if the applicant presents proof satisfactory to the board that, at the time of application for a Colorado license by endorsement, the applicant possesses credentials and qualifications that are substantially equivalent to the Colorado requirements for licensure set forth in section 12-64-107. The board may specify, by rule, what constitutes substantially equivalent credentials and qualifications.

Source: L. 67: R&RE, p. 362, § 1. **C.R.S. 1963:** § 145-1-8. **L. 73:** p. 1513, §§ 9, 10. **L. 79:** (1) and (5) amended, p. 588, § 7, effective June 15. **L. 91:** (1), (2), and (4) amended, p. 1472, § 6, effective July 1. **L. 2011:** Entire section R&RE, (SB 11-091), ch. 207, p. 895, § 18, effective July 1.

12-64-109. Temporary permit. (Repealed)

Source: L. 67: R&RE, p. 362, § 1. **C.R.S. 1963:** § 145-1-10. **L. 79:** Entire section R&RE, p. 589, § 8, effective June 15. **L. 83:** (1) amended, p. 596, § 3, effective July 1. **L. 91:** Entire section repealed, p. 1473, § 7, effective July 1.

12-64-110. License renewal.

(1) (Deleted by amendment, L. 2004, p. 1859, § 118, effective August 4, 2004.)

(2) All licenses must be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for renewal and fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, the license expires. A person whose license expires is subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(3) The board, by rule, may waive a licensed veterinarian's renewal fee while he or she is on active duty with any branch of the armed services of the United States. The period during which the renewal fee is waived cannot exceed the longer of three years or the duration of a national emergency.

(4) (a) In order to obtain license renewal, each licensee, except as otherwise provided, must complete a board-approved veterinary continuing educational program of at least thirty-two hours biennially. The courses may be taken at any time during the period since

the license was last renewed and before the license is due to be renewed. The licensee shall provide satisfactory proof of the completion of all delinquent continuing education requirements. For good cause, the board may prescribe the type and character of continuing education courses to be taken by any doctor of veterinary medicine in order to comply with the requirements of this article.

(b) The board shall have the authority to excuse licensees, as groups or individuals, from biennially continuing educational requirements for a good and sufficient reason.

(c) The board may employ qualified personnel to aid in the implementation of this section.

Source: L. 67: R&RE, p. 363, § 1. C.R.S. 1963: § 145-1-11. L. 73: p. 1514, § 11. L. 79: (1), (2), and (4)(c) amended, p. 589, § 9, effective June 15; (1) amended, p. 441, § 27, effective July 1. L. 83: (1) amended, p. 596, § 4, effective July 1. L. 91: (4)(a) amended, p. 900, § 41, effective June 5; (1), (2), and (4)(a) amended, p. 1473, § 8, effective July 1. L. 2001: (2)(b), (4)(a), and (4)(b) amended, p. 476, § 3, effective July 1. L. 2004: (1), (2), and (4)(a) amended, p. 1859, § 118, effective August 4. L. 2011: (2), (3), and (4)(a) amended, (SB 11-091), ch. 207, p. 895, § 19, effective July 1.

Editor's note: Amendments to subsection (1) by Senate Bill 79-293 and House Bill 79-1338 were harmonized.

Cross references: For the authority of the executive director of the department of regulatory agencies to change the period of validity and renewal date of any license or certificate issued by any examining or licensing board or commission in the division of professions and occupations, see § 24-34-102 (7) and (8).

12-64-110.5. Inactive license. (1) Upon notice to the board, a person licensed to practice veterinary medicine shall have his or her license transferred to inactive status. If a person whose license is in inactive status wishes to resume the practice of veterinary medicine, he or she shall apply to the board in a form and manner approved by the board and shall demonstrate, to the satisfaction of the board, continued competency to practice veterinary medicine. The board may approve the application and issue a license or may deny the application pursuant to section 12-64-107 (4).

(2) The board may pursue disciplinary proceedings pursuant to section 12-64-111 against a veterinarian whose license is in inactive status pursuant to this section for conduct that violates this article that the person engages in while in inactive status.

(3) (Deleted by amendment, L. 2011, (SB 11-091), ch. 207, p. 895, § 20, effective July 1, 2011.)

Source: L. 77: Entire section added, p. 777, § 1, effective March 16. L. 79: Entire section amended, p. 441, § 28, effective July 1. L. 91: Entire section amended, p. 1474, § 9, effective July 1. L. 2001: Entire section amended, p. 476, § 4, effective July 1. L. 2011: Entire section amended, (SB 11-091), ch. 207, p. 895, § 20, effective July 1.

12-64-111. Discipline of licensees. (1) Upon receipt of a signed complaint by a complainant or upon its own motion, the board may proceed to a hearing in conformity with section 12-64-112. After a hearing, and by a concurrence of a majority of members, the board may deny a license to an applicant or revoke or suspend the license of, place on probation, or otherwise discipline or fine, a licensed veterinarian for any of the following reasons:

(a) Violation of any of the provisions of this article or any of the rules of the board;

(b) Fraud, misrepresentation, or deception in attempting to obtain or in obtaining a license;

(c) (Deleted by amendment, L. 2011, (SB 11-091), ch. 207, p. 890, § 10, effective July 1, 2011.)

(d) Fraud, deception, misrepresentation, or dishonest or illegal practices in or connected with the practice of veterinary medicine;

- (e) Misrepresentation in the inspection of food for human consumption;
- (f) Fraudulent issuance or use of any health certificate, vaccination certificate, test chart, or blank form used in the practice of veterinary medicine to prevent the dissemination of animal disease, transportation of diseased animals, or the sale of inedible products of animal origin for human consumption;
- (g) Fraud or dishonesty in the application or reporting of any test for disease in animals;
- (h) Failure to keep veterinary premises and equipment in a clean and sanitary condition;
- (i) Refusal to permit the board to inspect veterinary premises during business hours;
- (j) Use of advertising or solicitation which is false or misleading;
- (k) Incompetence, negligence, or other malpractice in the practice of veterinary medicine;
- (l) Unprofessional or unethical conduct or engaging in practices in connection with the practice of veterinary medicine that are in violation of generally accepted standards of veterinary practice as defined in this article or prescribed by the rules of the board;
- (m) Willful making of any false statement as to any material matter in any oath or affidavit which is required by this article;
- (n) (Deleted by amendment, L. 91, p. 1474, § 10, effective July 1, 1991.)
- (o) Conviction of a charge of cruelty to animals;
- (p) Conviction of a violation of the "Uniform Controlled Substances Act of 1992", article 18 of title 18, C.R.S., the federal "Controlled Substances Act", or the federal "Controlled Substances Import and Export Act", or any of them;
- (q) Conviction of a crime in the courts of this state or of a crime in any other state, any territory, or any other country for an offense related to the conduct regulated by this article, regardless of whether the sentence is deferred. For the purposes of this paragraph (q), a plea of guilty or a plea of nolo contendere accepted by the court shall be considered as a conviction.
- (r) Conviction upon charges which involve the unlawful practice of veterinary medicine, and, based upon a record of such conviction, without any other testimony, the board may take temporary disciplinary action, even though an appeal for review by a higher court may be pending;
- (s) Permitting another to use his or her license for the purpose of treating or offering to treat sick, injured, or afflicted animals;
- (t) Practicing veterinary medicine under a false or assumed name, or impersonating another practitioner of a like, similar, or different name;
- (u) Maintenance of a professional or business connection with any other person who continues to violate any of the provisions of this article or rules of the board after ten days following receipt of the board's written request for termination of such connection;
- (v) Habitual or excessive use or abuse of alcohol beverages, a habit-forming drug, or a controlled substance as defined in section 18-18-102 (5), C.R.S.;
- (w) A determination that he or she is mentally incompetent by a court of competent jurisdiction and such court has entered, pursuant to part 3 or part 4 of article 14 of title 15 or section 27-65-109 (4) or 27-65-127, C.R.S., an order specifically finding that the mental incompetency is of such a degree that he or she is incapable of continuing to practice veterinary medicine;
- (x) Engaging in the practice of veterinary medicine while in inactive status or while the person's license is expired;
- (y) (Deleted by amendment, L. 2011, (SB 11-091), ch. 207, p. 890, § 10, effective July 1, 2011.)
- (z) Failing to report a known violation of any of the provisions of this section;
- (aa) Administering, dispensing, distributing, or prescribing any prescription drug other than in the course of a veterinarian-client-patient relationship, except in accordance with section 12-64-104 (2) (b);
- (bb) An act or omission which fails to meet generally accepted standards of veterinary practice;
- (cc) Practicing or performing services beyond a licensee's scope of competence;
- (dd) Engaging in any act prohibited in article 42.5 of this title;
- (ee) Failure to respond to a complaint against the licensed veterinarian;

- (ff) Failure to provide to the board an updated mailing address and other contact information as required by the board within thirty days after a change in the information;
- (gg) Failure to properly supervise a veterinary student or veterinary staff;
- (hh) Failure to provide a written prescription to a wholesaler within three business days after issuing an oral prescription order, as required by section 12-42.5-118 (3) (b).

(1.5) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(b) When a letter of admonition is sent by the board, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(1.7) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.

(2) The record of conviction of a felony in a court of competent jurisdiction shall be sufficient evidence for such disciplinary action to be taken as may be deemed proper by the board. For the purposes of this article, a conviction shall be deemed to be a conviction which has been upheld by the highest appellate court having jurisdiction or a conviction upon which the time for filing an appeal has passed.

(2.5) With respect to denying the issuance of a veterinary license or to taking disciplinary action against a veterinarian, the board may accept as prima facie evidence of grounds for such action any federal or state action taken against a veterinarian from another jurisdiction if the violation which prompted the disciplinary action in such jurisdiction would constitute grounds for disciplinary action under this section.

(3) Repealed.

(4) In addition to any other penalty that may be imposed pursuant to this section, any person violating any provision of this article or any rules promulgated pursuant to this article may be fined not less than one hundred dollars nor more than one thousand dollars for any such violation. Any moneys collected pursuant to this subsection (4) shall be transmitted to the state treasurer, who shall credit the moneys to the general fund.

(5) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(6) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person or on the board's own motion, that a licensed veterinarian is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required license, the board may issue an order to cease and desist such activity. The order must set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (6), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(7) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person or on the board's own motion, that a person has violated any other portion of this article, in addition to any specific powers granted pursuant to this article, the board may issue to the person an order to show cause why the board should not issue a final order directing the person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (7) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (7) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (7). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (7) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (7) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license, or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (7), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(8) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the board may enter into a stipulation with such person.

(9) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(10) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order in a court of competent jurisdiction.

(11) The board may suspend the license of a veterinarian who fails to comply with an order of the board issued in accordance with this section. The board may impose the license suspension until the licensee complies with the board's order.

Source: L. 67: R&RE, p. 363, § 1. C.R.S. 1963: § 145-1-12. L. 69: p. 828, § 4. L. 73: p. 1514, § 12. L. 75: (1)(z) R&RE, p. 924, § 15, effective July 14. L. 77: (1)(aa) added, p. 777, § 2, effective March 16. L. 79: (1) R&RE and (2) amended, pp. 590, 591, §§ 10, 11, effective June 15. L. 81: (1)(p), (1)(v), and (1)(y) amended, p. 736, § 16, effective July 1. L. 83: IP(1) amended, p. 596, § 5, effective July 1. L. 91: IP(1), (1)(b), (1)(c), (1)(e), (1)(i), (1)(k), (1)(n), (1)(q), and (1)(v) amended and (1)(z), (1)(aa), (1)(bb), (1)(cc), (1)(dd), (1.5), (2.5), and (4) added, pp. 1474, 1475, §§ 10, 11, effective July 1; (1)(w) added, p. 1783, § 9, effective July 1. L. 94: (1)(p) amended, p. 1632, § 35, effective

May 31. **L. 99:** (1.5) amended, p. 620, §12, effective August 4. **L. 2001:** (1)(l), (1)(q), (1.5), and (3) amended, p. 477, § 5, effective July 1. **L. 2004:** (1)(v) amended, p. 1197, § 47, effective August 4; (1.5) and (4) amended and (5) added, p. 1859, § 119, effective August 4. **L. 2006:** (1.7) and (6) to (10) added, p. 818, § 43, effective July 1. **L. 2010:** (1)(w) amended, (SB 10-175), ch. 188, p. 780, § 14, effective April 29. **L. 2011:** IP(1), (1)(c), (1)(s), (1)(v), (1)(x), (1)(y), (1)(aa), (6)(a), and (7)(a) amended, (1)(ee) to (1)(gg) and (11) added, and (3) repealed, (SB 11-091), ch. 207, pp. 890, 885, 892, §§ 10, 6, 12, 7, effective July 1. **L. 2012:** (1)(v) and (1)(dd) amended and (1)(hh) added, (HB 12-1311), ch. 281, p. 1595, § 4, effective July 1.

Cross references: For the “Colorado Licensing of Controlled Substances Act”, see part 2 of article 80 of title 27; for the federal “Controlled Substances Act”, see 21 U.S.C. sec. 802 et seq., Pub.L. 93-281, May 14, 1974, and amendments thereto; for the federal “Controlled Substances Import and Export Act”, see 21 U.S.C. secs. 952, 953, Pub.L. 95-633, November 10, 1978; for an alternative disciplinary action for persons licensed, registered, or certified pursuant to this article, see § 24-34-106.

ANNOTATION

Evidence supported findings of board that death of animal operated on caused by gross negligence, incompetence, or malpractice.

Schindelar v. State Bd. of Veterinary Medicine, 672 P.2d 1021 (Colo. App. 1983).

12-64-111.5. Review of board - disciplinary actions. (Repealed)

Source: **L. 91:** Entire section added, p. 1476, § 12, effective July 1. **L. 2004:** Entire section repealed, p. 192, § 4, effective August 4.

12-64-112. Hearing procedure.

- (1) Repealed.
- (2) Hearings shall be conducted in conformity with sections 24-4-105 and 24-4-106, C.R.S. The court of appeals shall have initial jurisdiction to review all final agency actions and orders pursuant to section 24-4-106 (11), C.R.S.

Source: **L. 67:** R&RE, p. 364, § 1. **C.R.S. 1963:** § 145-1-13. **L. 73:** p. 1516, § 13. **L. 79:** (1) repealed, p. 592, § 16, effective June 15. **L. 2001:** (2) amended, p. 478, § 6, effective July 1.

ANNOTATION

Law reviews. For note, “The Right to Cross-Examine Adverse Witnesses as a Part of Due

Process in Hearings Before Colorado Agencies”, see 31 Dicta 383 (1954).

12-64-113. Revocation. Any person whose license is revoked is ineligible to apply for a license under this article for at least two years after the date of revocation of the license. The board shall treat a subsequent application for licensure from a person whose license was revoked as an application for a new license under this article.

Source: **L. 67:** R&RE, p. 364, § 1. **C.R.S. 1963:** § 145-1-14. **L. 2011:** Entire section amended, (SB 11-091), ch. 207, p. 892, § 13, effective July 1.

12-64-114. Unauthorized practice - penalties. (1) No person who practices veterinary medicine without a currently valid license may receive any compensation for services so rendered.

(2) Any person who practices or offers or attempts to practice veterinary medicine without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and for the

second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(3) The board or a citizen of this state may bring an action to enjoin a person from practicing veterinary medicine without a currently valid license. If the court finds that the person is violating, or is threatening to violate, this article, it may enter an injunction restraining him or her from such unlawful acts.

(4) The successful maintenance of an action based on any one of the remedies set forth in this section shall in no way prejudice the prosecution of an action based on any other of the remedies.

Source: L. 67: R&RE, p. 364, § 1. C.R.S. 1963: § 145-1-15. L. 85: (2) amended, p. 410, § 21, effective July 1. L. 91: (1) and (3) amended, p. 1476, § 13, effective July 1. L. 2002: (2) amended, p. 1487, § 119, effective October 1. L. 2006: (2) amended, p. 96, § 63, effective August 7. L. 2011: (3) amended, (SB 11-091), ch. 207, p. 896, § 21, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-64-115. Abandonment of animals. (1) An animal placed in the custody of a licensed veterinarian for treatment, boarding, or other care that is unclaimed by its owner or his or her agent for more than ten days after written notice, by certified mail, return receipt requested, is given to the addressee at his or her last-known address is deemed to be abandoned and may be turned over to the nearest humane society or animal shelter or disposed of in a manner deemed appropriate by the custodian.

(2) The giving of notice to the owner, or the agent of the owner, of such animal by the licensed veterinarian, as provided in subsection (1) of this section, shall relieve the licensed veterinarian and any custodian to whom such animal may be given of any further liability for disposal. Such procedure by the licensed veterinarian shall not constitute grounds for disciplining procedure under this article.

(3) For the purpose of this article, the term “abandoned” means to forsake entirely, or to neglect or refuse to provide or perform the legal obligations for care and support of an animal by its owner, or his or her agent. Abandonment constitutes the relinquishment of all rights and claims by the owner to the animal.

Source: L. 67: R&RE, p. 364, § 1. C.R.S. 1963: § 145-1-16. L. 79: (1) amended, p. 591, § 12, effective June 15; (1) amended, p. 441, § 29, effective July 1. L. 2011: (1) and (3) amended, (SB 11-091), ch. 207, p. 896, § 22, effective July 1.

Editor’s note: Amendments to subsection (1) by Senate Bill 79-293 and House Bill 79-1338 were harmonized.

12-64-116. Veterinary students. (1) All duties performed by a veterinary student must be under the direct supervision of a licensed veterinarian. If the student does not conform to the following requirements, the licensed veterinarian is in violation of this article. A veterinary student may:

(a) Administer drugs only under the direct supervision of a licensed veterinarian; and
(b) Perform surgery, only if he or she is competent and has the necessary training and experience, under the direct supervision of a licensed veterinarian.

(c) and (d) (Deleted by amendment, L. 2011, (SB 11-091), ch. 207, p. 897, § 23, effective July 1, 2011.)

(2) It is unlawful for a veterinary student to participate in the operation of a branch office, clinic, or allied establishment unless the veterinary student is under the direct supervision of a licensed veterinarian.

Source: L. 73: R&RE, p. 1516, § 14. C.R.S. 1963: § 145-1-17. L. 79: Entire section amended, p. 592, § 13, effective June 15. L. 91: IP(1) amended, p. 1477, § 14, effective July 1. L. 2011: Entire section amended, (SB 11-091), ch. 207, p. 897, § 23, effective July 1.

12-64-117. Veterinary student preceptors. (Repealed)

Source: L. 73: p. 1517, § 15. C.R.S. 1963: § 145-1-18. L. 79: Entire section amended, p. 592, § 14, effective June 15. L. 2011: Entire section repealed, (SB 11-091), ch. 207, p. 897, § 24, effective July 1.

12-64-118. Emergency care or treatment. A licensed veterinarian who in good faith administers emergency care or treatment, or euthanasia for humane reasons, to an animal, without compensation, either voluntarily or at the request of a state or local governmental officer or employee, is not liable for civil damages for good faith acts in the administration of such care or treatment. This immunity does not apply in the event of a wanton or reckless disregard of the rights of the owner of the animal.

Source: L. 73: p. 1517, § 15. C.R.S. 1963: § 145-1-19. L. 79: Entire section amended, p. 592, § 15, effective June 15. L. 2011: Entire section amended, (SB 11-091), ch. 207, p. 897, § 25, effective July 1.

Cross references: For the exemption of persons rendering emergency assistance from civil liability, see § 13-21-108.

12-64-119. Review of board of veterinary medicine - repeal of article. This article is repealed, effective September 1, 2022. Prior to such repeal the state board of veterinary medicine shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 91: Entire section added, p. 1477, § 15, effective July 1. L. 2001: Entire section amended, p. 478, § 7, effective July 1. L. 2011: Entire section amended, (SB 11-091), ch. 207, p. 882, § 1, effective July 1.

12-64-120. Veterinary records in custody of animal care providers - definition - rules. (1) As used in this section, unless the context otherwise requires, “animal care provider” means any veterinary practice or veterinary hospital, including the veterinary teaching hospital at Colorado state university, that provides veterinary care or treatment to animals.

(2) Animal care providers shall make available the veterinary records in their custody as follows:

(a) The owner of an animal or the owner’s designated representative shall have reasonable access to such animal’s records for inspection;

(b) The owner or the owner’s designated representative may obtain a summary of such animal’s records upon request, following termination of care or treatment; and

(c) Copies of veterinary records, including digital records, digital images, diagnostic quality X rays, CT SCANS, MRIs, or other films, shall be furnished to:

(I) The owner or the owner’s designated representative upon payment of reasonable costs; and

(II) Local law enforcement authorities and the bureau of animal protection in the department of agriculture in connection with an investigation of animal cruelty pursuant to section 18-9-202, C.R.S., or animal fighting pursuant to section 18-9-204, C.R.S.

(3) (a) Records concerning an animal’s care are available to the public unless a veterinary-patient-client privilege exists with respect to such animal, as provided in section 24-72-204 (3) (a) (XIV), C.R.S.

(b) All practicing veterinarians in this state shall maintain accurate records for every new or existing veterinarian-client-patient relationship as defined in section 12-64-103

(15.5). In the animal patient records, the licensed veterinarian shall justify and describe the assessment, diagnosis, and treatment administered or prescribed and all medications and dosages prescribed in a legible, written, printed, or electronically prepared document that is unalterable. The licensed veterinarian shall prepare the records in a manner that allows any subsequent evaluation of the same animal patient record to yield comprehensive medical, patient, and veterinarian identifying information. Licensed veterinarians shall maintain animal patient records for a minimum of three years after the animal patient's last medical examination.

(c) The board shall promulgate rules including, but not limited to, criteria by which animal patient records may be adapted in the case of herds, flocks, litters, large volume, or specialty veterinary practices and identify exceptions to paragraph (a) of this subsection (3), if necessary, for veterinarians rendering emergency care or treatment.

Source: L. 99: Entire section added, p. 371, § 2, effective August 4. L. 2001: (3) amended, p. 478, § 8, effective July 1. L. 2007: (2)(c) amended, p. 1589, § 5, effective July 1. L. 2011: (3)(b) amended, (SB 11-091), ch. 207, p. 897, § 26, effective July 1.

12-64-121. Reporting requirements - immunity for reporting - veterinary-patient-client privilege inapplicable. (1) A licensed veterinarian who, during the course of attending or treating an animal, has reasonable cause to know or suspect that the animal has been subjected to cruelty in violation of section 18-9-202, C.R.S., or subjected to animal fighting in violation of section 18-9-204, C.R.S., shall report or cause a report to be made of the animal cruelty or animal fighting to a local law enforcement agency or the bureau of animal protection.

(2) A licensed veterinarian shall not knowingly make a false report of animal cruelty or animal fighting to a local law enforcement agency or to the bureau of animal protection.

(3) A licensed veterinarian who willfully violates the provisions of subsection (1) or (2) of this section commits a class 1 petty offense, punishable as provided in section 18-1.3-503, C.R.S.

(4) A licensed veterinarian who in good faith reports a suspected incident of animal cruelty or animal fighting to the proper authorities in accordance with subsection (1) of this section shall be immune from liability in any civil or criminal action brought against the veterinarian for reporting the incident. In any civil or criminal proceeding in which the liability of a veterinarian for reporting an incident described in subsection (1) of this section is at issue, the good faith of the veterinarian shall be presumed.

(5) The veterinary-patient-client privilege described in section 24-72-204 (3) (a) (XIV), C.R.S., may not be asserted for the purpose of excluding or refusing evidence or testimony in a prosecution for an act of animal cruelty under section 18-9-202, C.R.S., or for an act of animal fighting under section 18-9-204, C.R.S.

Source: L. 2001: Entire section added, p. 479, § 9, effective July 1. L. 2007: Entire section R&RE, p. 1590, § 6, effective July 1.

12-64-122. Corporate structure for the practice of veterinary medicine - definitions. (1) A licensed veterinarian shall not practice veterinary medicine in or through a corporation except in accordance with this section.

(2) One or more persons may form or own shares in a corporation for the practice of veterinary medicine if the corporation is organized and operated in accordance with this section. A corporation formed pursuant to this section may exercise the powers and privileges conferred upon corporations by the laws of Colorado.

(3) The practice of veterinary medicine by a corporation pursuant to this section must be performed by or under the supervision of a licensed veterinarian. Lay directors, officers, and shareholders of the corporation shall not exercise any authority whatsoever over the independent medical judgment of licensed veterinarians performing or supervising the practice of veterinary medicine by or on behalf of the corporation.

(4) The corporation shall not engage in any act or omission that, if engaged in by a licensed veterinarian employed by the corporation, would violate section 12-64-111 (1). A violation of section 12-64-111 (1) is grounds for the board to discipline a licensee pursuant to section 12-64-111.

(5) Nothing in this section diminishes or changes the obligation of each licensed veterinarian employed by the corporation to conduct his or her practice so as not to violate section 12-64-111 (1). A licensed veterinarian who, by act or omission, causes the corporation to act or fail to act in a way that violates section 12-64-111 (1) or any provision of this section is personally responsible for such act or omission and is subject to discipline for the act or omission.

(6) Nothing in this section modifies the veterinarian-patient-client privilege specified in section 24-72-204 (3) (a) (XIV), C.R.S.

(7) As used in this section, unless the context otherwise requires:

(a) "Corporation" means a domestic entity, as defined in section 7-90-102 (13), C.R.S., a foreign entity, as defined in section 7-90-102 (23), C.R.S., registered to do business in Colorado, or a sole proprietorship.

(b) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(c) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

Source: L. 2011: Entire section added, (SB 11-091), ch. 207, p. 885, § 8, effective July 1.

12-64-123. Veterinary premises - licensed veterinarian responsible for veterinary medical decisions. (1) At all times when a patient is present on a veterinary premises, a licensed veterinarian must be designated as responsible for the veterinary medical decisions and care provided to the patient.

(2) At all times when a patient is present on a veterinary premises, a licensed veterinarian must be designated as responsible for the premises. The board may fine a corporation organized and operated in accordance with section 12-64-122 that owns or operates a veterinary premises up to one thousand dollars per day for each day the corporation fails to have a licensed veterinarian designated as responsible for the veterinary premises.

Source: L. 2011: Entire section added, (SB 11-091), ch. 207, p. 886, § 8, effective July 1.

12-64-124. Veterinarian peer health assistance program - fees - administration - rules. (1) (a) On and after July 1, 2011, as a condition of licensure and renewal in this state, every veterinarian applying for a new license or to renew his or her license shall pay to the board, for use by the administering entity selected by the board pursuant to this subsection (1), an amount not to exceed forty dollars per year, which maximum amount may be adjusted on January 1, 2012, and annually thereafter by the board to reflect changes in the United States bureau of statistics consumer price index for the Denver-Boulder consolidated metropolitan statistical area for all urban consumers or goods, or its successor index. The board shall forward the fee to the chosen administering entity for use in supporting designated providers selected by the board to provide assistance to veterinarians needing help in dealing with physical, emotional, or psychological conditions that may be detrimental to their ability to practice veterinary medicine.

(b) The board shall select one or more peer health assistance programs as designated providers. To be eligible for designation by the board, a peer health assistance program must:

(I) Provide for the education of veterinarians with respect to the recognition and prevention of physical, emotional, and psychological conditions and provide for intervention when necessary or under circumstances established by the board by rule;

(II) Offer assistance to a veterinarian in identifying physical, emotional, or psychological conditions;

(III) Evaluate the extent of physical, emotional, or psychological conditions and refer the veterinarian for appropriate treatment;

(IV) Monitor the status of a veterinarian who has been referred for treatment;

(V) Provide counseling and support for the veterinarian and for the family of any veterinarian referred for treatment;

(VI) Agree to receive referrals from the board; and

(VII) Agree to make its services available to all licensed Colorado veterinarians.

(c) The board may select an entity to administer the veterinarian peer health assistance program. An administering entity must be a nonprofit private foundation that is qualified under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, and that is dedicated to providing support for charitable, benevolent, educational, and scientific purposes that are related to veterinary medicine, veterinary medical education, veterinary medical research and science, and other veterinary medical charitable purposes.

(d) The administering entity shall:

(I) Distribute the moneys collected by the board, less expenses, to the designated provider, as directed by the board;

(II) Provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(III) Post a surety performance bond in an amount specified by the board to secure performance under the requirements of this section. The administering entity may recover the actual administrative costs incurred in performing its duties under this section in an amount not to exceed ten percent of the total amount collected.

(e) The board shall collect the required annual payments payable to the administering entity for the benefit of the administering entity and shall transfer all such payments to the administering entity. All required annual payments collected or due to the board for each fiscal year are custodial funds that are not subject to appropriation by the general assembly, and the distribution of payments to the administering entity or expenditure of the payments by the administering entity does not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

(2) (a) Any veterinarian who is referred by the board to a peer health assistance program shall enter into a stipulation with the board pursuant to section 12-64-111 (8) prior to participating in the program. The agreement must contain specific requirements and goals to be met by the participant, including the conditions under which the program will be successfully completed or terminated, and a provision that a failure to comply with the requirements and goals are to be promptly reported to the board and that such failure will result in disciplinary action by the board.

(b) Notwithstanding sections 12-64-111 and 24-4-104, C.R.S., the board may immediately suspend the license of any veterinarian who is referred to a peer health assistance program by the board and who fails to attend or to complete the program. If the veterinarian objects to the suspension, he or she may submit a written request to the board for a formal hearing on the suspension within ten days after receiving notice of the suspension, and the board shall grant the request. In the hearing, the veterinarian bears the burden of proving that his or her license should not be suspended.

(c) Any veterinarian who self-refers and is accepted into a peer health assistance program shall affirm that, to the best of his or her knowledge, information, and belief, he or she knows of no instance in which he or she has violated this article or the rules of the board, except in those instances affected by the veterinarian's physical, emotional, or psychological conditions.

(3) Nothing in this section creates any liability on the board or the state of Colorado for the actions of the board in making grants to peer health assistance programs, and no civil action may be brought or maintained against the board or the state for an injury alleged to have been the result of the activities of any state-funded peer health assistance program or the result of an act or omission of a veterinarian participating in or referred by a state-funded peer health assistance program. However, the state remains liable under the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., if an injury alleged

to have been the result of an act or omission of a veterinarian participating in or referred by a state-funded peer health assistance program occurred while such veterinarian was performing duties as an employee of the state.

(4) The board may promulgate rules necessary to implement this section.

Source: L. 2011: Entire section added, (SB 11-091), ch. 207, p. 887, § 8, effective July 1.

ARTICLE 65

Hearing Aid Dealers

12-65-101 to 12-65-121. (Repealed)

Source: L. 86: Entire article repealed, p. 447, § 6, effective April 17, 1986.

Editor's note: This article was added in 1975. For amendments to this article prior to its repeal in 1986, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 66

Wholesale Sales Representatives

12-66-101.	Legislative declaration.	12-66-103.	Damages.
12-66-102.	Jurisdiction over nonresident representatives.	12-66-104.	Liquor licensees excepted.

12-66-101. Legislative declaration. The general assembly hereby finds, determines, and declares that independent wholesale sales representatives are a key ingredient to the Colorado economy. The general assembly further finds and declares that wholesale sales representatives spend many hours developing their territory in order to properly market their products. Therefore, it is the intent of the general assembly to provide security and clarify the relations between distributors, jobbers, or manufacturers and their wholesale sales representatives.

Source: L. 93: Entire article added, p. 546, § 1, effective April 29.

12-66-102. Jurisdiction over nonresident representatives. A distributor, jobber, or manufacturer who is not a resident of Colorado and who enters into any written contract or written sales agreement regulated by this article shall be deemed to be doing business in Colorado for purposes of personal jurisdiction.

Source: L. 93: Entire article added, p. 546, § 1, effective April 29.

12-66-103. Damages. (1) A distributor, jobber, or manufacturer who knowingly fails to pay commissions as provided in any written contract or written sales agreement shall be liable to the wholesale sales representative in a civil action for treble the damages proved at trial.

(2) In a civil action brought by a wholesale sales representative pursuant to this section, the prevailing party shall be entitled to reasonable attorney fees and costs in addition to any other recovery.

Source: L. 93: Entire article added, p. 546, § 1, effective April 29.

12-66-104. Liquor licensees excepted. This article shall not apply to any person licensed under article 46 or 47 of this title.

Source: L. 93: Entire article added, p. 547, § 1, effective April 29.

ARTICLE 70

Inactive License Status Authorized

12-70-101. Inactive license - rights and responsibilities.

12-70-102. Active military personnel - exemptions from licensing requirements.

12-70-101. Inactive license - rights and responsibilities. (1) Persons licensed (which for purposes of this article shall include persons referred to as certified) to practice any profession or occupation under this title for which postgraduate study or attendance at educational institutions is required in order to obtain renewal of such licenses may have their names transferred to an inactive licensees category under this section. Every board authorized under this title to issue licenses shall maintain a list of inactive licensees, and upon written notice to such board, any such licensee shall not be required to comply with any postgraduate educational requirements so long as such licensee remains inactive in the profession or occupation. Each such inactive licensee shall continue to meet the normal registration requirements imposed upon his profession or occupation.

(2) Such inactive status shall be noted on the face of any license issued while the licensee remains inactive. Should such person wish to resume the practice of his profession or occupation after being placed on an inactive list, he shall file a proper application therefor, pay the registration renewal fee, and meet any postgraduate study or in-service requirements which the governing board may determine to be applicable to such resumption of practice.

(3) Engaging in the practice of a profession or occupation while on inactive status pursuant to this article may be grounds for revocation.

Source: L. 79: Entire article added, p. 594, § 1, effective July 1.

12-70-102. Active military personnel - exemptions from licensing requirements. Each board or division, except the division of real estate, that regulates persons licensed, certified, or registered pursuant to this title shall exempt licensed, certified, or registered military personnel who have been called to federally funded active duty for more than one hundred twenty days for the purpose of serving in a war, emergency, or contingency from the payment of any professional or occupational license, certification, or registration fees, including renewal fees, and from any continuing education or professional competency requirements pursuant to this title for a renewal cycle that falls within the period of service or within the six months following the completion of service in the war, emergency, or contingency.

Source: L. 2011: Entire section added, (HB 11-1013), ch. 104, p. 326, § 1, effective August 10.

ARTICLE 71

Regulation of Military Individuals and Spouses

Editor's note: Section 26 of chapter 271, Session Laws of Colorado 2012, provides that the act adding this article applies to acts committed on or after July 1, 2012.

12-71-101.	Definitions.	12-71-104.	Continuing education - regulated service members -
12-71-102.	Authority to practice - reciprocity.		rules.
12-71-103.	Notice.	12-71-105.	Rules.

12-71-101. Definitions. As used in this article, unless the context otherwise requires:

(1) “Agency” means an agency of the state that regulates a profession or occupation under this title.

(2) “Authority to practice” or “authorized to practice” means the holding of a currently valid license to practice in a profession or occupation or a currently valid certification or registration necessary to practice in a profession or occupation if the person is licensed, certified, or registered under this title or a substantially similar law in another state.

(3) “Military spouse” means the spouse of a person who is actively serving in the United States armed forces and who is stationed in Colorado in accordance with military orders.

Source: L. 2012: Entire article added, (HB 12-1059), ch. 271, p. 1426, § 1, effective July 1.

12-71-102. Authority to practice - reciprocity. (1) Notwithstanding any other article of this title, a person need not obtain authority to practice an occupation or profession under this title during the person’s first year of residence in Colorado if:

(a) The person is a military spouse who is authorized to practice that occupation or profession in another state;

(b) Other than the person’s lack of licensure, registration, or certification in Colorado, there is no basis to disqualify the person under this title; and

(c) The person consents, as a condition of practicing in Colorado, to be subject to the jurisdiction and disciplinary authority of the appropriate agency.

(2) This section does not prevent an agency from entering into a reciprocity agreement with the regulating authority of another state or jurisdiction if otherwise authorized by law.

(3) This section does not apply to authority to practice under article 25, 28, 36, 40, or 61 of this title.

Source: L. 2012: Entire article added, (HB 12-1059), ch. 271, p. 1427, § 1, effective July 1.

12-71-103. Notice. (1) **Agency.** If a person who is practicing in Colorado under section 12-71-102 applies for authority to continue to practice after the first year under another article of this title, the applicant shall notify the agency receiving the application of the following:

(a) The applicant is currently practicing in Colorado under this article;

(b) The date the applicant began practicing in Colorado; and

(c) The name and contact information of any person employing the applicant to practice in Colorado.

(2) **Employer.** If an agency denies the application for authority to practice under this title, the agency shall notify the employer that the person was denied authority to continue to practice under this title.

Source: L. 2012: Entire article added, (HB 12-1059), ch. 271, p. 1427, § 1, effective July 1.

12-71-104. Continuing education - regulated service members - rules. (1) An agency may accept, from a person with authority to practice, continuing education, training, or service completed as a member of the armed forces or reserves of the United States, the National Guard of any state, the military reserves of any state, or the naval militia of any state toward the educational qualifications to renew the person’s authority to practice.

(2) An agency may promulgate rules establishing educational standards and procedures necessary to implement this section.

Source: L. 2012: Entire article added, (HB 12-1059), ch. 271, p. 1427, § 1, effective July 1.

12-71-105. Rules. The director of the division of registrations may promulgate rules reasonably necessary to implement this article.

Source: L. 2012: Entire article added, (HB 12-1059), ch. 271, p. 1428, § 1, effective July 1.

